

(2010) 04 JH CK 0060
In the Jharkhand High Court

Pranab Kumar Ambasta and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Citation : (2010) 126 FLR 871

Hon'ble Judges : Sushil Harkauli, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sushil Harkauli, J.—The petitioner in the leading writ petition No. 2095 of 2002 was appointed as daily wage worker in 1984 and continued upto September, 1999 when his service was terminated and since then he has not been working. The writ petition was filed in the year 2002 claiming that he should be continued as daily wage worker and should be considered for regularisation.

2. The petitioner has placed reliance upon a judgment dated 07.6.2001 passed in C.W.J.C. No. 3031 of 1999(R), a copy of which has been enclosed as annexure-5 to the leading writ petition. By that judgment a learned Single Judge directed the respondent authority to absorb/regularise the services of that writ-petitioner provided he was still working in terms of his appointment letter. (emphasis mine)

3. The learned Single Judge in the said Judgment dated 07.6.2001 has recorded at two places that the petitioner of that case was still working on Class-III post, having been appointed on daily wage basis with effect from 15.5.1982.

4. The order was upheld in L.P.A. and an SLP was dismissed by the Supreme Court by a non-speaking order.

5. The facts of the present leading case are quite distinguishable. In the present case, the petitioner has admittedly been terminated in respect of his daily wage employment since 1999, which means that, apart from explaining the laches for the period 1999 when he was terminated and 2002 when he filed the writ

petition, he would also have show some legal ground on which his termination as daily wager could be quashed, and he could be reinstated as a daily wager. Only thereafter the question about his regularisation could be examined.

6. In fact, in L.P.A. 649 of 2002 connected with 658 of 2002, both arising from the orders passed by the learned Single Judge in different contempt cases, a Division Bench of this Court by a judgment dated 24.1.2005 has clearly held that the direction for considering daily wagers for appointment by granting age relaxation would apply only to such daily wagers who are still working in the State Government and not to those who have already been retrenched/not in service.

7. Thus, the petitioner having already been terminated in respect of his daily wage appointment two and a half years before the filing of the writ petition cannot be said to be covered by any of the directions given in any decision, and on the contrary such terminated employees are clearly covered by the exception carved out in the earlier decisions, as indicated above in this order.

8. The petitioners of the other connected writ petitions, described above, are also similarly situated as the present petitioner, as they have all been terminated prior to filing of their respective writ petitions.

9. The learned Counsel for the petitioner placed reliance upon a decision of the Supreme Court in the case of Union of India (UOI) and Others Vs. Debika Guha and Others, . It is unfortunate that the learned Counsel for the petitioner has failed to keep abreast with the law and has cited an over-ruled decision of the Supreme Court. The decision of the Supreme Court in the case of Post Master General, Kolkata and Others Vs. Tutu Das (Dutta), may be seen in which the case of Debika Guha (supra) has been over-ruled.

10. Reliance has also been placed from the petitioners" side upon a decision of the Supreme Court in the case of U.P. State Electricity Board v. Pooran Chandra Pandey reported in 2007 AIR SCW 6904 and another decision of the Supreme Court in the case of State of Karnataka v. C. Lalitha reported in 2006 (1) Supreme 640. The decisions cited above referred to the proposition of law that there should be no discrimination between similarly situated employees.

11. As already mentioned above, the petitioners of the writ petitions are not similarly situated as the petitioner of the writ petition which had been allowed by the learned Single Judge, in as much as that person was still in service whereas all the petitioners herein have been terminated much before filing of the writ petitions.

12. Apart from the aspect of latches involved, no legally sound ground has been shown, on the basis of which the termination of all these petitioners as daily wage employees could be quashed, and they could be reinstated as a daily wagers. Therefore the question about consideration of their regularization does not arise.

13. In view of what has been stated above, all these writ petitions fail and are dismissed. No costs.