

(2006) 02 JH CK 0001

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2931 of 2004

Nandkeshwar Ram and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 01-02-2006

Acts Referred:

Citation : (2006) 1 JCR 424

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Siddhartha Ranjan, for the Appellant; M. Prasad, S.C. (L and C), for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—In both the writ petitions as common questions of law are involved and many of the facts are common, they have been heard together and are being disposed of by this common order.

2. All the petitioners have challenged the impugned Letter No. 1265 dated 30th April, 2004, their respective show cause notices, all dated 5th May, 2004 and the orders, contained in Letter Nos. 09, 10 and 12, all dated 26th May, 2004.

By the impugned Letter No. 1265 dated 30th April, 2004 the Regional Chief Conservator of Forest, Hazaribagh, informed that the petitioners and others have been illegally appointed in pursuance of a decision of the Establishment Committee dated 25th September, 1985 and thereby directed the divisional Forest Officers, Koderma Forest Division and State Training Division, Koderma, to ensure that the services of the petitioners and others are terminated. By show cause notices, all dated 5th May, 2004, it was alleged that the petitioners were appointed without following the procedures and thereby they were asked to show cause as to why their services be not terminated, followed by the orders, contained in Letter Nos. 09, 10 and 12, all dated 26th May, 2004, whereby and where under, alleging illegality in the matter of appointment of the petitioners,

their services have been terminated.

3. The facts, as pleaded and not disputed by the respondents, are that the petitioners No. 1, 2 and 3 of W.P. (S) No. 2931 of 2004; petitioners of W.P. (S) No. 3170 of 2004 and husband of petitioners No. 4 and 5 of W.P. (S) No. 2931 of 2004 were engaged on daily wages under the Respondents. Subsequently, they were appointed on regular basis on the recommendation of an Establishment Committee. Later on the husband of petitioners No. 4 and 5 having died, these two petitioners were appointed on compassionate grounds. Details of which are shown hereunder :

Sl. Name of the Date/year of Date of re- Post No. petitioner W.P. engagement
gular (S) No. 2931/04 on daily wage Appointment 1. Nandkeshwar Ram
21.09.1983 Memo No. Peon 1396 dated 29.7.1985 2. Bishwanath 1980 Memo
No. Chaukidar Prasad Singh 1987 dated 19.10.1985 3. Parmanand 1980 Memo
No. Peon Mishra 5662 dated 4.10.1986 4. Smt. Mina Devi Compassions- Memo
No. Peon te appointment 28 dated 6.1.1999 5. Smt. Kunti Compassions- Memo
No. Peon Devi te appointment 28 dated 16/1.1999

Name of the petitioner W.P. (S) No. 3170/04

Harihar 29.7.1985 Memo No. Peon Pandey 1821 dated 11.10.1985

4. The petitioners have enclosed a copy of the proceedings of the Establishment Committee to suggest that all of them including husbands of petitioners No. 4 and 5 were appointed prior to 1st August, 1985 on daily wages and subsequently their cases were considered for regular appointment to different posts, as mentioned against their names and on the basis of the recommendation of the Establishment Committee, they were appointed.

5. From the impugned orders, it will be evident that for about 20 years after regular appointments of petitioners or their husbands, the question of legality and propriety of their appointment was reopened and firstly it was decided to cancel their appointments vide Letter No. 1265 dated 30th April, 2004 and thereafter only formal notices were given as to why their services be not terminated. Subsequently their services were terminated. From the aforesaid facts, it will be evident that the rules of natural justice were violated because before giving notices, a decision had already been taken to terminate the services of the petitioners and the show cause notices were issued merely as an eye wash. Thereby orders were issued in violation of natural justice.

6. Admittedly, the State Government had issued guidelines, circulated vide Resolution No. 5940 dated 18th June, 1993, whereby, it was decided to terminate the services of only those daily wages employees, who were appointed after 1st August, 1985. In respect of those, who were appointed prior to 1st August, 1985, there was no direction given to terminate; on the other hand, it was decided by the State Government to consider their cases for regular appointment, giving preference over the outsiders and, if so required, after

relaxing the age limit, if found overage.

7. It has not been disputed by the respondents that the petitioners and husbands of petitioners No. 4 and 5 were engaged on daily wages prior to 1st August, 1985. As per the said Resolution No. 5940 dated 18th June, 1993, those engaged prior to 1st August, 1985, are to continue and, in fact, their cases were to be considered for regular appointment, after giving preference over the outsiders. In spite of the same, though the petitioners and husbands of petitioners No. 4 and 5 were engaged prior to 1st August, 1985, without taking into consideration the aforesaid guidelines, issued by the State, circulated vide Resolution No. 5940 dated 18th June, 1993, the respondent authorities issued the impugned orders of termination after about 20 years or more than their engagement. The aforesaid action on the part of the respondents is not only violative of the rules of natural justice, as held above, but also shown non-application of mind on the part of the authorities, who did not bother to look into the Government's opinion, as circulated vide Resolution No. 5940 dated 18th June, 1993 under the scheme of regular appointment of the daily wage employees.

8. This apart, the husbands of petitioners No. 4 and 5 having died much prior to 1999, it was not justified for the respondents to re-open the question of legality and propriety of appointment of such dead persons. Further, there being no illegality alleged in regard to the compassionate appointment of petitioners No. 4 and 5, it was not open to the respondents to terminate their services.

9. For the reasons aforesaid, the decision, as contained in Letter No. 1265 dated 30th April, 2004 and the orders of termination, as contained in Letter Nos. 09, 10 and 12, all dated 26th May, 2004, cannot be upheld, all being illegal and are hereby set aside. The petitioners are reinstated to their respective posts with full back wages, to be paid within three months from the date of receipt/production of a copy of this order. Both the writ petitions are hereby allowed. However, in the facts and circumstances, there shall be no order as to costs.