

(2007) 12 JH CK 0012
In the Jharkhand High Court

Rajendra Prasad Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 13-12-2007

Acts Referred:

Citation : (2011) 2 JCR 106

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Judgement

R.K. Merathia, J.—The contention of the petitioner is that he was not engaged against the category of displaced person, but he has been terminated by order dated 3.4.1993 (Annrxure-7) on the ground that he was appointed against the category of displaced person but he did not produce the displaced person certificate in spite of repeated requests.

2. Mr. Saurav Arun, appearing for the petitioner, submitted that in paragraph 13 of the writ petition, it is specifically stated that petitioner was never appointed as displaced person, to which the respondents replied in paragraph 30 of the counter affidavit saying generally that the statements made in paragraphs 13 to 16 are wholly wrong and denied. He further submitted tint in the show-cause notice dated 29.11.1996 (Annexure-6), it was alleged that petitioner was appointed by an officer of the rank of the Rehabilitation Officer, who had no power to make appointment. Petitioner replied on 17.6.1997 stating therein that a panel was prepared by the District Establishment Committee and on the basis of such panel, petitioner was appointed and his appointment was held to be valid by the then Director, Land Acquisition and Rehabilitation. He further submitted that the impugned order has not been passed on the ground that appointment was made by a person who was not competent to appoint the petitioner, but on the ground that he did not produce the displaced person certificate.

3. Mr. Mehta, appearing for the respondents, referred to Annexure-2 and submitted that the same is a list of 6 persons, who were appointed temporarily against the displaced persons category and in which petitioner"s name appear at

serial No. 11 and therefore petitioner is wrong in saying that he was not appointed as a displaced person. He further submitted that though petitioner was asked to show cause as to why he may not be terminated as his appointment was illegal on the ground that his appointment was made by an officer who had no power to make any appointment, but it was also found that the petitioner who procured appointment under displaced category did not produce the certificate of displaced person. He further submitted that now in view of the judgment of the Constitution Bench reported in (2006) 4 SCC 01 Secretary, State of Karnataka and Ors. v. Uma Devi and Ors., the writ court cannot direct the illegal appointees to continue even if they remained engaged for a long period.

3.1 is true that in view of the judgment of Uma Devi (supra) now this Court cannot direct that a person illegally appointed should be allowed to continue but then it has to be found out, whether the petitioner's appointment was illegal or not. It appears that the ground in the show cause notice was that petitioner was appointed by an officer who was not authorized to make appointment whereas the ground of termination was that writ petitioner did not furnish displaced person certificate, though he was appointed in that category. Therefore, an opportunity should be given to the petitioner to explain.

4. Now when petitioner knows about both the aforesaid grounds, he is given a liberty to file show-cause/representation regarding the said grounds, before the Director, Land Acquisition, State of Jharkhand Ranchi within six weeks from today, who will obtain the records of petitioner from the concerned office of Ranchi/Patna and will pass and communicate a speaking order thereon, in accordance with law, within two months from the date of receipt of such representation.

With these observations and directions, this writ petition is disposed of. No costs.