
(2001) 08 JH CK 0036
In the Jharkhand High Court
Case No : CWJC No. 737 of 2001

Sachidanand Prasad Sharma

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 31-08-2001

Acts Referred:

Citation : (2002) 50 BLJR 104

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : S.B. Gadodia, B.P. Mishra, R.K. Verma and V.N. Choudhary, for the Appellant; R.M. Sahay, SC 1 and M.K. Roy, JC to SC 1, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Heard the parties.

2. In this writ application the petitioner has prayed for quashing the Office Order No. 430 dated 21.10.2000 whereby the representation of the petitioner has been rejected, the effect of which is that the services of the petitioner have been terminated.

3. Petitioner's case inter alia is that he was initially appointed in 1983 on daily wage in Mechanical Division of Road Construction Department and worked in Hot Mix Plant on National Highway No. 33 till 31.3.1984. Thereafter by virtue of decision taken by the Establishment Committee, in its meeting dated 15.9.94 petitioner was appointed against sanctioned vacant post of peon and was posted in Road Division (Mechanical) Hazaribagh. It is stated that inspite of the Superintending Engineer to the Executive Engineer, the salary of the petitioner has not been paid. Petitioner then moved this Court by filling CWJC No. 2712/99 (R) for a direction to the respondents for payment of salary which was due from May, 1998." Respondents in their counter-affidavit took the stand that by general letter 29.8.98 issued by the Special Secretary, Road Construction Department, Government of Bihar, the services of all persons appointed by the Chief Engineer,

Superintending Engineer or Executive Engineer have been terminated. Since the name of the petitioner was not mentioned in the list of the employees whose service were terminated, this court disposed of aforementioned writ application by directing the petitioner to file detailed representation annexing all the documents in respect of the validity of ap- pointment/regularisation in service. By the said orders, the Special Secretary, Road Construction Department, Patna was directed to consider and dispose of the representation by passing a reasoned order after giving opportunity of hearing to the petitioner. In compliance of that direction the impugned order has been passed by the Special Secretary, Road Construction Department, Bihar Patna rejecting the representation of he petitioner.

4. Respondents stand in the counter-affidavit is that petitioner has worked as daily ages from 01.1.1983 to 01.3.1984, it is stated that as per the resolution dated 18.6.93, the appointment in the vacant post in the department suitable for daily wage earners shall be made by the Committee constituted by the Secretary of the department. It is stated that petitioner's salary has been stopped pursuant to the letter of the Special Secretary, Government of Bihar, dated 29.8.98.

5. From perusal of the impugned letter, it appears that respondents have admitted that petitioner was initially appointed on daily wages in 1983 and he continuously worked till 1994 when his services was regularised against the sanctioned post by virtue of decision taken by the Establishment Committee in its meeting held on 13.9.94. However, the representation of the petitioner was rejected merely on the ground that the Establishment Committee was not validly constituted inasmuch as the Secretary of the concerned department was not a member of that committee. It is, therefore, dear that petitioner has been continuously working on daily wages basis from 1983 to 1984 and then his services was regularised and/or he was appointed as regular Peon against sanctioned post by virtue of decision taken by the Establishment Committee. In other words petitioner continuously worked for 15-16 years and it was only in 1998 a plea was taken that since Establishment Committee was not properly constituted, his appointment cannot be given effect to. Thus Court is of the view that merely because of some irregularities, even assuming in the constitution of Establishment Committee, that cannot be a valid ground to terminate the services of the petitioner who has been working for the last 16 years. It is not a ease where petitioner was appointed by any back door method, Admittedly, the Establishment Committee is a competent body to make appointment in class IV post. Merely because one of the head of the concerned department was not a member of the committee the services of the petitioner cannot be terminated on that ground.

6. For the reasons aforesaid, this writ application is allowed and the impugned order passed by respondents is set aside. The respondents are directed to reinstate the petitioner in service with all backwages.

7. Writ application allowed.