

(2003) 04 JH CK 0077

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5296 of 2001

Dilip Prasad and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand) and Others

RESPONDENT

Date of Decision : 10-04-2003

Acts Referred:

Citation : (2003) 2 JCR 671

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : J. Mazumdar, for the Appellant; Suresh Kumar, J.C. to A.A.G., for the Respondent

Judgement

S.J. Mukhopadhaya, J.—This application has been preferred by petitioner after three years of their termination against the order contained in letter No. 6255 dated 29th August, 1998 whereby the respondents alleged their appointments as illegal.

2. According to petitioners, they were engaged on daily wages between 1994-1996 in two newly created works division (Mechanical). Many of the petitioners earlier moved before this Court for regularization of services in which certain directions were issued by the Court. It is alleged that before consideration of the case of petitioners for regularization of their services, the respondents terminated their service vide letter dated 29th August, 1998 without notice and hearing the petitioners.

3. Counsel for the petitioners relied on an unreported decision of the Court dated 7th March, 2003 in WP (S) No. 3769 of 2001 (Sanjiv Kumar Singh and Ors. v. The State of Jharkhand and Ors. and analogous cases), wherein the Court observed that the petitioners of those cases were required to be noticed and asked to submit show cause as to why their appointments should not be terminated and consequently the same very order dated 29th August, 1998 was quashed.

4. According to this Court, even if no individual show cause is given to any party and appointment order is cancelled on the ground of "illegal appointment", once the party move before a Court, it is for the party to show that he was appointed legally following the procedure and the appointment was not made in violation of Articles 14 and 16 of the Constitution of India. In such case, the Court can satisfy itself relating to legality and propriety of appointment and in a case where it is found that the appointment orders issued in violation of Articles 14 and 16 of the Constitution of India, without issuance of an advertisement or interview letter or selection, can refuse to entertain the writ petition. However, as this Court has already interfered with the same very order dated 29th August, 1998 in WP (S) No. 3769 of 2001 (Sanjiv Kumar Singh and Ors. v. The State of Jharkhand and Ors. and analogous cases), as referred above, I have no other option but to dispose of this writ petition with same and similar direction.

5. In the circumstances, the impugned order dated 29th August, 1988 is set aside with direction to the respondents to issue a fresh show cause notice upon the petitioners or even a general notice inviting show cause within a period of three weeks, from the date of such notice.

6. Petitioners may file their show cause and thereafter the respondents may decide the issue relating to legality and propriety of appointment of petitioners within one month thereof.

7. So far as the salary of the petitioner is concerned, the petitioner having moved this Court after long delay, they Will not be entitled for salary for the intervening period but the respondents will pay them the salary/wages for the period they have actually worked.

8. The writ petition stands disposed of, with the aforesaid observations/directions.