

(2009) 05 JH CK 0029
In the Jharkhand High Court

Ramdayal Karketta and Others

APPELLANT

Vs

Ranchi University and Others

RESPONDENT

Date of Decision : 25-05-2009

Acts Referred:

Citation : (2009) 05 JH CK 0029

Hon'ble Judges : Gyan Sudha Mishra, C.J.;Pradeep Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred against the order dated 20.10.2008 passed by the learned Single Judge in W.P(S) No. 6007/2004 by which the writ petition filed by the petitioner/appellant herein was dismissed on the ground that it is barred by the principle of constructive res judicata.

2. The appeal arises out of a petition which has a chequered history as the petitioners/appellants herein initially filed a writ petition claiming regular appointment on Class IV post on which they were discharging duties on daily wage. The petitioners/appellants herein succeeded in securing regular appointment from the year 2002 and they were ordered to be paid regular salary. Prior to this, the petitioners/appellants herein had all through been contesting for their regularization and finally they were denied the benefit on the ground that they were discharging their duties on the posts which were not sanctioned. However, the entire controversy was finally set at rest and the petitioners/appellants herein were granted regular appointment along with the regular salary. Thereafter, they filed a writ petition before the learned Single Judge out of which this appeal arises praying therein that they should be granted the benefit of arrears of salary, gratuity and Provident fund etc. from the date they were appointed on daily wage and were discharging duties on the posts which were not even sanctioned. The learned Single Judge did not enter into the merit of the matter but was pleased to dismiss the writ petition on the ground of constructive res judicata as already indicated hereinbefore.

3. Counsel for the appellants endeavored hard to impress upon this Court that the appellants were entitled for the arrears of salary and the benefit of gratuity and provident fund etc. ever since they were discharging their duties although they were not regularized. This plea of the Counsel for the appellants is fit to be rejected outright as the Counsel is clearly missing that the learned Single Judge is perfectly justified in dismissing the writ petition on the ground of constructive res judicata for when the appellants succeeded in securing regularization in their favour along with regular salary, it was their duty at the same stage to secure an order that they should be granted not only regularization but also the benefit of regularization should be conferred with retrospective effect ever since they started discharging duty on daily wage.

4. This plea obviously was not even raised by the appellants at the relevant time. However, after securing an order of regularization they filed writ petition before the learned Single Judge, which was dismissed but we concur with the view of the learned Single Judge that this point is clearly barred by the principle of constructive res judicata for after securing an order of regularization, the consequential relief of regularization from a back date i.e. with retrospective effect, if at all it was admissible, ought to have been raised by the appellants at the relevant stage when the order of regularization was passed in their favour.

5. It is an admitted position that the appellants were initially appointed on daily wages in 1987 and thereafter on 17.03.1990 and their appointment also got bogged down into controversy as they were allowed to discharge duty on the posts which were not even sanctioned. However, they succeeded in securing an order of regularization in their favour and when the order of regularization was allowed in their favour, they subsequently thought that this benefit of regularization should have been allowed in their favour not in the year 1992 but from the year ever since they were discharging duty on daily wages. But this plea ought to have been raised at the relevant stage. At this belated stage it is not legally permissible for this Court to permit the appellants to raise their claim for regularization from the date when they initially started discharging duties although the order of regularization has already been granted in their favour.

6. Counsel for the appellants finally prayed that the appellants should be permitted to file representations before the competent authority to claim the benefit of regularization viz. arrears of salary, benefit of provident fund, gratuity etc. But, this prayer also cannot be accepted in the wake of the fact that this was fit to be raised only at the stage when the order of regularization was passed in their favour in the year 2002. Even at the risk of repetition we need to emphasise that the plea of the appellants that they are fit to be regularized on the basis of their past service, cannot be allowed to be raised by way of a representation offering them a plank to re-agitate the matter and the reason is very obvious. If the petitioners/appellants herein are allowed to file representation at this stage that would be contrary to the order by which they were not allowed to be regularized from the date when they were taken into

service but, were ordered to be regularized only after long number of years ignoring the fact that they had been discharging duty on the post which were not even sanctioned. The Counsel for the appellants is missing that the very basis of the claim of regularization emerges out of the ground of discharging of duties of long years of service on daily wages and that was the reason that they were allowed to be regularized even though they had worked on unsanctioned post and if they were working on unsanctioned post, it is difficult to understand as to how they can claim benefit of regular salary for the period during which they were not even regularized.

7. The prayer of the appellants, therefore, claiming arrears of salary and other benefits in absence of any order to the effect in the earlier writ petition that the appellants should be allowed arrears of salary ever since they were enjoying service on regular basis cannot be allowed by way of a fresh writ petition. Thus, for the reasons assigned by the learned Single Judge as also the reasons assigned hereinabove, we find no merit in this appeal.

8. Consequently, the appeal is dismissed at the admission stage itself.