
(2020) 05 JH CK 0082
In the Jharkhand High Court
Case No : W.P. (S) No. 1901, 2599 of 2017

Mala Mandal And Ors

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 21-05-2020

Acts Referred:

Citation : (2020) 05 JH CK 0082

Hon'ble Judges : Shree Chandrashekhar, J

Bench : Single Bench

Advocate : Manoj Tandon, Chandra Prabha, Raunak Sahay

Final Decision : Allowed

Judgement

1. Hearing of these Writ Petitions has been convened and conducted through Video-Conferencing.

2. Vide order dated 10.04.2018, W.P.(S) No. 1901 of 2017 was ordered to be listed along with W.P.(S) No. 2599 of 2017.

3. In W.P.(S) No. 1901 of 2017 the petitioner has challenged the show-cause notice issued to her and in W.P.(S) No. 2599 of 2017 she has challenged the order of termination contained in Memo No. 813 dated 25.04.2017, amongst other prayers.

W.P.(S) No. 1901 of 2017

4. In view of the final order of termination of service which has been passed against the petitioner, permitting the petitioner to raise all such grounds which are available to her when a challenge to the order of termination dated 25.04.2017 is mounted, W.P.(S) No. 1901 of 2017 is disposed of having been rendered infructuous.

5. Ordered accordingly.

W.P.(S) No. 2599 of 2017

6. The petitioner, a widow, was appointed on 03.10.2009 on a Class-IV post on compassionate ground and she joined the post of Peon in the High School, Dhanbad on 06.10.2009. Her certificates were verified and on the basis of the report dated 22.02.2010, the District Education Officer vide Annexure-6 which forms part of this writ petition accorded approval for payment of salary. On 08.06.2012 the petitioner was transferred to another +2 High School at Govindpur where she did submit her joining on 13.06.2012, after being relieved on 12.06.2012 vide Annexure-8. About 5 years thereafter a show-cause notice was issued to her on the ground that she does not possess the educational qualification in terms of Memo dated 25.04.1997. On 18.03.2017 the petitioner submitted her reply and thereafter another show-cause notice was issued to her on 27.03.2017 which was followed by letter dated 18.04.2017. The petitioner in response thereof has informed the respondent-authority by letter dated 24.04.2017 that her writ petition is pending in this Court. But, by an order contained in Memo dated 25.04.2017 the petitioner has been terminated from service.

7. Various grounds have been raised by Mr. Manoj Tandon, the learned counsel for the petitioner for assailing the order of termination dated 25.04.2017 and repelling his submissions Mrs. Chandra Prabha, the learned State counsel referring to the order passed by this Court in W.P.(S) No. 4536 of 2014 and the memo dated 25.04.1997 as also dated 12.07.1977 has submitted that the petitioner who does not possess the requisite qualification for appointment, that is, standard VIII pass, was not eligible for appointment on a Class-IV post, even on compassionate ground.

8. The decision of the respondent-authority to terminate the petitioner from service is flawed atleast for three reasons. First, under the extent rules termination from service is a major punishment and now this is not an area of doubt that without holding a proper enquiry/departmental proceeding a regular employee cannot be terminated from service. There are end number of judgments on this issue and one may refer to the judgment in "Kamal Nayan Mishra vs. State of M.P. & Ors." reported in (2010) 2 SCC 169.

9. Mrs. Chandra Prabha, the learned State counsel has however tried to contend that the proceeding initiated against the petitioner was a regular enquiry as a second show-cause notice was issued to him. I am unable to accept this submission for the simple reason that in service jurisprudence a "second show-cause notice" has a distinct connotation and meaning. Merely because after issuing a show-cause notice another notice has been issued it would not become a "second show-cause notice" as understood in a departmental enquiry. In a departmental proceeding after a report is submitted by the enquiring officer a "second show-cause notice" is issued to the delinquent employee supplying him a copy of the enquiry report and this has a solemn significance in a departmental proceeding. There was no enquiry against the petitioner, no charge was framed and no witness was examined by department nor an opportunity to lead evidence

was offered to the petitioner. Therefore, without any difficulty it must be held that the order of termination is illegal.

10. Secondly, in her reply dated 18.03.2017 the petitioner has referred to a decision of this Court in the case of "Rabab Fatma vs. State of Jharkhand & Ors." reported in 2006 (2) JCR 443 (Jhr) and she has thrown a specific challenge to the arbitrary manner in issuing a show-cause notice challenging validity of her appointment after about seven years of her joining the service. In the letter of termination there is no reference of the judgment in the case of "Rabab Fatma". In that case the claim was rejected on the ground that the applicant lady was a simple literate; there is reference of the minimum qualification of standard VIII pass in that case also. The learned Single Judge after taking note of the circular issued by the Department of Personnel and Administrative Reforms has held that Rabab Fatma was entitled for appointment on a Class-IV post on compassionate ground. There are judgments of the Hon'ble Supreme Court which lay down that a person can be terminated from service without regular enquiry if during enquiry he could not have improved upon his case or offered a plausible explanation which can sanctify his appointment, but those judgments are not applicable in the present case for the reason that the petitioner has referred to a judgment of this Court on the similar issue and she has also challenged the arbitrary manner in which show-cause notice for termination was issued after about seven years of her service.

11. The third ground which in my opinion is also relevant is, that pendency of the writ petition filed by the petitioner was within the knowledge of the respondent-authority and this fact is recorded in the order of termination itself, still, without taking leave of the Court or awaiting a final decision of this Court the respondent-authority has proceeded in the matter and terminated the petitioner's service. Though, this as a rule cannot be laid down that in all cases the authority must take permission of the Court before proceeding in a pending matter but in my opinion the situation in the present case is a little different. The petitioner has raised contentious issues, she was working for the past seven years and she was appointed on the recommendation of the District Compassionate Appointment Committee headed by the Deputy Commissioner but the order of termination has been issued by the District Education Officer who is technically inferior in rank to the Deputy Commissioner.

12. Lastly, under what circumstances the show-cause notice was issued to the petitioner is shrouded in mystery. Suddenly, seven years after the appointment how an authority without disclosing any reason nor there being a complaint against the employee starts a proceeding against an employee, in my opinion requires an answer. This also has to be kept in mind that the petitioner's appointment was recommended by a duly constituted Committee and what were the proceedings of the Committee have not been brought on record; it may disclose the reason why the petitioner has been offered compassionate appointment. It is indeed in public interest that past transactions should not be

reopened except in cases where fraud has been detected. The order passed in W.P.(S) No. 4536 of 2014 on which the learned State counsel has placed reliance to support the order of termination of the petitioner from service is not at all relevant for the present purpose. The order dated 19.07.2018 passed in W.P.(S) No. 4536 of 2014 reflects that the applicant in the said case had raised a plea that under the scheme of 2015 by relaxing the rules she could have been granted appointment on compassionate ground. The writ petition was dismissed observing that the writ Court cannot direct an authority to grant relaxation. The judgment in "Rakesh Kumar Sharma vs. State (N.C.T of Delhi) and Others" reported in (2013) 11 SCC 58 is on illegal appointments and particularly an appointment secured by making false representation about qualification. Above all, what is more important is that "expectancy of continuance" of an employee is endorsed by this judgment.

13. For the aforesaid reasons, I find the order of termination contained in Memo dated 25.04.2017 illegal and, accordingly, it is quashed.

14. There is a specific prayer for back-wages but the respondents have not taken a stand on this issue. There cannot be a fixed formula for grant of back-wages and full back-wages is not the rule. The petitioner was prevented from discharging her duty due to her illegal termination from service and it is not necessary for her to aver that she was not gainfully employed elsewhere, but the fact remains that she has not worked in the interregnum.

15. Accordingly, the District Education Officer, Dhanbad is directed to issue letter for joining of the petitioner, within six weeks. The petitioner is held entitled for all consequential benefits, including 50% back wages for the period after 25.04.2017, primarily for the reason that the order of termination has been found illegal.

16. The writ petition W.P.(S) No. 2599 of 2017 stands allowed, in the aforesaid terms.