

(2015) 06 JH CK 0017
In the Jharkhand High Court
Case No : WP(S) No. 7127 of 2013

Nagendra Prasad and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 30-06-2015

Acts Referred:

Citation : (2015) 06 JH CK 0017

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Arbind Kumar, for the Appellant

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.

1. Heard learned counsel of the parties.

2. 20 petitioner herein have sought quashing of the order dated 31/08/1998, Annexure-3 issued by the Director in Chief, Health Services, Bihar, whereby they have been terminated from service from their respective posts of Health Worker(Tuberculosis) in the district of Dumka. Petitioners' claim that that they have joined on daily wages in 1983 and further claim to have been made permanent w.e.f. 1989, 1993 and 1995. Reference has been given to the appointment letters, Annexure 1 series, which was issued by the Civil Surgeon cum Chief Medical Officer, Dumka pursuance to the recommendation of the Deputy Secretary, Health Services (TB), vide letter dated 16/10/1984. According to them, all of a sudden they were served with notice in the year 1994-1996 in their individual cases to respond as to the legality of their appointment whether they were made against sanctioned vacant post after interview and selection process or not. However, thereafter suddenly the impugned order dated 31/08/1998 was issued where under services of 170 persons were terminated, Annexure 3. Petitioners have made reference of the judgment passed by the Patna High Court in CWJC No. 6579/2009 dated 06/10/2009 as also the

judgment passed in LPA No. 1413/2014 by Patna High Court, which the State of Bihar had preferred and was dismissed. Petitioner have also stated that the representations were preferred by similarly situated persons, now in Jharkhand, in respect of which direction was passed to the concerned respondent to dispose of such representations. Therefore, petitioners have also come before this Court challenging the order of termination in the light of the judgment relied upon by them.

3. Learned Counsel for the respondent-State has appeared and filed their counter affidavit defending the impugned action. Apart from that, learned counsel for the State has produced the judgment passed by this Court in a batch of writ petitions i.e. WPS No. 6516/13 in the case of Rajesh Kumar Singh and analogous cases where same common order dated 31/08/1998, Annexure-3 was also impugned by the said petitioners. It is submitted that the facts of the present case and issues involved herein are squarely covered by the judgment rendered by this Court in the said case, as the similar issues were also raised on their behalf.

4. Having taken note of the aforesaid relevant material facts on the record and the submissions of the parties, it is not disputed by the counsel for the petitioner that the instant issue as raised has been considered and decided by this Court in the case of Rajesh Kumar Singh (Supra), vide judgment dated 12/05/2015, where same order was under challenge. In that view of matter, the present writ petition also deserves the same fate. The relevant paragraphs of the said judgment are also quoted herein:

"4. For better appreciation, judgment dated 06.05.2014 which has adequately dealt with the plea of the said petitioners and also stands applicable to the facts of the present case, is being quoted hereunder:

Heard counsel for the parties.

The petitioners who are 27 in number have sought quashing of an order dated 31st August, 1998, Annexure-3, issued by Director-in-Chief, Health Services, Bihar, Patna, whereby, according to them, their services were terminated. The appointment letter of the years 1989, 1993 and 1995 issued under the signature of Civil Surgeon-cum-Chief Medical Officer, Dumka, have been annexed as Annexure-1 to the writ petition in support of their contention that they were appointed on respective Class-III post of Health Worker in Primary Health Centres in the district of Dumka on daily wages and were absorbed on the said post by the said letter.

The petitioners have contended that Annexure-3, which is impugned though does not mention their names, but the petitioners have also been terminated under the same order as allegedly such appointments were made through forged and fabricated appointment letters. The said findings are also indicated in Annexure-3 to the writ petition. The petitioners have also stated that some of the affected persons had been pursuing their cases before the Patna High Court in the writ petition and in Letters Patent Appeal preferred against the same by the State of

Bihar, the judgments of which are annexed as Annexures- 4 and 5 to the writ petition. It is submitted on the strength of the said judgments that the termination order of the said petitioners were set aside and they were directed to be reinstated. Therefore, the petitioners also deserve to be reinstated in service.

According to the petitioners, some of the other person had also approached this Court in other writ petition such as W.P. (S) No. 7263 of 2012 in which a direction was given to the respondents to dispose of the representation in accordance with law by passing a speaking order.

On behalf of the respondents, a counter affidavit has been filed and it has been stated that after passing of the judgment in some of the other cases of similarly situated employees who were appointed in the Tuberculosis Department by one Dr. A.A. Mallik in wholly, arbitrary, illegal and perverse manner, the matter was considered by the Respondent-State and representation of such persons have been rejected by Annexure-B dated 1st October, 2011 passed by the Director-in-Chief, Health Services, Govt. of Jharkhand. It has been further stated that the opinion of the learned Advocate General was also taken as to whether the said persons could be permitted to join in the Successor State of Jharkhand in view of the judgments passed by the Patna High Court in such cases in 2009. They have made reference to the opinion of the learned Advocate General, Jharkhand that the State of Jharkhand is not bound to accept the joining of the persons in compliance of the order passed by the Patna High Court. Such directions have also been issued by the Health Department to all the concerned Civil Surgeons within the State of Jharkhand. Reference has also been made to similar illegal appointments made in the Leprosy Department which were terminated and thereafter on consideration of the representation of such persons, their claims had also been rejected. The respondents have therefore taken a plea that the appointees of Dr. A.A Mallik, the then Deputy Director of Tuberculosis have been examined and such illegal appointees have been terminated during the existence of erstwhile State of Bihar taking into account all these facts. Therefore the claim of such similarly situated persons was also rejected by Annexure-B, as above.

I have heard learned counsel for the parties and gone through the relevant materials on record. In the first place, it is apparent that the petitioners allege to have been terminated in the year 1998 after issuance of the order dated 31st August, 1998 itself by the Director-in-Chief, Health Services Bihar on the grounds that the appointments made at the relevant point of time in the Tuberculosis Department were found to be forged and fabricated. In spite of that the petitioners have moved before this Court after 15 years in the present writ application. A reference has been made to one or other judgments passed by the Patna High Court. Though reference has been made to the order passed by this Court earlier in respect of such employees whose services were terminated in similar manner, but perusal of one such order at Annexure-7 indicates that the respondents were only directed to take a decision in accordance with law.

On the other hand, the stand of the respondents as reflected hereinabove,

indicates that these appointments were made sometime in 1980s and earlier 1990s by one doctor A.A. Mallik who was the then Deputy Director, Tuberculosis in an illegal and irregular manner and the services of such illegal appointees were also terminated by the erstwhile State of Bihar. The respondents also appeared to have considered the cases of similarly situated employees upon direction passed in one or other case upon them to dispose of their representation. Upon consideration of such representations pursuant to the direction passed in several cases such as W.P. (S) No. 5629 of 2010; W.P.(S) No. 2336 of 2010; W.P.(S) No. 2396 of 2010; W.P.(S) No. 2589 of 2011 and W.P.(S) No. 2918 of 2011, the claim for reinstatement of such persons have been rejected by a reasoned order which is enclosed as Annexure-B dated 1st October, 2011 passed by the Director-in-Chief, Health Services, Jharkhand. Therefore examining the claim of the petitioners from all aspect not only the writ petition is suffering from gross delay and latches as the petitioners have never agitated their cause of action rather sat over the matter till 2013, at the same time the case of similarly situated persons were considered by the respondent authorities of the State of Jharkhand and have been rejected, as aforesaid.

Therefore, no grounds for interference in the impugned order is made out. Accordingly, the writ petition is dismissed.

5. Learned counsel for the petitioners has not been able to show that there are any distinguishable features in the present case from that of Shambhu Sharma and others (Supra) decided earlier by this Court. Therefore, this writ petition also have to meet the same fate.

6. Having considered the aforesaid aspects of the matter, this Court does not find any ground for interference in the impugned order. Accordingly, writ petitions are dismissed."

5. Accordingly, this Writ petition is dismissed.