

(2015) 03 JH CK 0042
In the Jharkhand High Court
Case No : Writ Petition(S) No. 579 of 2009

Rajendra Prasad Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-03-2015

Acts Referred:

Citation : (2015) 3 AJR 652 : (2015) 2 JLJR 323

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Rahul Kumar and Rituraj Sinha, for the Appellant; Vineet Prakash, J.C. to S.C., Advocates for the Respondent

Final Decision : Allowed

Judgement

Pramath Patnaik, J.—The instant writ application has been filed by the petitioner for quashing the order as contained in Memo No. 1249 dated 13.05.2008, issued under the signature of respondent No. 3, whereby the petitioner's representation for absorption of his services in the respondent department has been rejected notwithstanding the fact that the petitioner has been appointed in a lawful manner from the wait list panel of District Collectorate and not as a displaced person as erroneously considered by the respondents and for direction to the respondents for regularization of petitioner taking into account continuous, uninterrupted and unblemished service rendered by the petitioner since 1989.

In the instant writ application, the legality and propriety of the order passed under annexure-13, has been assailed by the petitioner.

2. The factual matrix as delineated and described in the writ application is that the petitioner was appointed on 17.04.1989 on the post of Grade IV i.e. Peon vide annexure-1 to the writ application and the petitioner has been found fit by the medical certificate (Annexure-2) and as per annexure-3 to the writ application, twenty sanctioned posts were mentioned out of which five posts were meant for General Category and the petitioner belongs to general category.

It has been averred in the writ application that as per the order dated 18.05.1989, the name of the petitioner as "Chainman" is placed at Serial No. 11 whereas name of one Shakantula Devi finds place at Serial No. 3. In pursuance to the appointment of petitioner, service book has been opened where the date of appointment of the petitioner has been shown as 01.05.1989 as per annexure-6 to the writ petition. Since, the actual date of appointment of the petitioner was 17.04.1989, he made a representation before the competent authority vide annexure-7 for rectification of date of entry in the service book i.e. the date of appointment as 17.04.1989 instead of 01.05.1989. But, the said representation was not considered by the competent authorities and has fallen on deaf ears and thereafter, the petitioner was issued a show cause notice vide letter dated 29.11.1996 (annexure-8), intimating on the ground that incompetent authority i.e. Rehabilitation Officer has made appointment and in pursuance to the show cause the petitioner submitted his reply (annexure-9 to the writ application). As per annexure-10, vide office order contained in Memo No. 376 dated 03.04.1998, the services of the petitioner was terminated by the Director, Land Acquisition (respondent No. 6).

3. Being aggrieved by the order of termination, the petitioner approached this Court in C.W.J.C. No. 1739 of 1998(R) and this Court vide order dated 13.12.2007 has been pleased to dispose of the writ application with liberty to the petitioner to file representation within a period of six weeks before the respondent-Director, Land Acquisition, State of Jharkhand, who will obtain the records of petitioner from the concerned office and will pass and communicate a speaking order thereon, in accordance with law, within two months from the date of receipt of such representation.

In deference to the order of this Court dated 13.12.2007, the petitioner submitted detailed reply enumerating the factual position and vide annexure-13, the services of the petitioner has been terminated, which is impugned in this writ application.

4. Counter affidavit has been filed on behalf of respondents controverting the averments made in the writ application wherein, it has been stated that the services of the petitioner has been terminated because his appointment was found to be illegal and in pursuance to judgment/order dated 13.12.2007, in the aforesaid writ application the respondent No. 6 i.e. Director, Land Acquisition, Jharkhand passed a speaking order. The Director, Land Acquisition examined the concerned document as well as representation submitted by the petitioner. It was observed that since the petitioner was appointed vide Memo No. 1994 dated 18.05.1989 on the ground of being a displaced person, enquiry was conducted for the alleged illegal appointments made in the Land Acquisition and Rehabilitation Offices of erstwhile Water Resources Department, Government of Bihar. In the process of enquiry of illegal appointment, petitioner was asked to produce certificate which could prove that he was a displaced person vide Memo No. 2262 dated 17.06.1997. It has been stated in the counter affidavit that since

the petitioner could not produce any evidence of displaced person, hence the Water Resources Department terminated the services of the petitioner vide Memo No. 376 dated 03.04.1998 because appointment of the petitioner was illegal. In the light of the aforesaid observation, the Director, Land Acquisition, Water Resources Department has rejected the claim for reappointment in service and a reasoned order has been passed vide Memo No. 1249 dated 13.05.2008, under annexure-13 to the writ application.

5. Heard learned counsel Mr. Rahul Kumar appearing for the petitioner as well as learned counsel Mr. Vineet Prakash, J.C. to S.C. (L and C) appearing for the respondents.

6. Learned counsel appearing for the petitioner has assailed the impugned order of termination (annexure-13) on the following grounds:

(a) The first limb of argument of the learned counsel for the petitioner is that the Special Land Acquisition Officer is the competent authority to make appointment in Grade IV post and the said appointment order had the tacit approval of the Director, Land Acquisition, as revealed from annexure-3. The appointment of the petitioner has been made by the competent authority and in this context, learned counsel for the petitioner has referred to the judgments rendered in case of Ravindra Narain Thakur and Others Vs. The State of Bihar and Others, and paragraph 5 of the said judgment is relevant, which is as under:

"5. In cases falling under category A, learned counsel for the petitioners tried to show by reference to copies of appointment letters subsequently brought on record that majority of appointments were made by the Special Land Acquisition Officer who was competent authority to appoint and even in cases of appointments made by Rehabilitation officer some of the appointment letters show that appointments had been made under the orders of the competent authority the Director. On the basis of some unreported judgments of this Court including one by me dated 11.1.2000 in CWJC No. 6586 of 1998 (Sunil Kumar Singh Vs. State of Bihar and Ors.) it was submitted that even in cases of such petitioners who were appointed by Rehabilitation officer, the subsequent order of extension of service by Director should be construed as an order approving or affirming the appointments and hence, the appointment of petitioner cannot be treated as made by a person without authority."

Similar views have been taken by this Court in the case of Ram Pravesh Kumar (Mapak) Vs. State of Jharkhand and Others, ; Gopal Singh Vs. State of Jharkhand as reported in (2005) 4 JLJR 614 and Baleshwar Prasad Yadav Vs. The State of Jharkhand and Others, .

(b) The second contention raised by the learned counsel for the petitioner is that the principle of equity is applicable because out of same transaction one Shakuntala Devi and the petitioner were appointed and she has been continuing in service in pursuant to the judgment of this Court in W.P.(S) No. 1661 of 2004 and batch cases and the petitioner stands on the same footing like that of

Shakuntala Devi and petitioner is entitled to be reinstated with the same benefit and deserves the parity in treatment as that of Shakuntala Devi.

7. Per contra, learned counsel for the respondents has strenuously urged before this Court that the representation of the petitioner has been rightly rejected by the competent authority by a reasoned order and the petitioner does not stand in the same footing like that of Shakuntala Devi because in the case of Shakuntala Devi, in pursuance to show cause, she filed all the documents whereas petitioner failed to produce the documents with regard to certificate of disabled person. Learned counsel for the respondents has referred to the judgment rendered in case of State of Bihar and Others Vs. Prashant Kr. Sharma and Others--> , specially to paragraph 21, 22, 24 and 36 of the aforesaid decision to bring on record the point that initial appointment of the petitioner is illegal and that cannot be cured by the subsequent order. The learned counsel for the respondents has also referred to the judgment rendered in case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

8. On perusal of aforesaid decision of Hon''ble Apex Court in the case of Uma Devi (supra), it appears that the said decision relates to regularization of illegal appointment whereas the case of the present petitioner relates to termination and the said decision is clearly distinguishable and not applicable to the facts situation of this case.

9. Having heard the learned counsel for the petitioner and rivalised submissions of the respondents, I am of the considered opinion that the impugned order (annexure 13) is not legally sustainable. Accordingly, the impugned order dated 13.05.2008 (annexure-13), is quashed and the respondents are directed to reinstate the petitioner in service forthwith within a period of two months from the date of receipt of a copy of this order. However, since the petitioner has remained out of work due to order of termination dated 13.05.2008 and he has undergone the trauma of sufferings during the interregnum period, for the ends of justice the petitioner is entitled to be 25% of the back wages for the periods from the date of termination till the date of reinstatement in service apart from continuity in service.

10. Accordingly, this writ application is allowed with aforesaid observation.