
(2008) 04 CHH CK 0014
In the Chhattisgarh High Court

Naresh Giri Goswami

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 02-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 119 FLR 434 : (2009) 1 LLJ 797 : (2008) 3 MPJR 53

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—By this petition filed under Articles 226/227 of the Constitution of India, the petitioner seeks following reliefs:

(i) That the Hon"ble Court may kindly be pleased to quash the impugned order dated January 31, 2003 and kindly direct the respondent No. 1 to take back the petitioner in service.

(ii) That the Hon"ble Court may kindly be pleased to issue an appropriate writ as the principle of natural justice is violated by not giving reasonable opportunity of hearing on merits of the case.

(iii) That the Hon"ble Court may be pleased to issue any other writ or writs, order or orders, direction or directions deemed fit in the interest of justice.

2. The facts as averred in the petition are that the petitioner was appointed on July 7, 1982 and worked as fitter upto January 18, 1985. Thereafter, the petitioner was terminated from the service without any show-cause-notice 1 by oral order. Feeling aggrieved, the petitioner made representations dated March 22, 1985, November 24, 1998, April 26, 1999, June 19, 1996, February 25, 2002, July 22, 2002 and December 19, 2002 to the various authorities (Annexure P/2 colly.) The petitioner, in the meantime, filed an affidavit that there was no criminal case against the petitioner. The petitioner made a complaint to

the All India Human Rights Commission, Public Complaints Department, Raipur.

3. The authorities, by the impugned order dated January 31, 2003 (Annexure P/1) dismissed the representation dated April 11, 2001, holding that the case for reinstatement of" the petitioner on daily wages basis is rejected.

4. Being aggrieved, the petitioner has filed this petition for the above stated relief. The main contention of the petitioner is that the order of termination was passed without affording opportunity of hearing to the petitioner, secondly, the rejection to reinstate the petitioner by order dated January 31, 2003 (Annexure P/1) is not supported by specific" reasons. Learned Counsel appearing for the petitioner would further submit that the similarly situated employees have "already been considered and reinstated in the service, without submitting details of the other similarly situated persons.

5. Per contra, Shri Satish Gupta, Government advocate appearing for the respondents would submit that the petitioner was working on daily wages basis and has worked from August 7, 1982 to August 31, 1984 as per the office documents and records. Thereafter, the petitioner remained absent for about 12 years and appeared suddenly on June 24,1996. The petitioner was engaged as Helper and no appointment order was passed in his favour. Accordingly, no order of removal was passed. The petitioner remained absent himself for a long period of 12 years.

6. It is further contended that the petitioner was never appointed on the regular establishment through proper procedure established by law, and engagement of the petitioner as daily wager was not in accordance with the constitutional scheme of employment.

7. Having heard learned Counsel for the parties, perusing the pleadings and documents appended thereto, the petitioner has failed to file any appointment order indicating the nature of appointment. Further, according to the learned Counsel for the petitioner, services of the petitioner was discontinued by oral order. Therefore, contention of the learned Counsel for the respondents that the petitioner remained absent for about 12 years as is clear from the letter dated June 24, 1996 merits acceptance.

8. The nature of appointment of the petitioner is such which does not confer any right on the petitioner to the post. It is well settled by a catena of decisions that the employee appointed de hors the constitutional scheme of employment and not in accordance with law, has no right to continuation, reinstatement or regularization in service. This is also not a case where the petitioner has established or contended with necessary documents that since other similarly situated persons have been recommended, there was a discrimination or arbitrariness on the part of the respondents. It is clearly established that the appointment of the petitioner was not in accordance with law.

9. Reliance of the petitioner on the decision of the Supreme Court in U.P. State

Electricity Board Vs. Pooran Chandra Pandey and Others, is not applicable to the case as the facts of the said case was that 34 petitioners, who were daily wages employee of the Co-operative Electric Supply Society prayed for regularization of their services in U.P. State Electricity Board. The Society was taken over by the Electricity Board on April 3, 1997. Services of the daily wages employees of the society was taken over by the Electricity Board with a condition that the employees of the society will start working in the Electricity Board in the same manner and position. Thus, the Supreme Court held that the decision of the Electricity Board permitting the regularization of the employees of the Electricity Board who were working before May 4, 1990 was violative of Article 14 of the Constitution as the petitioners daily wages employee of the society were all appointed in the society before May 4,1990.

10. The facts of this case is entirely different as the petitioner has not established that there was any discrimination meted out to the petitioner and similarly situated employees have been regularized.

11. The judgment of the Supreme Court in the matter of G.B. Pant University Vs. Govind Ballabh Pandey and Others, cited by the learned Counsel would not be applicable to the facts of the present case as the Hon"ble Supreme Court, even after granting regularization to the respondent-employees clearly held as under at p. 1057 of LLJ:

5. This judgment shall not be quoted as a precedent by any other employee.

12. In the matter of Secretary, State of Karnataka and Others Vs. Umadevi and Others, a Constitution Bench of the Supreme Court with regard to the regularization, permanence, absorption, continuance of temporary, contractual, "casual, daily wagger or ad hoc employees appointed/recruited and continued for long in public employment, observed as under at p. 737 of LLJ:

34. ...Thus, it is clear that the adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee....

44. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad-hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in

the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the Court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment....

13. Applying the well settled principles of law as enunciated by the Supreme Court in the cases cited above to the facts of the case, there is no merit in this case and the impugned order dated January 31, 2003 (Annexure P/1) does not warrant interference being just and proper.

14. The petition is accordingly dismissed. No order as to costs.