
(2015) 08 JH CK 0038
In the Jharkhand High Court
Case No : W.P. (S) No. 1192 of 2011

Gita Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Citation : (2015) 4 LLJ 104

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Chanchal Jain, Advocate, for the Appellant; Bhawesh Kumar, S.C. II, for the Respondent

Final Decision : Disposed Off

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the petitioner and State. Petitioner was engaged on daily wage w.e.f. 22.4.1985 admittedly by the Executive Engineer, National Highway Division, Barhi. He was also taken in Work Charge Establishment by the order of Chief Engineer, National Highway Division, Road Construction Department, Bihar vide letter No. 5289 dated 24.12.1985 along with two other persons. Petitioner, thereafter was again converted into a daily wager and he worked till 30.3.2011, even as per the statement made in Para 9 of the counter affidavit, when by the impugned order dated 29.3.2011 (Annexure-13), he was disengaged by the order of respondent No. 5, Executive Engineer, National Highway Division, Dhanbad. The impugned order shows that petitioner had not completed 240 days of work prior to the cut off dated 1.8.1985 in terms of the resolution No. 5940 dated 15.6.1993 and the letter No. 3352(S) dated 26.6.1997. Petitioner being aggrieved with the impugned order has approached this Court seeking regularization in service. According to the petitioner for the last 26 years since his engagement on 22.4.1985, he has been working for the respondents but denied regularization and now disengaged as well.

2. Learned counsel for the petitioner submits that one Anirudh Singh, who was

also taken in Work Charge Establishment by the same Annexure-3 dated 24.12.1985, has been regularized in service by the order of Superintending Engineer, National Highway Division, Respondent No. 4 dated 29.3.2012 bearing memo No. 184 (Annexure-14). It is submitted that parity has not been followed in the matter of regularization of the present petitioner.

3. Learned counsel for the petitioner has relied upon judgment rendered by the Constitution Bench of the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , as per which the Regularization Rules, 2015 has also been framed by the Government of Jharkhand vide notification dated 13.2.2015 issued by the Department of Personnel, Administrative Reforms and Rajbhasha. He has also relied upon a judgment dated 15.5.2015 rendered by the Hon''ble Supreme Court passed in Civil Appeal No. 4474 of 2015 in the case of Prem Ram v. Managing Director, Uttarakhand Pey Jal & Nirman Nigam, Dehradun and Others. Learned counsel for the petitioner submits that the respondents do not have any laid down yardstick for engagement of any workman on daily wage or in Work Charge Establishment. The other person who was also taken in Work Charge Establishment on the same date along with the petitioner stands regularized in pursuance of the direction passed in his case being Court Case (Civil). No. 652 of 2009 referred to in his order of regularization as well.

4. It is submitted that in similar circumstance, when a daily wage employee namely Prem Ram was not regularized in service though person junior to him taken in Work Charge Establishment had been regularized, the Hon''ble Supreme Court in his case i.e., Prem Ram v. Managing Director, Uttarakhand Pey Jal & Nirman Nigam, Dehradun & others (supra) was pleased to hold that there being no discernible criteria of classification between Work Charge employee and daily wage employee for the purpose of their engagement, the case of the said appellant in the Work Charge Establishment should be treated on same footing to grant regularization. In such circumstance, a direction was issued for regularization of the said person also taking into account the judgment rendered in the case of State of Karnataka v. Uma Devi and Others (supra). Learned counsel for the petitioner submits that as per the Regularization Rules, 2015 also petitioner''s case is liable to be considered for regularization.

5. Learned counsel for the respondent-State submits that petitioner has not completed 240 days in terms of the circular of 15.6.1993 which laid down conditions for regularization of such daily wage workman engaged prior to 1.8.1985. The distinction between the case of the petitioner and that of the said Anirudh Singh is that the latter''s case was that he was under engagement for 240 days on daily wage prior to 1.8.1985. It is submitted that petitioner''s engagement was not on sanctioned post and therefore, he has been disengaged by the impugned order in March, 2011.

6. Facts of the present case noticed herein above disclose that despite having the services of a person like the petitioner for 26 years, whether on daily wage or in

Work Charge Establishment, as per the wishes of the respondent-authorities of the Government, he has now been disengaged and left without any job at the twilight of his career when he would not be eligible for any other job considering his age. Keeping into regard the instances of daily wage employee/temporary employee engaged for a period of more than 10 years, the Hon''ble Supreme Court in a judgment in the case of State of Karnataka v. Uma Devi and Others (supra) was pleased to direct the State Instrumentalities to frame rule for regularization as one time measure in respect of those who were engaged in an irregular manner. The State of Jharkhand has also framed a Regularization Rules, 2015, which stipulates certain conditions to be satisfied, for being considered for regularization. One of the condition laid down therein is that the daily wage/temporary employee should have remained for more than 10 years in such engagement prior to the cut of date 10.4.2006 i.e. the date of judgment in the case of State of Karnataka v. Uma Devi and Others (supra) without intervention of any Court's order. Such claims are to be considered through a Committee constituted under the said Rules.

What is noted in the present case is that a similarly placed person namely Anirudh Singh had been taken into regular establishment though he was also taken into Work Charge Establishment on the same date with the petitioner i.e. 24.12.1985. In his case, of course, he appears to have completed 240 days prior to 1.8.1985.

7. Be that as it may, for the reasons discussed herein above, the case of petitioner requires reconsideration by the concerned respondent authorities in terms of the Regularization Rules, 2015. It would be open for the petitioner to rely upon the judgment rendered in the case of Prem Ram v. Managing Director, Uttarakhand Pey Jal & Nirman Nigam, Dehradun & others (supra) and any other instances on that count of such employee who are similarly placed or junior to him who have been regularized in the department in such manner after having worked for such a long time.

8. In that view of the matter, the matter is remanded to the respondent No. 3, Chief Engineer, National Highway, Ranchi, Jharkhand for reconsideration of the case of the petitioner in accordance with law within a reasonable time preferably 12 weeks from the date of receipt of copy of this order. It is made clear that the impugned order will not come in the way of the respondents to reconsider the claim of the petitioner. The writ petition is disposed of in the aforesaid manner.