
(2012) 05 JH CK 0100
In the Jharkhand High Court
Case No : L.P.A. No. 278 of 2011

Jharkhand State Mineral Development Corporation Limited
and Others

APPELLANT

Vs

Pawan Mistri and Others

RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Citation : (2012) 4 JCR 42

Hon'ble Judges : Prakash Tatia, C.J;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Anoop Kumar Mehta and Amit Kr. Sinha, for the Appellant; R. Krishna, N. Krishna, Amit Sinha and Mr. R. Shankar, G.A. for the State, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties. The writ petitioners approached this Court by filing writ petition being CWJC No. 2035 of 1994(R), wherein after taking note of the fact that the petitioners were working as daily wage earners since 1972 and by the time the petitioners' writ petition was decided the writ petitioners have already completed 25-30 years, obviously in the year 2002. The petitioners' writ petition was allowed and the appellant-respondent was directed to regularize the services of the writ petitioners and time was given of thirty days. However, it has been observed, in addition to above specific direction, that if the services of the petitioners are not regularized they shall be paid salary at par with the regular employees. This order has attained the finality. Therefore, the petitioners were entitled to be regularized as per the first part of the order and if not regularized then they were entitled to the salary at par with the regular employee. The respondents-appellants though accepted the said order, which has attained the finality, but instead of regularizing them in service, started paying the salary at par with the regular employees. The petitioners, when not granted the pay scale similar to the regular employee, which includes

annual increment etc. then approached this Court by filing W.P.(S)No. 1854 of 2009 which was disposed of with direction to the Managing Director of the Corporation to examine this issue, whether casual employees are also entitled to the increments which are given to regular employees or not. The Managing Director thereafter considered the matter and held that the petitioners are eligible for regularization in service.

2. According to the appellants, the Managing Director had no jurisdiction to take decision. The stand of the appellants is just in contrast to the direction given by the High Court in W.E(S) No. 1854 of 2009 dated 10th November, 2009, whereby Managing Director of the Corporation was directed to examine the issue and to take a decision. Therefore, the Managing Director was fully competent to take a decision in pursuance of the direction of this Court. It is very strange that the employees who are in service for almost 25-30 years as back as in the year 2002 and who are being paid salary at par with the regular employee, are being denied to have the absorption in the service, so as to deny them the benefit of increments and post retiral benefits. This is a grave case of abuse of the position of the employer in violation to all safeguards which have been provided in the Industrial Disputes Act against unfair labour practice etc.

3. Learned counsel for the appellants relied upon the decisions of the Hon"ble Supreme Court, delivered in the case of State of Karnataka and Others Vs. M.L. Kesari and Others, wherein the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, was considered and, according to the learned counsel for the appellants, regularization can be ordered in a case when appointment is legal and it can be regularized as one time measure if there is vacancy. Similar view has been taken in Satya Prakash and Others Vs. State of Bihar and Others, .

4. We would like to reiterate again that the appellant is a Corporation and is in need of the workmen and is bound by the decision of this Court delivered in the petitioners" writ petition being CWJC No. 2035 of 1994(R) and this decision has not been challenged by the appellants. The appellant has accepted this judgment and started paying the "salary at par with regular employees" to the writ petitioners and, therefore, except taking an absolutely hyper technical stand by the appellants that as the Corporation is in need of the person, taking work of these persons since last more than 30 years will not regularize these persons because of the order of the State Government restricting the creation of the further post in spite of the fact that order of the High Court was passed in a writ petition of the year 1994, however in the year 2002, recognizing the petitioners" right of regularization and however with some indulgence of making payment of salary to the employees at par with the regular employees, obviously it may be because of the reason that till all employees are absorbed against the vacancies they may not be put to monetary loss but following the decision of Uma Devi"s case as referred above, we are of the considered opinion that it was a fit case for taking steps of regularization instead of fighting the case before the Court to deny the benefit of regularization to the employees who are in service for last

more than 30 years at par with the other regular employees. Therefore, in view of the above reason, we do not find any merit in the Letters Patent Appeal, which is, accordingly, dismissed.