
(2012) 10 JH CK 0027

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1951 of 2006

Girija Shankar Dubey and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 31-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 10 JH CK 0027

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : S.P. Sinha, for the Appellant; Rajesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh

1. Heard learned counsel for the parties. The petitioners have approached this Court for a direction to the respondents to make payments of arrears of salary to them after the year 2002 till date for working on the post of road roller driver in Public Works Department, Road Construction Division, Dhanbad since 1988-89 without any break of service.

2. According to the petitioners, they were appointed on daily wages under the Coal Mines Area Development Authority in the month of May, 1988. Thereafter their services were transferred to the Department of Public Works, Dhanbad in Road Construction Division by an order dated 10th April, 1989 and since then they have been working as daily wages and have been regularly discharging their duties.

3. The petitioner had earlier come before this Court being aggrieved by an order dated 4th June, 2002 passed by the Deputy Secretary, Government of Jharkhand, whereby the services of the daily wages employees, who were appointed after 1st August, 1985, were terminated, in WP (S) No. 5933/2002 which was disposed of by an order dated 31st July, 2003 by directing the

respondents to consider the case of the petitioners as and when regular appointment would be made and also to give necessary relaxation in terms of age and past experience of the petitioners (Annexure 2). The petitioners thereafter preferred LPA No. 569/2003, which was dismissed on 11th December, 2003 upholding the order passed by the learned Single Judge. It is the contention of the petitioner that thereafter work has been taken from them and the petitioners relied upon the letters contained in Annexure 3, issued by the Executive Engineer, Road Construction Department, Dhanbad dated 1st August, 2002 to suggest that the concerned official has informed the superiors that petitioners and other daily wages employees were stopped from discharging their duties. Counsel for the petitioners submits that the respondent-official thereafter continued to take work from them without paying any salary. On these grounds, the petitioners being aggrieved have approached this Court after their representations were not responded.

4. A counter affidavit and a supplementary counter affidavit have been filed by the respondents and lastly another supplementary counter affidavit has been filed in January, 2012. The respondents have taken a stand that by an order issued under the signature of the Deputy Secretary, Public Works Department being Letter No. 2581(S) dated 4th June, 2002, directions were issued to all Chief Engineers to stop taking works from the daily wages employees/muster roll workers after 1st August, 1985. This order was followed by another direction as contained in Letter No. 728 dated 14th February, 2003 issued by the Additional Secretary, Road Construction Department, Government of Jharkhand not to take work from such daily wages muster roll workers, Annexure E to the first counter affidavit.

5. It is submitted on behalf of the respondents that person affected by the common order dated 1st August, 2002, which is brought on record by way of Annexure C, namely, Raj Kumar Mahto, had approached this Court in WP (S) No. 6843 of 2005 praying for payment of wages. From perusal of the order dated 5th April, 2006 passed in WP (S) No. 6843/2005, it would appear that the said petitioner had also annexed copies of the absentee for the Month of August, 2002 and other months supporting his claim for wages against the work alleged to have been taken from the said person. It is submitted that this Court refused to issue any direction for payment in such cases observing that it does not appear to have any conclusive evidence regarding the services of the petitioner having been taken by the respondents. It is further submitted on behalf of the respondents, by referring to Annexure C to the last affidavit that the order passed in LPA No. 302/2006 dated 24th October, 2007 annexed to this affidavit filed in January, 2012, it appears that the said writ petitioner had assailed the order of the learned Single Judge in WPS No. 6843/2005 but the Division of this Court refused to interfere with the order observing that whether the document produced by the petitioner is genuine or relevant, it is for the petitioner-appellant to approach the appropriate forum to establish the said fact. Counsel for the respondents also submits that there are specific guidelines laid down in Bihar

Public Works Account Code, which require that in respect of payment of wages to daily wages/muster roll workers, it is compulsory that muster roll in the prescribed Form 21 (TC Form No. 49) laid down in Bihar Public Work Account Code Rules 226 and 227 are to be submitted by the concerned Junior Engineer along with daily report. It is submitted on behalf of the respondents that the aforesaid procedure has also not been followed and the documents relied upon by the petitioners by way of reply to the supplementary counter affidavit cannot be taken to be conclusive evidence that the works have been taken from them. It is further submitted that once the Government itself has taken a decision not to take work from muster roll employees/daily wages workers by order dated 4th June, 2002, no legal right accrues to these petitioners to claim daily wages. Lastly relying upon the judgment delivered by this Court and upheld till Division Bench of this Court, counsel for the respondents submits that since the similar issue has been decided in case of similarly placed person Raj Kumar Mahto, this court should restrain from passing any direction under Article 226 of the Constitution of India.

6. After having heard the counsel for the parties and going through the relevant materials on record, it is apparent that the respondent-State took a decision to stop taking work from daily wages/muster roll employees, who were employed after 1.8.1985. Being aggrieved by order dated 4th June, 2002, the petitioners approached this Court challenging the said order, which was not interfered with but disposed of with a direction to the respondents to consider their cases for regularisation. The petitioners thereafter approached the Division Bench of this Court in appeal, which refused to interfere with the said order. Another similarly placed person Raju Kumar Mahto approached this Court thereafter in WP (S) No. 6843/2005 seeking a direction for payment of daily wages and also relied upon copies of absentee for different months from August, 2002 to January, 2004 like these petitioners but the learned Single Judge of this Court refused to pass any direction. The LPA against the same was also dismissed by observing that he may approach the appropriate forum to establish the said fact.

7. In these circumstances, for the reasons recorded herein-above, I do not find that the petitioners have made out a case of infringement of any legal right or fundamental right in order to seek issuance of any writ or direction against the respondents, who have taken a decision to stop taking work from the daily wages employees from a particular date. This writ petition is, therefore, devoid of merit and is dismissed.