
(2013) 03 JH CK 0087
In the Jharkhand High Court
Case No : WP (S) No. 4882 of 2003

Niroj Kumar Choubey and Others	Vs	APPELLANT
The State of Jharkhand and Another		RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Citation : (2013) 3 AJR 200 : (2013) 2 JLJR 311

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : V. Shivnath and Birendra Kumar, for the Appellant; Sunil Singh, for the Respondent

Judgement

Aparesh Kumar Singh, J.

I.A. No. 121 of 2004

I.A. No. 1447 of 2004

1. Heard learned counsel for the parties. The petitioners have prayed for quashing the order contained in Memo No. 2 (Gopniya) dated 20.5.2003 published in a daily Hindi newspaper Prabhat Khabar dated 2.6.2003 (Annexure-21) issued under the signature of Regional Director, Animal Husbandry Department, Santhal Pargana Region, Dumka, respondent no. 4, whereunder their services have been sought to be terminated without giving any notice to show cause and without following the rules and procedure.

2. The case of the petitioners is that they have been working on the post of Technical Assistant since April, 1991 i.e. for more than 13-14 years. It is submitted that vide letter no. 11397 dated 31.12.1987, Regional Director, Animal Husbandry Department had been empowered to make temporary appointment on ad hoc basis to the post of Technical Assistant in Tribal Region under the Frozen Semen Bank Scheme. The State Government had decided that 50% of the posts of Class-III of Technical Assistant have to be filled up by direct

recruitment and rest of 50% shall be filled up through promotion to Class-IV employees of the same Department. It is further submitted that the Establishment Committee was constituted by the Regional Director, Animal Husbandry Department, Santhal Pargana Region, Dumka, respondent no. 4 consisting of the Assistant Director of Regional Office of Dumka, District Animal Husbandry Officers of Dumka, Deoghar, Godda and Sahebganj. The petitioners were registered with the Employment Exchange. Their names were forwarded to the Office of the Regional Deputy Director and they were asked to appear for an interview. On interview, having been found eligible, they were appointed by office order contained in Memo No. 2160 dated 5.10.1990 issued under the signature of Regional Director, Animal Husbandry, Santhal Pargana, Dumka, respondent no. 4 on temporary basis. The appointment letters of petitioner nos. 1, 2, 3 and 4 are also contained at Annexures-4 to 7. It is contended that they were appointed on sanctioned and vacant posts in the prescribed pay scale of 975-1540/- and were directed to submit their joining before Artificial Insemination Officer of Frozen Semen Bank Scheme at Dumka. After joining, they were sent for training and after successful completion of training, they were posted in different Frozen Semen Bank Centres and they have continued thereafter on the post of Technical Assistant. However, on certain complaints made against appointment of Class-III posts by Regional Director, Animal Husbandry, Ranchi and Dumka, the enquiry was conducted by the State Government and the appointment of the petitioners was justified as per the report contained at Annexure-8. However, by letter dated 16.4.1996 issued by the Secretary, Animal Husbandry and Fishery Department, Government of Bihar, Patna, the respondent no. 4 was asked to give information under what circumstances, the Regional Director, Animal Husbandry at Dumka, respondent no. 4, has made appointment to Class-III posts when the said power had already been withdrawn vide letters dated 21.2.1992 and 28.10.1991. Thereafter, the Director of Animal Husbandry, Bihar, Patna was directed to take steps for termination of such Class-III employees, who have been appointed by the order of Regional Director after 28.10.1991 and 21.2.1992, Annexure-9. However, no notice or show cause was served upon these petitioners. Thereafter, the Director of Animal Husbandry, Bihar, Patna was directed to take steps of cancellation of appointment of Technical Assistant, who were appointed directly in contravention of the orders of State Government as Director was only authorized to make the appointment (Annexure-11). Thereafter, writ petition being CWJC No. 5533 of 1998 was preferred by one aggrieved person namely Daya Nand Jha challenging his termination from the post of Technical Assistant. It is submitted that the Patna High Court, vide judgment dated 30.9.1999, held that the Regional Director had power to make appointment prior to 28.10.1991 and therefore, order of termination was quashed, Annexure-12. Similar views had been taken in another writ petition being CWJC No. 5480 of 1998, which was preferred by Arun Kumar Singh & Others. Thereafter, LPA No. 325 of 2000 was preferred by the State Government in which the judgments of the learned single Judge were upheld. However, thereafter the respondent- authorities remained silent for a

while and petitioners continued to discharge their function, but it appears that vide order dated 3.5.2001, the Joint Secretary, Animal Husbandry directed the respective Regional Directors, Animal Husbandry to take steps for termination/cancellation of promotion in terms of the order dated 23.10.1998, which was followed by another letter dated 8.11.2001 and as a result of which, the District Animal Husbandry Officer, Godda issued a letter contained in Memo No. 69 dated 25.1.2002 directing the Block Animal Husbandry Officer to issue show cause notice to the persons named therein, who are alleged to have been in service on the basis of illegal appointment. However, vide letter dated 28.1.2002, the Regional Director, Animal Husbandry, Santhal Pargana, Dumka, respondent no. 4, had directed the District Animal Husbandry Officer, Dumka, Godda and Sahebganj, not to issue show cause notice as the matter was pending before the Hon"ble Supreme Court, Annexure-16. In between, vide letter dated 6.6.2002, the Secretary, Animal Husbandry Department, directed the Regional Director, Santhal Pargana, Dumka to explain under what circumstances, steps have not been taken for termination/cancellation of such appointment/promotion. The Regional Director, Santhal Pargana, Dumka, in his reply dated 26.6.2002, explained that steps were not taken in view of the Stay Order granted by the Hon"ble Supreme Court against the letter dated 23.10.1998 and, therefore, 88 Technical Assistants have been allowed to continue in service.

3. However, these petitioners claim that they have never been given any show cause by any competent authority and came to know about the decision vide notification dated 2.6.2003 published in daily newspaper Prabhat Khabar issued by the Regional Director, Animal Husbandry, Santhal Pargana Region, Dumka, respondent no. 4 that the petitioners have been terminated from service alongwith other Technical Assistants. It is submitted that the names of petitioner nos. 1, 2, 3 and 4 appear at serial nos. 14, 10, 12 and 15 respectively in the said notification published in the Newspaper, Annexure-21. Learned counsel for the petitioners has, however, relied upon the order passed in SLP Nos. 5342-5343 of 2003 in relation to the termination of the services of the Technical Assistants working in South Chotanagpur Division. It is submitted that the Hon"ble Supreme Court had directed the respondents to constitute a committee as per Rules and the persons, whose services are terminated may apply for being reappointment or for regularization of their services in the Department. It is submitted that the Committee was directed to consider the eligibility, suitability, past record as well as the Educational Qualifications of such persons as per the Rules and after giving age relaxation and weightage over outsiders as directed by the High Court. Learned counsel for the petitioners submits that these petitioners are also entitled to similar treatment. Learned counsel for the petitioners further submits that similar placed employees, whose services have also been terminated by the same Memo No. 20.5.2003 had approached this Court in W.P. (S) No. 4837 of 2003 Reported in Bijendra Singh Vs. The State of Jharkhand and Others, , which was decided on 3.4.2012 by a Bench of this court. Learned counsel for the petitioners submits that detailed directions have been passed for

taking steps in the same line in which they have been directed by the Hon''ble Apex Court in other case. Para-6 of the judgment dated 3.4.2012 in W.P.(S) No. 4837 of 2003 Reported in Bijendra Singh Vs. The State of Jharkhand and Others, is quoted hereinbelow:--

6. Under the circumstances, the petitioner is required to be directed to submit a detailed representation addressed to the Secretary, Animal Husbandry Department, Govt. of Jharkhand for regularization of his services and upon receipt of such representation, the Secretary of the Animal Husbandry Department, Jharkhand shall consider and decide the same within a period of two months thereafter. It is clarified that while considering the representation, submitted by the petitioner, the Secretary, Animal Husbandry Department shall also consider the factum of initial appointment of the petitioner, which was done by the Regional Directors, pursuance to the power given by the State Government as also the date of his appointment i.e. 28.6.1988 as well as the orders passed by the Hon''ble Patna High Court in CWJC Nos. 5480/1998 and 5533/1998, LPA Nos. 243, 466, 480, 539, 467, 572 and 588 of 2001 and the orders passed by the Hon''ble Apex Court in Civil Appeal Nos. 5342, 5343, 5344, 5345, 5346 and 5376 of 2003. Since the petitioner was not a party in the proceedings, which was decided by the Hon''ble Apex Court, the case of the petitioner requires to be considered as the cases of similarly situated employees have been considered by the State Government in pursuance to the direction given by the Hon''ble Apex Court as well as Patna High Court. It is further clarified that before taking any final decision in this regard, the respondent authority shall give an opportunity of being heard to the petitioner. It is also clarified that in the event of allowing the representation, submitted by the petitioner, the respondent authorities shall reinstate the petitioner in service and shall pay all consequential benefits, permissible under law, within eight weeks, thereafter. The respondent authorities are also directed to communicate the order passed on the representation that may be made by the petitioner.

4. Learned counsel for the respondent-State has, however, stated that the petitioners were unauthorizedly appointed on the post of Technical Assistants, a State Cadre Post of Class-III Category, during 1990-91 by the then Regional Director, Santhal Pargana Area, Dumka. It is further stated that as the post is of State Cadre, the power of appointment on the post is exclusively vested with the Director, Animal Husbandry Department only. The said appointments were to be made by the Director only on purely temporary and ad hoc basis till regular appointments are made. It is further submitted that the Regional Directors encroached upon the jurisdiction of the Director and made a large number of appointments exceeding the sanctioned strength flouting all the norms and rules of appointment. When this fact came into light, the Secretary of the Department directed the respondent authorities concerned to terminate the services of those employees recruited by the Regional Directors. Accordingly, the services of the petitioners were terminated as it was illegal appointment.

5. However, it further appears from the submissions of the respondents that earlier SLPs were preferred challenging such termination orders in one matter, the Hon"ble Apex Court after careful consideration of the facts and circumstances involved in these matters, directed the respondent-State to constitute a Selection Committee as per the existing Rules and to start the recruitment process. The Hon"ble Apex Court has also directed to give relaxation of age and weightage over outsiders as directed by the High Court to the candidates whose services were terminated. However, learned counsel for the respondent-State has objected to the same relief being granted to the petitioners.

6. I have heard learned counsel for the parties at length and have gone through the relevant materials on records. The facts, which borne out from records that the petitioners have been appointed on different dates i.e. from 5.10.1990, 10.10.1990, 16.10.1990 and 25.4.1991 under the orders of Regional Director, Animal Husbandry, Santhal Pargana, Dumka, respondent no. 4. It further appears that the power to make appointment of Class-III posts were withdrawn from the Regional Director, Animal Husbandry Department vide letter dated 28.10.1991 followed by another letter dated 21.2.1992. These petitioners were initially appointed on temporary basis in prescribed pay scale and had continued in service till the impugned termination in question was published in daily Hindi Newspaper Prabhat Khabar dated 2.6.2003. From perusal of the judgments rendered in the case of Bijendra Singh (supra), it appears that several employees were terminated from the same Department earlier, who were appointed by the Regional Director, Animal Husbandry Department, by the same notification dated 20.5.2003 from the post of Technical Assistant after having worked for more than 15 years. The same grounds, which have been raised in the present writ petition including that relating to the power of Regional Director to make such appointments were also considered by the learned single Judge in the judgment rendered in the case of Bijendra Singh (supra) and thereafter, in view of the judgment rendered by the Hon"ble Supreme Court in Civil Appeal No. 5342 of 2003 and its analogous cases, the learned single Judge had disposed of the writ petition by directing the petitioner to submit a detailed representation before the Secretary, Animal Husbandry Department, Government of Jharkhand for regularization of his services in the manner indicated therein.

7. The respondents have not distinguished the case of the present petitioners from that of the other persons. Accordingly, this writ petition is being disposed of in similar terms as that of W.P.(S) No. 4837 of 2003 i.e. Bijendra Singh (supra).

8. Under the circumstances, the petitioners are required to submit detailed individual representation addressed to the Secretary, Animal Husbandry Department, Govt. of Jharkhand for regularization of their services. Upon receipt of such representations, the Secretary of the Animal Husbandry Department, Jharkhand shall consider and decide the same within a period of two months thereafter. It is clarified that while considering the representations, submitted by the petitioners, the Secretary, Animal Husbandry Department shall also consider

the factum of initial appointment of the, petitioners, which was done by the Regional Directors, pursuant to the power given by the State Government and taken into regard the order passed by the Patna High Court and Hon''ble Supreme Court relied upon by the petitioners. It is further clarified that before taking any final decision in this regard, the respondent authorities shall give an opportunity of being heard to the petitioners. It is also clarified that in the event of allowing the representation, submitted by the petitioners, the respondent authorities shall reinstate the petitioners in service and shall pay all consequential benefits, permissible under the law, within eight weeks, thereafter. The respondent authorities are also directed to communicate the order passed on the representation that may be made by the petitioners.

9. With the above observations and directions, the instant writ petition stands disposed of. Accordingly, I.A. No. 121 of 2004 & I.A. No. 1447 of 2004 also stand disposed of.