
(2009) 04 JH CK 0088
In the Jharkhand High Court
Case No : Writ Petition (S) No. 6307 of 2005

Rukmini Devi

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 57 BLJR 1960

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Ritu Kumar, for the Appellant; V.K. Prasad, J.C. to A.G., for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—Heard the parties and with their consent, this writ petition is being disposed of at the stage of admission itself.

2. The sole petitioner Rukmini Devi working as Female Health Worker (Mahila Kaksha Sevika) in Pakur Hospital at Pakur, has filed this writ application, challenging the order as contained in Letter No. 619 dated 07.07.2004 of the Joint Secretary, Department of Health, Government of Jharkhand, whereby he directed the Civil Surgeon - cum - Chief Medical Officer, Pakur to terminate the service of the petitioner on the ground that her appointment on such post was illegal. Further prayer of the petitioner is to quash the consequential letter No. 1127 dated 01.08.2004 issued by the Civil Surgeon - cum - Chief Medical Officer, Pakur by which the petitioner has been restrained from discharging her duties.

3. The case of the petitioner as set out by her is that since 1983, she has been working as Female Health Worker (Mahila Kaksha Sevika) in the Health Department in Pakur Hospital, Pakur on temporary basis and her service was regularized on the said post by issue of an Order contained in Memo No. 304 dated 15.01.1986 in the scale of Rs. 350 - 5 - 425 vide Annexure-2. She

continued to work on the said post and thereafter, she was confirmed in her service on the aforesaid post by issue of Memo No. 20 dated 10.07.1996 under the signature of Civil Surgeon - cum - Chief Medical Officer, Sahebganj. On completion of ten years of service, she was also granted first time bound promotion w.e.f. 07.09.1996. The letter contained in Memo No. 20 dated 10.07.1996 has been annexed as Annexure-3 to the writ petition.

4. Further case of the petitioner is that by issue of Memo No. 146 Pakur, dated 02.02.2002 (Annexure-4), she was directed to give her reply on the following questions:

- i. Her appointment appeared to be illegal;
- ii. Her age was about 60 years;
- iii. Her appointment was not made against any advertisement.
- iv. She was not a resident of that District.
- v. Whether she solemnized second marriage and if so, when and with whom.
- vi. She was asked to produce certificates regarding her date of birth and residence as well as about her educational qualification.

This letter has been annexed as Annexure-4 to the writ application.

5. According to the petitioner, the allegation made in the aforesaid letter dated 02.02.2002 (Annexure-4) was vague and was made without conducting any inquiry.

However, she submitted her show-cause giving clarification and stating that she worked as daily wage worker since 1983 and thereafter, her service was regularized vide letter contained in Memo No. 304 dated 15.01.1986 (Annexure-2).

6. It is stated by the petitioner that by letter contained in Memo No. 1441 dated 08.09.2003, as contained in Annexure-5, issued from the office of Civil Surgeon - cum - Chief Medical Officer, Pakur, the salary of 32 persons named in the said letter including this petitioner at Serial No. 14, was stopped on the ground that they were illegally appointed.

7. Though the petitioner in para 10 of the writ petition has stated that she challenged the said order dated 08.09.2003 (Annexure-5) by filing W.P.(S) No. 5705 of 2003, before this Court in which it was ordered that she should be paid her salary but as it appears from the order passed by the learned Single Judge of this Court in W.P.(S) No. 5705 of 2003, which has been reported in (2005) 1 JLR 9 that in fact the said writ petition was not filed by the petitioner but it was filed by one Radhey Shyam Prasad Singh, who was the sole petitioner in that writ petition. While disposing of the writ petition, the learned Single Judge specifically noted the fact in his order that the learned Counsel who appeared for the petitioner, submitted that 32 persons were included in the impugned order but

the writ petition was confined only to the petitioner. The aforesaid writ petition filed by Radhey Shyam Prasad Singh was allowed by the learned Single Judge and the impugned order dated 08.09.2003, so far as against the writ petitioner was concerned, was quashed.

8. The submission of the petitioner that the order as contained in Annexure-1 as well as the consequential order whereby the petitioner has been restrained from discharging her duty is illegal and against the principles of natural justice since no notice to show-cause or a chance of being heard was given to her. Learned Counsel for the petitioner placed reliance on the decision of this Court in the case of Radhey Shyam Prasad Singh v. The State of Jharkhand and Ors. reported in (2005) 1 JLJR 9 Sadika Begum v. State of Jharkhand reported in (2006) 4 JLJR 461 and The State of Jharkhand and Ors. v. Radhey Shaym Prasad Singh reported in 2007 (2) JLJR 196.

9. Mrs. Ritu Kumar, learned Counsel appearing for the petitioner further submitted that the petitioner has been continuing in service for more than 18 years and therefore, after such a long period of service, she cannot be thrown out from the service in arbitrary manner as has been done in her case.

10. On the other hand, on behalf of the respondents, counter affidavit has been filed, where the main plea has been taken that a detailed inquiry was conducted against 32 employees, who were allegedly appointed illegally against the Rules prescribed by the Government for making such appointment and in course of inquiry against the petitioner, it was found that she was appointed by the Deputy Superintendent of Sadar Hospital, Pakur, who was not authorised to make such appointment. The post of Female Health Worker (Mahila Kaksha Sewak) is a Class - IV post and on such post, the appointment has to be made on the basis of a panel prepared by the Deputy Commissioner at the District level. It is also stated in the counter affidavit that neither the name of the petitioner was called for from the Employment Exchange nor the due procedure for such appointment was followed and therefore, the appointment of the petitioner was illegal. The inquiry report has been annexed as Annexure-B to the counter affidavit wherein, the case of the petitioner has been dealt with at Serial No. 14.

Mr. V.K. Prasad, learned J.C. to the Advocate General, submitted that since the petitioner was appointed without following the due procedure. It was through back door by a person who was not competent to make such appointment and therefore, the case of the petitioner is directly under the teeth of the decision of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and as such, the petitioner is not entitled to any relief.

11. There is no dispute of the fact that neither any name was called for from the Employment Exchange nor the post on which the petitioner was appointed, was advertised at any time. In other words, the due procedure for making such public appointment was not followed. The fact as stated in the counter affidavit that the petitioner was appointed by the Deputy Superintendent of Sadar Hospital, Pakur,

who was not authorized or competent to make such appointment, rather such appointment of Class - IV posts was to be made from a panel prepared by a Committee constituted for the said purpose headed by the Deputy Commissioner has not been controverted by the petitioner by filing any reply to the counter affidavit. From the inquiry report, which has been annexed as Annexure-B to the counter affidavit, it appears that on enquiry it was found that a letter No. 191 dated 05.09.1985 was written by the Deputy Superintendent, Sadar Hospital, Pakur to the Civil Surgeon - cum - Chief Medical Officer, Dumka that on his verbal order, Smt. Rukmini Devi (petitioner) gave her joining on 01.05.1985 on daily wage basis and the Civil Surgeon - cum - Chief Medical Officer by letter No. 304 dated 15.01.1986, wrote back to the Deputy Superintendent, Sadar Hospital, Pakur that the regularization of the service of the petitioner by him was against the rules and it should not be repeated in future.

12. From the facts of the case, in the case of Radhey Shyam Prasad Singh v. State of Jharkhand and Ors. 2005 (1) JLJR 9 relied on by the petitioner, it appears that in the said case, it was noticed that the said writ petitioner had moved this Court earlier in W.P.(S) No. 3223 of 2001 challenging his termination from service, the writ petition was disposed of by remanding the matter to the Regional Deputy Director, Health Services, Santhalpargana Division, directing him to determine as to whether they would like to make any enquiry relating to the legality and propriety of the appointment of the petitioner or not. It was further directed to conclude the inquiry within six months from the date of receipt of a copy of that order, failing which, the Respondents were prohibited to make further inquiry in respect to the legality and propriety of the appointment of the petitioner, made 161/2 years ago.

In violation of the order of the High Court, which was peremptory in nature, the enquiry regarding legality and propriety of the writ petitioner was conducted beyond the period of six months from the date of the communication of the order and therefore, in that situation, it was held that the order of termination on the basis of the enquiry conducted after the period of six months from the date of communication of the order of the High Court was in direct conflict with the order of this Court. Accordingly, the order of termination was set aside by holding that unless there was an order enlarging the time fixed by this Court, the respondents could not have resorted to any further enquiry.

13. Against the aforesaid Judgment of the Single Bench, the State of Jharkhand preferred Letters Patent Appeal. The second Judgment cited by the petitioner is the Judgment of the Division Bench passed in the L.P.A. which is reported in 2007 (2) JLJR 196 [State of Jharkhand and Ors. v. Radhey Shyam Prasad Singh]. The Division Bench dismissed the L.P.A. filed by the State of Jharkhand and affirmed the Judgment of the Single Bench.

14. The third decision relied on behalf of the petitioner is Sadika Begum v. State of Jharkhand and Ors. 2006 (4) JLJR 461. In this decision, several writ petitions were heard and disposed of finally. It was noticed in this Judgment that the writ

petitioners" service were terminated after a lapse of 15 years on the ground of appointment being fake and illegal without explaining as to which appointment was fake i.e. based on forged document and which is illegal i.e. without any process of selection. It was also noticed in the said case that in some cases, names were forwarded by the Employment Exchange. In some cases even Interviews were held but in the enquiry held by the State, it was found that the appointments were fake and illegal. On this background, it was held in the said case that the enquiry conducted by the State was of no consequence since it was conducted in the back of the petitioner and without associating them in such enquiry,

In the said case, it was also noticed that some of the writ petitioners were earlier asked to submit documents but at no stage any one of them was informed that the explanation tendered or documents produced were not genuine and were allowed to continue in service. In such a situation, termination of service of the writ petitioners was held to be against the principles of natural justice.

15. Learned J.C. to the Advocate General has relied on the decision of the Constitution Bench in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, Paragraphs 4, 43 and 45 of the Judgment of the Supreme Court are very much relevant for the purpose of the present case wherein it has been held that the persons who get employed without the following of a regular procedure or even through the backdoor or on daily wages, have been approaching the Court, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The Courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into serviced. A class of employment which can only be called "litigious employment", has risen like a phoenix seriously impairing the constitutional scheme. While directing that appointment, temporary or casual, be regularised or made permanent, the Courts are swayed by the fact that the person concerned has worked for some time and in some cases, for a considerable length of time. Such an arguments fail when tested on the touch stone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution. Merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuation, if the original appointment was not made by following a due process of selection as envisaged by the relevant Rules. It is not open to the Court to prevent regular recruitments at the instance of temporary employees whose period of employment has come to an end or of adhoc employees, who by the very nature of employment, do not acquire any right.

It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of his employment. He accepts the employment with open

eyes. It is true that he is not in a position to bargain - not at arm's length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the Constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed, should be directed to be continued permanently. By doing so, it would be creating another mode of public appointment, which is not permissible. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it.

16. In paragraph 53 of the aforesaid Judgment, the Supreme Court has held that there may be cases where irregular appointment for (not illegal appointment) of duly qualified persons in duly sanctioned/vacant post might have been made and the employees have continued to work for ten years or more but without the intervention of the orders of the Courts or Tribunals.

The question of regularisation of services of such employees might have to be considered on merits in the light of the principles settled by the Supreme Court.

This very Judgment in the case of Uma Devi (Supra) has been reiterated in the case of Official Liquidator Vs. Dayanand and Others, ; C. Balachandran and Others Vs. State of Kerala and Others, and State of West Bengal and Others Vs. Banibrata Ghosh and Others, .

The exceptions mentioned by the Supreme Court in paragraph 53 of the Judgment in Uma Devi's (Supra) case clearly speaks about the cases of irregular appointment and not the cases of illegal appointments.

17. In the present case in hand, it has not been disputed that the appointment of the petitioner was made by the Deputy Superintendent of Sadar Hospital, Pakur, who was not authorised or competent to make such appointment. Therefore, it is clear that the appointing authority had no jurisdiction or power to make an appointment then in that case the appointment made by him would be void in law.

An order can be said to be voidable which is legal and valid unless it is set aside by a competent Court at the instance of the aggrieved party. On the other hand, a void order is not an order in the eye of law and is a nullity and void ab initio.

18. As already noticed above, since the order of appointment of the petitioner was issued by the authority who was not competent to make such appointment and therefore, on the basis of which though the petitioner has continued in service for a considerable period but in view of the Judgment of the Supreme Court in the case of Uma Devi (Supra), the petitioner did not acquire any legal right and therefore, in such a situation, it was not necessary to comply the

principles of natural justice. The order of termination of the petitioner cannot be set aside on the ground of non observance of principles of natural justice. The decisions cited on behalf of the petitioner are not applicable in the facts and circumstances of the present case since the facts of those cases which have already been noticed in the foregoing paragraphs are different.

19. I further find that there is no dispute of the fact that neither the name of the person was called for or was sent by the Employment Exchange nor the post was advertised. Apparently, due process of selection of public employment was not followed and therefore, the appointment of the petitioner was made in violation of Articles 14 and 16 of the Constitution of India.

20. In view of the discussions and findings above, I do not find any merit in this writ application. Accordingly, the same is hereby dismissed. However, there shall be no order as to costs.