

(2012) 02 JH CK 0049
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5579 of 2003

Girdhari Mahto

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 2 JCR 470

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Advocate : Rajendra Krishna and Jay Shanker Tiwary, for the Appellant;
Amrendra Pradhan, JC to GP-IV, for the Respondent

Final Decision : Allowed

Judgement

P.P. Bhatt, J.—Petitioner by way of filing this writ petition under Article 226 of the Constitution of India has prayed for issuance of appropriate writ/order/direction for quashing the order as contained in Memo No. 371 dated 16.4.1998 (Annexure-6), by which the Director, Land Acquisition & Rehabilitation. Water Resources Department, Government of Bihar has terminated the service of the petitioner on the ground that he had not been able to produce the displacement certificate on the basis whereof he is said to have been given compassionate appointment. It is submitted that petitioner was appointed vide Annexure-1 i.e. office order dated 18.5.1989 on the post of peon under the Water Resources Department, Government of Bihar as a displaced person. It is further submitted that the benefit was extended to the petitioner on the ground of acquisition of his land for the purpose of irrigation project. It is also submitted that petitioner could not produce the displacement certificate as he has lost it somewhere. It is also submitted that services of other similarly situated persons, mentioned in the order (Annexure-1) i.e. at serial Nos. 15 and 16, were terminated on the similar ground. Writ petition [CWJC No. 1816 of 1998(R)] filed by Kishore Kumar, one of the similar situated persons, was allowed by this Court. In support of the

contention, learned counsel for the petitioner has referred to and relied upon the case, reported in Kishore Kumar Vs. State of Bihar and Others, . It is submitted that the case of the petitioner is also similar to that of the petitioner in CWJC No. 1816 of 1998(R). Learned counsel for the petitioner, while referring Annexure-7 to the supplementary affidavit filed by the petitioner, submitted that on similar grounds several other persons had been terminated. They challenged the order of termination before this Court and this Court set aside the said order. Being aggrieved by the said decision, the State Government preferred an LPA but lost the same. Against the order of LPA, the State Government preferred SLP which has also been disposed of by Hon''ble Supreme Court in terms of order dated 18.8.2009. Learned counsel for the petitioner, while referring Annexure-9 to the supplementary affidavit, submitted that while considering the cases of other petitioners, in W.P.(S) No. 413 of 2010, W.P.(S) No. 4319 of 2009, W.P.(S) No. 22 of 2011 and W.P.(S) No. 4177 of 2009, whose services were terminated, this Court was pleased to allow those writ petitions by observing that the petitioners therein are also entitled for regularization and liberal view is required to be taken in such matter.

2. Learned counsel for the State, while referring the counter-affidavit filed by the respondent-State, submitted that the petitioner was asked to submit displacement certificate, the basis on which he was appointed as peon but unfortunately, the petitioner could not produce the displacement certificate and therefore, the respondent-authority had no option but to terminate the services of the petitioner for want of requisite document.

3. Considering the aforesaid rival submissions and on perusal of the materials on record, it transpires that petitioner was appointed on the post of peon as far back as on 18.5.1989 vide Annexure-1. It appears that his appointment was given on account of acquisition of land by the State for the purpose of medium irrigation scheme. It appears that petitioner''s appointment was done as a displaced person. Appointment order produced by the petitioner along with this writ petition (Annexure-1) clearly indicates that the petitioner''s appointment was done at Sl. No. 4 in the said appointment order. Considering the status as displaced person, there is reason to believe that at the time of making appointment, the respondent-authority must have verified the fact of his displacement and on the basis of material available with the respondent-authority, the petitioner was offered employment and after lapse of ten years vide order dated 16.4.1998, the service of the petitioner was terminated by assigning reason that the petitioner failed to produce the displacement certificate as required for the purpose of appointment. It also appears that other similarly situated persons, namely, Kishore Kumar and Chumnu Mahto, who were appointed vide appointment order (Annexure-1) and whose names were indicated at serial Nos. 15 and 16, were also terminated by the respondents. This Court while dealing with the writ petition filed by the said Kishore Kumar, set aside the order of termination and allowed the writ petition. On perusal of the judgment, reported in Kishore Kumar Vs. State of Bihar and Others, , it appears

that the fact of the present case is also similar to that case. It also appears that the persons appointed, by virtue of that displacement by Irrigation Department, were terminated and they also preferred writ petitions before this Court. It appears that the writ petitions filed by those persons were allowed by this Court and being aggrieved by the order passed by this Court, State preferred an LPA but the said LPA came to be rejected. Against the order of LPA, the State Government went up to Hon''ble Supreme Court by way of filing SLP. On perusal of the supplementary affidavit filed by the petitioner and orders annexed with the said supplementary affidavit, it appears that Hon''ble Apex Court, while dealing with the said SLP, has taken note of the judgment rendered in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and has observed that since these persons are working on the sanctioned posts, and are continuing for a substantial number of years, it will be better for the State Government to consider as to whether these persons can be regularized. It also appears that subsequent thereto, in other similar cases (W.P.(S) No. 413 of 2010, W.P.(S) No. 4319 of 2009, W.P.(S) No. 22 of 2011 and W.P.(S) No. 4177 of 2009), this Court also passed an order for regularization of the services. On perusal of the order passed by the Hon''ble Apex Court, it appears that the State of Bihar was directed to consider the case of other similarly situated persons in the light of Uma Devi's case, considering the period of service rendered by those persons against the sanctioned and vacant posts. In the present case, there is no dispute about the fact that petitioner Was offered employment vide Annexure-1 as a displaced person and after lapse of ten years, his service was ordered to be terminated and therefore, considering the length of service rendered by the petitioner as a peon, his case is also required to be considered by the respondent-authority as observed by the Apex Court in Uma Devi's case.

4. Having regard to the facts and circumstances of the present case, it appears that the case of the petitioner is also similar to that of the case of the petitioner in CWJC No. 1816 of 1998(R). It appears that in the present case, the petitioner was offered employment considering the fact that he was a displaced person and therefore, there is reason to believe that at the time of making appointment, respondent-authority might have taken into consideration the necessary papers/data before issuance of appointment order. However, the requirement with regard to production of displacement certificate after lapse of ten years of service could not be fulfilled by the petitioner and therefore, on that count, the service of the petitioner was terminated. In such eventuality, this Court while allowing the petitions of similarly situated persons, set aside the order of termination. likewise, looking into the facts and circumstances of the present case, termination order passed by the respondents deserves to be quashed and set aside.

5. In the light of the above position, the order of termination passed by the respondent-authority (Annexure-6) is ordered to be quashed and set aside. Petitioner is ordered to be reinstated in service. Respondent-State is directed to regularize the services of the petitioner in the light of observation made by the

Apex Court in Uma Devi's case and the order passed by the Hon''ble Supreme Court in Civil Appeal No. 918 of 2008 (Annexure-7 to the supplementary affidavit) and also keeping in mind the orders passed by this Court in the cases of other similarly situated persons within six weeks from the date of receipt of a copy of this order. This writ petition is allowed accordingly.