

(2004) 10 JH CK 0012
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5705 of 2003

Radhey Shyam Prasad Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-10-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 JCR 60

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Ritu Kumar, for the Appellant; R.N. Sahay, Sr. SC II, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—In this Writ Petition the petitioner prays for quashing a portion of the memo dated 8.9.2003 (Annexure-14) issued by the Civil Surgeon-cum-Chief Medical Officer, Pakur by which the salary of the petitioner and others have been ordered to be kept in abeyance on the basis of an order dated 8.9.2002 passed by the Deputy Commissioner. The ground for passing the said impugned order appears to be that the petitioner is said to have been illegally appointed. The learned counsel for the petitioner submits that 32 (thirty two) persons have been included in the impugned order but this Writ Petition is confined only to the petitioner. By reason of an Amendment Application, registered as 1A No. 340 of 2004, the petitioner has also made a prayer for quashing the memo No. 203 dated 9.2.2004 as contained in Annexure-16 of the said Amendment Application terminating the services of the petitioner on the ground that his appointment was found to be forged. The petitioner also prays for quashing the letter dated 12.2.2004 (Annexure 17 of the said Amendment Application) communicating to the petitioner, the decision of the concerned authority taken on 9.2.2004 directing the petitioner to hand over charge to one Smt. Pramila Soren. The petitioner also makes a prayer that the first information report lodged pursuant

to the order dated 9.2.2004 be kept in abeyance.

2. The short facts, which are necessary to be taken note of are that the petitioner and others were duly appointed against a sanctioned vacant post of Class III vide memo dated 15.12.1984 issued by the Civil Surgeon-cum-Chief Medical Officer, Ranchi vide Annexure-1 appended to the Writ Petition. Thereafter, the petitioner was sent for training from time to time; whereafter, by an order dated 5.8.1988, he was transferred to Pakuria in Sahebganj vide Annexure-2. Two years thereafter, on 2.3.1990, the petitioner was informed that it had been learnt that his appointment was illegal and therefore, he was directed to present himself with all necessary papers on 16.4.1990 in the Office of the Deputy Development Commissioner, Sahebganj. Pursuant to the said letter, the petitioner appeared on 16.4.1990 and again, on 14.8.1991. Four years thereafter, in the year 1995, a decision was taken to conduct an inquiry into the alleged illegal appointments and a list was prepared asking the persons mentioned therein to file their respective explanations. According to the petitioner, his name was not included in that list.

3. The petitioner continued working but, on 11.5.1996, by Annexure 7, he along with others were asked to submit their letters of appointment in the District Headquarters for purposes of an inquiry. The petitioner states that he submitted all required documents showing that he was validly appointed, whereafter, on 4.9.1996, the respondents issued a direction in relation to the payment of salary of the petitioner. The petitioner submits that these documents establish that his appointment was found to be genuine.

4. After a lapse of eight months, the petitioner again received a memo dated 9.5.1997 (Annexure-9) by which, he along with others, were again asked to submit the letters of appointment etc for purposes of conducting an inquiry. The petitioner submits that he again submitted these documents and on 5.11.1998, he was once again directed to appear in person vide Annexure 10 along with the concerned relevant documents. The petitioner submits that he again appeared and submitted all necessary documents and in the year 1999 vide Annexure 11, a list of 61 illegally appointed persons was published, but the name of the petitioner was not included in the 1999 list. Yet, he was once again directed to appear and produce documents. Facing so much harassment, the petitioner filed WP (S) No. 3223 of 2001. By an order dated 24.7.2001 (Annexure 12), one of us, disposed off the Writ Petition remanding the matter to the Regional Deputy Director, Health Services, Santhal Pargana Division directing him to determine as to whether they would like to make any inquiry relating to the legality and propriety of the appointment of the petitioner or not. It was further directed to conclude the inquiry within six months from the date of receipt of a copy of that order, failing which, the respondents were prohibited to make further inquiry in respect to the legality and propriety of the appointment of the petitioner, made 16-1/2 years ago. It was also observed that if the respondents chose to proceed with the inquiry, then they were to hear and inform the petitioner.

5. The petitioner states that he brought this Order to the notice of the respondents, immediately, whereafter, on 13.8.2001, he was directed to reply to certain queries, which, he submitted on 25.8.2001. Thereafter, he was again directed to submit a list of documents vide letter dated 14.10.2001, which, the petitioner again complied with, Thereafter, the petitioner did not hear anything from the respondents. The petitioner has made an allegation in paragraph 30 of the Writ Petition that in September 2003, one Dr. Ramesh Prasad, Civil Surgeon (respondent No. 7) asked for illegal gratification, but the petitioner refused to oblige him, whereafter, he received the first impugned communication dated 8.9.2003 informing him that his salary has been kept in abeyance.

6. A counter-affidavit has been filed by the respondent No. 7, namely, Dr. Ramesh Prasad on behalf of himself and on behalf of the respondent No. 3. In the said counter-affidavit it has been mentioned, in paragraph 6, that a thorough inquiry was made and it was found that this petitioner, along with 31 others, were appointed in an illegal manner. The Enquiry Report has been brought on record vide Annexure "D" and the name of the petitioner has been dealt with at SI No. 27 therein. Upon perusal of the same, it is evident that in the inquiry, which was conducted, it found that the original records and the despatch register did not contain the issuance of any appointment letter in favour of the petitioner, which corresponds to letter dated 15.1.1984 which has been marked Annexure 10 to the instant Writ Petition. The inquiry report, therefore, came to the conclusion that this appointment letter appeared to be forged. This report further discloses that a first information report was proposed to be lodged against the petitioner. This report is to be found at running page 87 of the Writ Petition.

7. In paragraph 12 of the counter-affidavit, it has been stated that the Enquiry Report was submitted and that the report disclosed that the appointment letter was found to be forged proving that no appointment letter had been issued from the Office of the Civil Surgeon-cum-Chief Medical Officer, Ranchi and that the training certificate of the petitioner was also found to be forged.

8. However, what appears to be a genuine argument on behalf of the petitioner is that there was a specific bar" created by one of us on 24.7.2001 passed in WP (S) No. 3223 of 2001 (Annexure 12), which, clearly stipulated that the Regional Deputy Director, Health Services would determine as to whether they would like to hold an inquiry and if so, then they were directed to conclude the inquiry within a period of six months, failing which the respondents were prohibited from making further inquiry in respect to the legality and propriety of the appointment of the petitioner said to have been made 16-1/2 years ago, Annexure "D" brought on record is the inquiry report, which appears to have been signed on 16.8.2003-much beyond the period of six months.

9. The petitioner has stated in paragraph 25 that he immediately brought the aforesaid order dated 24.7.2001 passed in WP (S) No. 3223 of 2001 to the knowledge of the respondents. This paragraph has been replied by the respondents in paragraph 28 of the counter-affidavit as being "matters of

record". In that view of the matter, this Court has no option, but to hold that the inquiry was conducted much beyond the period fixed by one of us in the aforementioned Writ Petition and as such it is in direct conflict with the order of this Court. It has therefore, to be set aside.

10. Mr. R.N. Sahay, learned Senior Standing Counsel No. II submitted that the petitioner being an illegally appointed person has no right to be heard nor does he deserve an opportunity of hearing. What Mr. Sahay submits is true. The rules of natural justice cannot be stretched to an extent that it amounts to conferring unwarranted relief to persons who have got no bona fides. However, in the instant case, it is seen that the petitioner was appointed in the year 1984 and the inquiry was signed on 16.8.2003. Thus, from the date of appointment and conclusion of the inquiry the period is almost nineteen years. That apart, after the bar created by one of us in WP (S) No. 3223 of 2001, the inquiry, in any case could not have been conducted after six months from the date of communication. The petitioner has stated that the order was communicated immediately, but in reply, the respondents have stated that this is matter of record. In other words, the period of six months lapsed some time in January, 2002 and therefore, unless there was an order enlarging the time fixed by this Court, the respondents could not have resorted to any further inquiry.

11. In that view of the matter, the impugned letter/orders are all quashed and the Writ Petition is allowed.

There shall, however, be no order as to costs.