

(2013) 01 JH CK 0168
In the Jharkhand High Court
Case No : Writ Petition (S) No. 2632 of 2005

Nilambar Thakur

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Citation : (2013) 2 JLJR 97

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Rajendra Krishna, Jayshankar Tiwary and A.K. Sinha, for the Appellant;

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The petitioner in the instant case had come against the letter no. 639 dated 4.3.2004 (Annexure-7) issued by the Additional Secretary, Water Resource Department, Government of Jharkhand whereby the petitioner was asked to show cause as to why his services be not terminated. The ground indicated in the said letter were that upon inquiry it was found that the appointment of the petitioner was irregular/illegal as the Special Land Acquisition Officer, North Koei Project was not conferred with the power of extension of services of the petitioner on the post of chainman-"Janjir Wahak" for the period beyond 3 months of his provisional appointment from 16.8.1986, Further, the appointment letter has been issued by the confidential section of the office of Special L.A. Officer, although there was no direction for such issuance from the confidential section which goes to show that appointment was irregular, The appointment letter has been issued in contravention of the bar on such appointment made vide circular no. 7639 dated 11.6.1986 issued by the Department of Personnel and Administrative Reforms in the erstwhile Government of Bihar. Before making such appointments no advertisement was issued or names were called for from the employment exchange neither the procedures for such appointment following the rules of

reservation were made making the appointment illegal.

2. Counsel for the petitioner submits that the petitioner, who was appointed as "Janjir Wahak" by order of the Special L.A. Officer, North Koel Project contained in letter dated 16.8.1986 (Annexure-1) continued in service as the same was extended from time to time beyond the original period of 3 months. Such extension of service were granted to several other persons which would be evident from the letter dated 13.5.1998 (Annexure-3). The petitioner was transferred from one place to another and even by letter dated 18.3.1993 the respondent no. 2 directed all those Special Land Acquisition Officers of the Department to submit information in respect of such persons so that their services can be regularized. The petitioner was, however issued show cause notice in October, 1995 to which he filed his reply which are Annexures-4 and 4/A. Petitioner again furnished reply pursuant to the notice published in newspaper in September 1998 but again a show cause notice was issued vide letter dated 14.2.2001 asking the petitioner to show as to how his appointment is legal and valid.

3. Counsel for the petitioner has submitted that earlier also similar notices or termination orders have been issued to many similarly situated persons like the petitioner, who being aggrieved had challenged the said notices/terminations in a number of writ petitions like the petitioner before this Court. In this regard counsel for the petitioner refers to the judgment reported in 2005 (4) JLJR 614 in W.P.S. No. 2238 of 2004 in the case of Gopal Singh vs. State of Jharkhand whose appointment as a chainman-"Janjir Wahak" made by the Special L.A. Officers, Sone Project, Aurangabad was also terminated on the ground which are indicated in para 4 of the said judgment. It is stated that by the aforesaid judgment rendered on 18.3.2005 the termination order of the said petitioner was quashed and he was directed to be reinstated in the service without any break. In that respect LPA No. 421 of 2005 preferred by the State of Jharkhand was dismissed by the Division Bench of this Court vide its order dated 25.9.2006. Taking into account the similar type of judgments rendered by the learned single Judge, the Division Bench of this Court affirmed the said judgments in L.P.A. Nos. 617, 619, 620, 621, 631, 633, 654, 661, 669 of 2005. It is submitted that Civil Appeal No. 918 of 2008 preferred against the judgment of the Division Bench being 919 of 2008 was also disposed of without interfering with the same. Counsel for the petitioner further relies upon the judgment rendered in the case of other similarly situated person namely Suresh Prasad and Others being W.P.S. No. 1192 of 2004 Reported in 2005 (3) JLJR 240 decided alongwith analogous cases vide common judgment rendered on 5.5.2005 by this Court. It is stated that in the instant case of Suresh Prasad & Others, the aforesaid persons approached this Court being aggrieved by the show cause notice in some cases also of the same date i.e. 4.3.2004 and the grounds shown in the show cause were identical to the present one. It is submitted that the Single Bench of this Court quashed the aforesaid show cause notice served upon different petitioners and the writ petitions were allowed. It is stated that L.P.A. No. 621 of 2005 preferred against

the said judgment rendered in the case of Suresh Prasad and Others was also challenged before the Hon"ble Supreme Court alongwith the judgment of the Division Bench of this Court rendered in case of other employees upholding the judgment of the learned single Judge. The said batches of Special Leave to Appeal (Civil) being SLP Nos. 26529 of 2008 with 26530, 26531, 36532, 36534, 26535, 26537 and 26538 of 2008 were dismissed vide order dated 30.8.2010. As such the judgment rendered in the cases of similarly situated employees were affirmed by the Hon"ble Supreme Court. It is further submitted that after the judgment rendered in the case of Suresh Prasad and Other employees in the said S.L.P.s this Court has again quashed the show cause notice issued in respect of the other persons similarly situated such as in the case of Rakesh Kumar in W.P.S. No. 5917 of 2010 vide judgment dated 11.7.2011 as also in the case of Satyendra Kumar Singh and Others in W.P.S. No. 2799 of 2009 vide judgment dated 14.10.2011 in which order of termination of those petitioners appointed as "Janjir Wahak" were under challenge. The said writ petitions have also been allowed quashing the impugned show cause and termination. In that view of the matter, petitioner being similarly situated is also entitled for similar relief.

4. Although the respondent-State have appeared and filed their counter affidavit earlier but they have not disputed the aforesaid facts relating to the judgment of this Court wherein similar show cause notices or termination order in respect of the persons were under challenge and this Court has quashed the said show cause notices or the termination order.

5. I have heard counsel for the parties at length and gone through the relevant materials on record, it appears that the ground on which petitioner has been asked to show cause by the impugned letter are identical to those in the case of Gopal Singh as well as in the case of Suresh Prasad decided by this Court vide judgment dated 18.3.2005 and 5.5.2005 respectively and this Court has taken into account the contentions of the parties and had proceeded to hold that these persons were retained in service for a long period and were given salary fixing their pay scale. Their services were extended by the competent authority and their service books were opened. The Government even collected their required particulars for the purpose of regularization. This Court in the circumstances, overruled the contentions of the respondent-State while quashing the order passed against the similarly situated persons who have continued in service for so long.

6. The order passed by this Court were not interfered with either by the Division Bench of this Court or even by the Hon"ble Supreme Court in S.L.Ps. preferred by the respondent-State. In these circumstance, therefore, the petitioner is also entitled to similar relief. Further, it is informed that petitioner is still in service in view of the interim order dated 1.7.2005 passed by this Court in the present case. In view of the reasons recorded hereinabove and also the fact that similar order of termination or show cause notice served upon similarly situated persons have been quashed by this Court earlier, the impugned order dated 4.3.2004 is

accordingly quashed. The writ petition is allowed.