

(2011) 07 JH CK 0035

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5350 of 2010

Pawan Mistri and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Citation : (2011) 4 JCR 6

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mrs. Poonam Srivastav, J.—Heard counsel for the petitioner as well as counsel on behalf of the respondents.

2. Counter-affidavit is on record and the petition is listed for "Admission". As agreed between the respective counsels, the writ petition is heard finally.

3. The instant writ petition is preferred praying for a writ of certiorari quashing the order dated 16.9.2010 whereby the previous order of regularisation dated 4th March, 2010 vide memo No. 325, passed by the respondents was reconsidered on 5th July, 2010 and thereafter, the regularisation granted earlier was set at naught.

4. Evidently, the petitioners have been working on daily wage basis continuously since in between 1976-1987 and also they have discharged their duties to the satisfaction of the respondents for a period of 23 years or more. It is also admitted that the petitioners had requisite qualification at the time they were allowed to join in service but since the State Government had not granted any approval and sanctioned the post for regularisation, they are languishing as daily wagers.

5. Having found no alternative, the petitioners filed C.W.J.C. No. 2035 of 1994 (R), Trilochan Mahkur and others v. Bihar State Minerals Development

Corporation Ltd. and others. The writ petition was allowed and a direction was given to the respondents to regularise their service expeditiously preferably within a period of thirty days from the date of production of a copy of the order passed in the said writ petition. In the event they are not regularised within the prescribed period, the respondents were "directed to ensure that the payment of salary shall be made in confirmation with the grade fixed for regular employees. The aforesaid judgment was passed in the writ petition claiming regularisation following the principles laid down by the Apex Court in the case of State of Haryana v. Piara Singh, reported in AIR (SC) 1992 (2130) and also in the case of Gujrat Agriculture University v. Rathod, reported in 2001 SC Weekly 351.

6. The petitioners were regularised and they were given their salary in accordance with the grade applicable to the regular employees. But subsequently, the impugned order has been passed on 16.9.2010 by the Establishment of Jharkhand State Mineral Development Corporation Limited.

7. In the counter-affidavit, the respondents have taken a stand that the regularisation was not done by the competent authority. It is averred that the order of regularisation was not passed by the Board of Directors who was entitled to pass order of regularisation. It is also asserted in the counter-affidavit that the reservation policy and the roster was liable to have been followed, which was not done and therefore, the regularisation of the petitioner stood nullified and the order passed by the respondents calls for no interference whatsoever. It is also emphatically stated that now the impugned order setting aside regularisation of the petitioner is passed by the Board of Director.

8. Having heard the counsel at length and going through the records, I am of the considered view that this Court has decided the question of regularisation and passed specific directions for regularisation and also for fixing salary in the scale of a regular employees which was done consequent to a notice issued in Contempt Petition. Subsequently, the order is once again recalled which is evidently for obvious reasons. It is also noteworthy that the order passed earlier in C.W.J.C. No. 2035 of 1994(R), Trilochan Mahkur and others v. Bihar State Minerals Development Corporation Ltd. and others, dated 30.8.2002, has not been challenged before any superior Courts till date or it has not been cancelled by a Larger Bench.

9. In view of these circumstances, the order passed against the petitioners setting aside the regularisation is held to be illegal and against the decision of this Court in the writ petition passed earlier. Evidently, the impugned order has been passed to circumvent the regularisation granted earlier to the writ petitioner and cannot be allowed to stand. If at all their assertion is accepted that the regularisation was not passed by a competent authority, it was the fault of the respondents themselves and the petitioner cannot be made liable and their right cannot be jeopardized for the fault of the respondents themselves, which is clearly evident from the counter-affidavit.

10. In view of what has been stated above, the writ petition is allowed. The order impugned dated 16.9.2010 is quashed. Petition allowed.