

(2006) 08 JH CK 0055

In the Jharkhand High Court

Case No : Civil Writ Jurisdiction Case No. 1531 of 1998 (R)

Ramdeni Prasad Singh

APPELLANT

Vs

The State of Bihar (now Jharkhand) and Others

RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:

Citation : (2006) 4 JCR 602

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

Bench : Single Bench

Advocate : Sumit Gadodia, for the Appellant; M. Patra, J.C. to G.A., for the Respondent

Judgement

R.K. Merathia, J.—Petitioner has challenged his removal from service on the basis of office order dated 25.1.1997 (Annexure 5).

2. According to the petitioner, he worked since July, 1987 on hand receipts and he was regularised as daily wager with effect from 1.7.1987 on 7.1.1988 by the Executive Engineer (respondent No. 6) vide Annexure 2.

However, learned Counsel for the petitioner could not satisfy me as to under what provision, a person working on daily wages could be regularised with retrospective effect.

3. Petitioner's further case is that pursuant to memo No. 650 dated 28.7.1988 (Annexure 3) issued by the Engineer-in-Chief-Cum-Special Secretary (respondent No. 3), he was posted in the work charge establishment as driver, but under the impugned order dated 25.11.1997 (Annexure 5) issued by the Executive Engineer, he was removed from service without issuing any letter of termination. Learned Counsel for the petitioner submitted that the petitioner's case is fully covered by the Full Bench judgment of this Court in Ram Prasad Singh and Another and Others Vs. State of Jharkhand and Others, and, accordingly, similar order may be passed in this case also. He referred to paragraph 17 of the said judgment which reads as follows:

I, therefore, hold that:

The work-charged employees, who have completed more than five years of continuous service against one post in the work-charged establishment and otherwise eligible, have a right of consideration of their cases for taking over their services in the permanent (regular) establishment, irrespective of their dates of appointment.

But the work-charged employees, working on daily wages, not holding any post, are not so entitled.

4. Learned Counsel for the State submitted that in view of the Constitution Bench judgment of the Supreme Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, , petitioner cannot be made permanent overlooking the financial implications and requirement of work etc. She further submitted that the Executive Engineer doubted the petitioner's purported appointment in the work charge establishment on 22.6.1989 vide Annexure 4 and, therefore, he issued letter dated 25.1.1997 (Annexure 5). She further submitted that, in any event, the petitioner having allegedly been posted after 1.1.1988 is not entitled to the relief prayed in terms of Government decision.

5. It appears that such objection about the cut off date was not accepted by the Full Bench. However, from the said letter dated 28.7.1988 (Annexure 3), it appears that a decision was taken by the Departmental Establishment Committee to appoint the persons detailed in the enclosed list in the work charge establishment. Such list mentioned in the said letter has not been brought on the record. The doubt expressed by the Executive Engineer on the posting/appointment of the petitioner in the work charge establishment vide office order No. 36 dated 22.6.1989 (Annexure 4) remains uncleared.

6. Therefore, in my opinion, it has to be seen first, whether the petitioner was engaged in a work charge establishment on 22.6.1989 and worked for five years as claimed by him.

7. In the circumstances, the matter is remitted to the Secretary, Drinking Water & Sanitation Department, Government of Jharkhand, Ranchi (earlier known as P.H.E.D.). The petitioner will file a representation before him within four weeks which will be disposed of in accordance with law and by a speaking order, and will be communicated to the petitioner within six weeks from the date of it's receipt. If the Secretary finds that the petitioner had completed more than five years of continuous service against one post in the work charged establishment; and there is requirement of such engagement; and he is otherwise eligible, his case may be considered for taking over his service in the permanent (regular) establishment. It is made clear that if the Secretary decides that the petitioner should be considered for engagement in permanent (regular) establishment, he will not be entitled to the wages for the intervening period, but the Secretary will decide whether such intervening period is to be calculated for other purposes or not.

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