
(2003) 09 JH CK 0072
In the Jharkhand High Court
Case No : WPS No. 687 of 2003

Md. Kalimuddin and Others	Vs	APPELLANT
State of Jharkhand and Others		RESPONDENT

Date of Decision : 09-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 279

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : M.M. Banerjee, A. Sen and A. Sinha, for the Appellant; Ritu Kumar, G.P. IV, for the Respondent

Judgement

M.Y. Eqbal, J.—In this writ application the petitioners have prayed for quashing the order dated 12.8.2002 passed by the Secretary, Health and Family Welfare, Government of Jharkhand, whereby appointment of the petitioners have been held to be illegal and also for quashing the order dated 20.12.2002 whereby petitioners have been relieved from their service.

2. Petitioners' case is that in the year 1982 certain vacancies arose for the post of Unani Compounder (Indigenous corn-pounder) in the department of health and Family Welfare and requisition was sent to the employment exchange office for forwarding the name of eligible candidates and accordingly names of petitioner No. 1 and other eligible candidates were forwarded to the concerned department. Petitioner No. 1 thereafter appeared in interview and on being declared successful he was given appointment with effect from 22.9.1982. Copy of the office order dated 22.9.1982 is annexed as Annexure-4 to the writ application.

3. It is contended by the petitioner No. 1 that since then he has been working and discharging his duty and was given first time bound promotion in the year 1999. Copy of the office order dated 26.10.1999 giving time bound promotion has been annexed as Annexure-5 to the writ application. Petitioner No. 1 while in

service was also transferred to various place and he joined and performed his duty on the transferred post.

4. Similarly, petitioner No. 2 was also got himself enrolled in the employment exchange and on the request made by the concerned respondent the name of petitioner No. 2 alongwith other eligible candidates were forwarded for the appointment in the post of Indigenous Compounder. Petitioner No. 2 was then called for interview vide letter-dated 16.6.1986 and by the office order dated 21.6.1986 he was given appointment on the said post. Petitioner No. 2 also submitted his joining on 23.6.1986 and since then he has been working on the said post. Petitioner has annexed copy of the proceeding of the appointment committee as Annexure-11 to the counter affidavit. Petitioner No. 2 was also given first time bound promotion and he has been working on the said post.

5. So far petitioner No. 3 is concerned he was also enrolled in the employment exchange in 1988 and was appointed on the post of sweeper-cum-servant in the office of the District Indigenous Medical Office vide office order as contained in memo dated 31.7.1987 on the basis of the recommendation made by the Deputy Commissioner. Petitioner was subsequently posted as State Homeopathic Clinic, Ramagarh, Durnka vide order dated 1.8.1987. Petitioner No. 4 was appointed on the post of sweeper-cum-servant in the office of the State Homeopathic, Clinic, Nala Dumka vide office order dated 17.10.1989 on the basis of recommendation of the Deputy. Commissioner. He also submitted his joining on the said post in 1989.

6. Further case of the petitioners" is that all of a sudden their salary was withheld since June 2001 and inspite of repeated requisition salary were, not released. Petitioner then moved this Court by filing WPS No. 5848/2001 which was disposed of on 4.12.2001 with a direction to the petitioner to file fresh representation before the Director, Deshi Chikitsa, Jharkhand, Ranchi and the latter was also directed to pass appropriate order for payment of salary. Petitioners accordingly, filed their representation before the respondents. When the direction of this Court was not complied with petitioner filed Contempt Case No. 328/2002. In the said contempt case, respondents filed their show cause stating that representation of the petitioner was disposed of by the impugned order dated 12.8.2002 and it was held that appointment of the petitioners was illegal.

7. A counter affidavit has been filed by respondent No. 5, Zila Deshi Chikitsa Padadhikari, Dumka wherein it is stated that appointment of the petitioners have been found illegal as the proper procedure laid down for appointment was not followed. So far, petitioner No. 1 is concerned, it is contended that selection of the petitioner No. 1 was made only by the District Indigenous Medical Officer, Dumka without taking consent of the two members. So far petitioner No. 2 is concerned, it is stated in the counter affidavit that according to the rules framed by the State Government knowledged of Urdu subject was necessary but it revealed that petitioner has no knowledge of Urdu subject. So far petitioner No.

3 and 4 are concerned it is stated that their appointment in class IV post was not made from district panel and it is not mentioned in their appointment letter that their cases were recommended by the District Appointment Committee.

8. Heard Mr. M.M. Banerjee, learned counsel for the petitioners and Mrs. Ritu Kumar, learned Government Pleader No. IV.

9. I will first deal with the case of petitioner Nos. 1 and 2. From perusal of Annexure-3, which is letter dated 24.8.1982 it appears that on the basis of names of the candidates sent by the Employment Exchange; petitioner No. 1 was called upon to appear in the interview on 12.9.1982. Another office order dated 14.9.1982 was issued declaring the petitioner successful and appointing the petitioner on the post of Indigenous compounder. Copy of such letter is annexed as Annexure-4 to the writ application. Petitioner No. 1 continuously worked and was transferred from one place to another and in 1999 vide office order dated 26.10.1999 he was given first time bound promotion. Similarly, petitioner No. 2 was enrolled in the employment exchange and he was called upon for interview vide letter dated 20.5.1986 and on being selected, he was appointed vide office order dated 21.6.1986. Pursuant to the petitioner No. 2 joined on 23.6.1986. Annexure-11 is the copy of the minutes of the proceeding of the District Establishment Committee which shows that case of petitioner No. 2 was considered by the Committee along with other candidates and thereafter petitioner was appointed on the recommendation of the District Establishment Committee. Petitioner No. 2 was also given time bound promotion.

10. Admittedly, petitioner Nos. 1 and 2 after joining in 1982/86 have been regularly paid salary and served in the places where they were transferred and they were also given first time promotion. It was only after about 19 years in the case of petitioner Nos. 1 and 15 years in the case of petitioner No. 2 their salary was withheld since June 2001. Petitioner moved this Court by filing WPS No. 5848/2001 and this Court disposed of this writ application on 4.12.2001 by passing the following order :

"Heard the parties.

Petitioners were working as compounder/sweeper under respondent Nos. 4, 5 and 6. Their grievance is that inspite of allotment made by the Government; they have not been paid their salary since June 2001 onwards.

It appears that petitioners have made representation before the respondent No. 4 but their salary have not been paid.

In the facts of the case, I direct the petitioner to file fresh representation before respondents No. 3, Director Deshi Chikitsa, Jharkhand Ranchi. In case such representation is filed, respondent No. 3 shall consider and dispose of the same by passing appropriate order for payment of salary in accordance with law, if legally payable to the petitioner. The representation shall be disposed of within a period of one month from the date of filing of the same.

With the aforesaid observation and direction, this writ application disposed of."

11. From the aforesaid order it is manifest that this Court directed respondent No. 4, Director, Deshi Chikitsa, Jharkhand Ranchi to look into the matter and dispose of the representation of the petitioners by passing appropriate order for payment of salary. It is worth to mention here that there was no direction of this Court to make an inquiry and decide the question of legality and validity of their appointment. When the aforesaid order and direction was not complied with petitioner filed contempt case being Contempt Case No. 328 of 2002. The said contempt proceeding was placed for hearing on 15.7.2002. In presence of Secretary, Health and Family Welfare Department, Government of Jharkhand and on his request case was adjourned for four weeks, to enable him to look in the matter and file affidavit. It would be most appropriate to reproduce paras 7 and 8 of the show cause filed by the Director, Deshi Chikitsa, Jharkhand Ranchi :

"Para 7--That it may be stated that the. deponent aftermaking proper enquiry and after verifying the genuineness of the claim of the petitioners on the basis of the record made available by the subordinate officers under whom the petitioners were working on different posts, passed an order on 15.3.2002, vide his memo No. 10 (Deshi Chikitsa), whereby the deponent was pleased to direct the concerned authorities to make payment of salary and, accordingly, copy of the same was also forwarded to the Treasury Officer, Dumka with a direction to pass the bill relating to salary of the concerned employees."

"Para 8--That at this stage, it is relevant to point- out here that while passing the order of payment with regard to petitioner Nos. 1 and 2, it was mentioned that, prima facie, their appointments deemed to be genuine and as such it was ordered to make payment of salary. But with regard to petitioner Nos. 3 and 4 are concerned, a direction was issued for payment of salary only for the period they have actually worked because on account of non-availability of the proper documents, it was not clear with regard to genuineness of the appointment of these petitioner i.e. petitioner Nos. 3 and 4."

12. From the aforesaid statement it is manifest that appointment of petitioner Nos. 1 and 2 in the year 1982 and 1986 was found genuine, legal and valid. In spite of these facts, impugned order was passed by the respondents declaring the appointment of petitioner Nos. 1 and 2 as illegal on the ground that posts were not advertised in the newspaper. However, sending of names of petitioner Nos. 1 and 2 alongwith others through Employment Exchange has not been denied or disputed by the respondents.

13. The relevant facts which emerge from the facts discussed hereinabove is that petitioner Nos. 1 and 2 earlier moved this Court only against non-payment of salary from June, 2001. This Court issued direction to consider the representation and to pass appropriate order for payment of salary. When order was not complied with petitioner initiated contempt proceeding. In the said contempt proceeding, the Director Health Services was directed to file show

cause as to why direction was not complied with. The Director, Deshi Chikitsa filed show cause admitting that appointment of petitioner Nos. 1 and 2 appears to be genuine but as against appointment of petitioner Nos. 3 and 4, it needs inquiry. It is, therefore, apparent that it is only because of initiation of contempt proceeding for the non-compliance of the direction for payment of salary, the appointment of petitioner Nos. 1 and 2 has been declared illegal at the instance of the Director Health Services.

14. It is really surprising that petitioner Nos. 1 and 2 were appointed after their names were recommended by the employment exchange office and after having selected in the interview, they continuously worked for 16-20 years and they were given time bound promotion. After completing such a long years of service, the appointment of these petitioners cannot and shall not be declared illegal merely by holding that procedure of appointment was not followed and on the ground that these two petitioner moved this Court with a grievance that the direction was not complied with. The impugned order therefore declaring appointment of petitioner Nos. 1 and 2 as illegal cannot be sustained in law, as the same is wholly illegal, arbitrary and mala fide. That part of the impugned order declaring appointment of petitioner Nos. 1 and 2 as illegal is therefore bound to be quashed.

15. So far, petitioner Nos. 3 and 4 are concerned, there is nothing in the record to show that they were appointed on the post of Sweeper in the year 1987 and 1989 from the district panel and on the recommendation of the District Establishment Committee, it has been categorically denied by the respondents that petitioner Nos. 3 and 4 were not even enrolled in the district panel. Admittedly neither any advertisement was made nor the name of the petitioner Nos. 3 and 4 were sent from the employment exchange rather without adopting any procedure and without even obtaining written recommendation of the Deputy Commission as Chairman of the District Establishment Committee, petitioner Nos. 3 and 4 were appointed as Deshi Chikitsa Padad-hikari. The appointment of petitioner Nos. 3 and 4, therefore cannot be held to be legal and valid.

16. For the aforesaid reasons, this writ, application is allowed in part and the impugned order passed by the respondents holding appointment of petitioner Nos. 1 and 2 illegal is hereby quashed. However, the impugned order so far declaring appointment of petitioner Nos. 3 and 4 as illegal is hereby affirmed and needs no interference.