
(2020) 09 JH CK 0036
In the Jharkhand High Court
Case No : Writ Petition(S) No. 4708 Of 2009

Ram Kailash Singh

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 03-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 141, 311

Citation : (2020) 09 JH CK 0036

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : A.K. Sahani, Jayant Franklin

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties through V.C.
2. The instant writ application was initially preferred for a direction upon the respondent-authorities to pay the arrears of salary to the petitioner since June, 2001. During pendency of this application, the petitioner has been discharged from service pursuant to the office order as contained in Memo No. 683 dated 12.05.2014 (Annexure-12); as such, the aforesaid order has been impugned pursuant to the filing of amendment writ application which was allowed by this Court.
3. This case has a chequered history. The petitioner was a land looser and displaced person in Swranrekha Project and vide memo No. 19437 dated 26.05.1987, the Development Book has been issued by the Rehabilitation Officer, Swranrekha Project, Chandil and subsequently, the name of the petitioner has been incorporated, being a son of the land looser and he was appointed as typist vide order dated 22.04.1992. The said appointment was pursuant to a decision taken by the Coordinate Committee and the petitioner was posted as typist on a sanctioned and vacant post at Special Land Acquisition Office No.3, Chaliyama. The service of the petitioner has been extended from time to time. Thereafter,

vide Memo No. 45 dated 30.04.1994, the Special Land Acquisition Officer requested the Additional Director, Rehabilitation and Land Acquisition to appoint the petitioner on regular post.

The case of the petitioner is that since he was not getting his regular salary since June, 2001, he filed a representation before the Special Land Acquisition Officer for payment of arrears of salary. As a matter of fact, the Special Land Acquisition Officer, Swranrekha Project, Chandil vide Memo No. 113 dated 14.05.2004 wrote a letter to the Additional Director regarding payment of arrear of salary of the petitioner, but unfortunately, the same has not been paid. Even the under Secretary of the Department vide Memo No. 3092 dated 22.11.2008, has directed to Chief Engineer regarding taking proper action in the case of the petitioner.

From record it also appears that in the year 2007, vide Memo No.3543 dated 31.12.2007, a chart was prepared by the Government and the persons who were continuously working for more than 10 years were directed to be transferred and pursuant to the said order dated 31.12.2007, the petitioner was transferred to the office of Special Land Acquisition officer, Irrigation project, Ranchi. It is also a fact that the petitioner was deputed as 1st Polling Officer during General Parliamentary Election, 2009 being Typist of Land Acquisition Officer, Chandil. Even the attendance register has been annexed as Annexure-8 to the writ application. However, since the petitioner was not being paid salary regularly; as such, he represented the Secretary, Department of Water Resources on 11.09.2009 for payment of arrear of salary since June, 2001, but no action has been taken by the respondent authorities.

Faced with the situation, the petitioner filed the instant writ application in the year 2009, for payment of salary since 2001. However, during pendency of this case, by office order as contained in Memo No. 683 dated 12.05.2014, the Deputy Secretary, Department of Water Resources, Government of Jharkhand relieved the petitioner from services without issuing any show cause notice and without following the principal of natural justice. Thus, on the one hand, the petitioner was not being paid salary regularly and on the other hand, instead of paying salary to the petitioner, the order of termination was issued which has been made impugned by way of amendment in the instant writ application by the order of this Hon'ble Court.

4. A counter-affidavit has been filed in this case, wherein it has been stated inter-alia that the petitioner had joined the office of Special Land Acquisition Officer (SLAO in short), Chandil on 21.05.1997 on the basis of the letter No. 162 dated 20.05.1997 SLAO, Chaliyama. At the time of joining, petitioner submitted only last pay certificate and he did not submit his service book from his earlier posting in Chaliyama Office. The petitioner had received his salary from date of his joining till the audit party from A.G. objected on the payment of salary of the petitioner in the month of August, 2001. The audit party raised objection and gave direction to stop payment of salary to petitioner as the petitioner had not

submitted his service book till the date of audit. The service book was thereafter, submitted on 7.05.2008 by the SLAO, Adityapur. On perusal of the service book, it was revealed that the appointment of the petitioner was only for 3 months and this fact was entered in the service book and also a photocopy of the appointment letter issued on 24.04.1992 was annexed with the service book. It has also been stated that the SLAO, Chandil had written several times to the higher authority for extension of the service of the petitioner. Lastly, as per the order vide letter No. 683 dated 12.05.2014, the petitioner was terminated and discharged from service with immediate effect. The said order was communicated to the petitioner vide office Memo No. 197 dated 25.06.2014. According to the order, the service of the petitioner was illegal, so, no question arise to make payment of due salary.

5. At the outset, learned counsel for the petitioner confines his argument only on the question of payment of salary and submits that by reading Annexure-G to the counter-affidavit filed on 06.07.2020, it clearly transpires that as per the report which was the internal communication among the respondents clearly indicates that Rs.9,00,000/- (Rs. 9 lacs) was pending till that date and the same was not paid to him. He further submits that Annexure-H to the said counter-affidavit also indicates that a letter was written by Special Land Acquisition Officer to the Chief Engineer requesting for payment of arrear of salary to the petitioner. He vehemently contended that on the one hand the respondent authorities themselves are admitting that this petitioner is not being paid salary and only till 2009, the arrears of salary was about Rs. 9 lacs which is apparent from the record of the respondents and on the other hand, instead of payment of arrears of salary, the respondent has issued the impugned letter of termination (Annexure-12), whereby it has been stated that the appointment of the petitioner was not legal as there was difference in the date of birth as provided by the petitioner with that of the entry made in the service book and secondly the petitioner being a differently able person for only 20% and he is knowing only manual typing; as such, his services has been terminated and he has been discharged with immediate effect.

6. Learned counsel for the petitioner further contended that, admittedly, the petitioner had worked till the age of termination and as such, he is entitled for his salary. Even the termination order is illegal and arbitrary as the same has been passed pursuant to filing of this writ application and that too without giving any show cause notice to the petitioner; as such, the same is illegal and deserves to be quashed and set aside and the respondent authorities be directed to pay the salary of the petitioner till the date of termination.

7. Learned counsel for the respondent submits that the petitioner has received his salary from the date of his joining in the year 1992 till 2001 when the audit party from Accountant Office objected on payment of salary of the petitioner in the month of August, 2001. The audit party has raised the objection on the ground that the petitioner had not submitted his service book till the date of

audit. It has been further submitted by learned counsel for the respondents that the service book was submitted only on 07.05.2008 by the Special Land Acquisition Officer, Adityapur and from perusal of the service book it was revealed that the service of the petitioner was only for three months which fact was also entered in the service book and a photocopy of the appointment letter was annexed with the service book. On all these grounds, the services of the petitioner was terminated vide order dated 25.06.2014.

8. Learned counsel for the respondents relied upon the judgments passed in the case of Basistha Narayan Singh Vs. State of Jharkhand reported in 2014 SCC Online Jhar.11, Umesh Kumar Singh Vs. State of Bihar & Ors. reported in 2001 (3) L.L.N. 374 and also the judgment passed by the Hon'ble Apex Court in the case of Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendr Kumar Jain & Ors. reported in (1995) 1 SCC 638. Relying upon the aforesaid judgments, learned counsel for the respondents contended that since the initial appointment of the petitioner itself was void ab initio; as such, he is not entitled for any salary.

9. Having heard learned counsel for the parties and after going through the materials available on record, it appears that the petitioner has received his salary from the date of his appointment in the year 1992 till August, 2001 regularly. His salary was stopped only when there was an audit objection on the ground that the service book of the petitioner was not available. It is also an admitted fact that the service book was made available only on 07.05.2008 (after a lapse of about 7 years), when it was revealed that the petitioner was initially appointed for three months only.

It further transpires from Annexure-G & H of the counter affidavit and various other documents filed by the respondent-State that the petitioner continued to work under the respondent-authorities, but had not received regular salary inasmuch as, the report dated 14.12.2009 given by the Special Land Acquisition Officer, Swranrekha Project, Chandil to the under Secretary, Water Resources Department mentioning therein that an amount of Rs. 9 lakh approx was due as against the salary of the petitioner.

The record further reveals that the petitioner was also transferred in the year, 2007 to the office of the Special Land Acquisition Officer, Irrigation Project, Ranchi, pursuant to the decision of the government as contained in Memo No.3543 dated 31.12.2007, whereby a chart was prepared by the Government regarding the persons who were continuously working for more than 10 years were directed to be transferred and since the petitioner completed 10 years of service at one place he was also transferred in the year, 2007 to the office of the Special Land Acquisition Officer, Irrigation Project, Ranchi.

In these background, there would not be any exaggeration in holding that the petitioner was working regularly under the respondents. There are number of documents which have been filed by the respondents clearly transpires that the petitioner had worked at least till 2009. It is amazing that when the respondent-

authorities came to know about the fact that the petitioner's initial appointment was only for three months in 2007, they took 7 years in issuing the order of termination and that too on other grounds. In this background, I am forced to agree with the contention of the learned counsel for the petitioner that it is only after filing of the writ application, the respondent authorities instead of paying the salary to the petitioner, terminated his services.

I am not in an agreement with the contention of the learned counsel for the respondents that since the initial appointment itself was illegal, the petitioner is not entitled for any salary. In this regard, I want to hold that this is not a case of illegal appointment. The petitioner was appointed pursuant to the order dated 22.04.1992 (Annexure-2), wherein it was specifically stated that the initial appointment of the petitioner was for three months and if within three months the work will not be found satisfactory, his services will be deemed to have terminated automatically. At the cost of repetition, the petitioner's services was not terminated rather he continued to serve the respondent-department at various places inasmuch as, vide Memo No. 45 dated 30.04.1994, the Special Land Acquisition Officer, Chandil requested the Additional Director, Rehabilitation and Land Acquisition to appoint the petitioner on regular post. Further, the petitioner was also transferred vide Annexure-6 along with several persons on the ground that they have completed 10 years of service at one place and the name of the petitioner was mentioned in that list.

The judgments cited by learned counsel for the respondents is with regard to those cases in which the employee was appointed illegally inasmuch as, in the case of Basistha Narayan Singh (Supra) the appointment of the petitioner was held to be illegal because there was no vacancy advertised nor there was any sanction committee constituted and in the case of Umesh Kumar Singh (Supra) the appointment letter was forged. So far as the judgment of the Hon'ble Apex Court in the case of Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendr Kumar Jain & Ors (Supra) is concerned, it is also not applicable as in that case the issue was with respect of complying with the formalities as enshrined under Article 311 of Constitution of India.

In the case in hand, the appointment letter was neither forged nor fabricated rather the petitioner being a land looser and displaced person in Swranrekha Project, his name was incorporated in the Development Book issued by the Rehabilitation Officer, Swranrekha Project, Chandil and subsequently, he was appointed as typist vide order dated 22.04.1992 on the vacant post pursuant to a decision taken by the Coordinate Committee and he was posted as typist at Special Land Acquisition Office No.3, Chaliyama. In the appointment letter it was very clear that the petitioner was appointed initially for three months with a condition that if his work will not improve within three months; his service will be terminated automatically. The record also transpires that vide Memo No. 45 dated 30.04.1994, the Special Land Acquisition Officer requested the Additional Director, Rehabilitation and Land Acquisition to appoint the petitioner on regular

post. The fact further reveals that the petitioner was also transferred vide Annexure-6 along with several persons on the ground that they have completed 10 years of service at one place. As such, there are several evidences which transpire that the respondent authorities have taken work from the petitioner regularly without payment of regular salary inasmuch as, in the year, 2009, a report was submitted that Rs.9 laks was due as the salary of the petitioner. In the case of Rajendra Mohan Bhatnagar as reported in 1992 Supp (2) SCC 513 wherein the Hon'ble Apex Court has held that when the petitioner has in all put in more than 15 years of service and holding that such an officer was not a permanent employee and remained only as temporary employee is as abuse of service jurisprudence. Para-2 of the said judgment is quoted herein below.

"2. We have examined the material. We are unable to accept the decision of the High Court. The appellant was initially taken in the government service in 1958. In 1962 when the Corporation was formed, he was taken by the Corporation. While in the service of the Corporation, the appellant was promoted at least on three occasions and the last promotion was in 1973 as Chief Personnel Officer (Head of Personnel Department). He has in all put in more than 15 years of service. To say that such an officer was not a permanent employee and remained only as a temporary employee is an abuse of the service jurisprudence. The Corporation ought not to have invoked the provisions of Regulation 69 to terminate the services of the appellant on the ground that he was temporary servant."

10. In view of the aforesaid discussions I hold that the petitioner is entitled for entire salary till the date of termination inasmuch as, the respondents continued to take work from him for more than 15 year. At this stage, it is pertinent to refer the judgment of Hon'ble Apex Court passed in the case of State of Punjab & Others versus Jagjit Singh & Others reported in (2017) 1 SCC 148 wherein the Hon'ble Court has held that the principle of equal pay for equal work has also been extended to temporary employees. Para 57, 58 & 59 is quoted herein below:-

"57. There is no room for any doubt that the principle of "equal pay for equal work" has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India under Article 141 of the Constitution of India. The parameters of the principle have been summarised by us in para 42 hereinabove. The principle of "equal pay for equal work" has also been extended to temporary employees (differently described as work-charge, daily wage, casual, ad hoc, contractual, and the like). The legal position, relating to temporary employees has been summarised by us, in para 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us yet again.

58. In our considered view, it is fallacious to determine artificial parameters to

deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

59. We would also like to extract herein Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:

"7. The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays." (emphasis supplied) India is a signatory to the above Covenant having ratified the same on 10-4-1979. There is no escape from the above obligation in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of "equal pay for equal work" constitutes a clear and unambiguous right and is vested in every employee--whether engaged on regular or temporary basis."

11. Since the petitioner has confined his argument only on the claim for payment of his salary; as such, I am not dealing with the legality or illegality of the termination order, but certainly since the petitioner has worked till the date of termination, he is entitled for his entire salary calculated in the light of judgment of Jagjit Singh (Supra).

12. As a result, this writ application is allowed to the aforesaid extent and

disposed of with above observation and directions.