
(2004) 12 JH CK 0037

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3562 of 2003

Sandesh Kumar Mandal and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 105 FLR 933 : (2005) 1 JCR 162

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

Bench : Single Bench

Advocate : S.N. Pathak, for the Appellant; G.P. IV, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Heard the parties.

2. Petitioners pray for quashing the order of their termination dated 5.6.2003 (Annexure-6), for payment of salary and to regularize them from the date of their initial appointment.

3. Petitioner's case is that they are working as Daily Wagers since 1988 and in 1994, they were appointed on sanctioned and vacant posts,

4. It appears from purported appoint-letters that the petitioners were appointed by the Assistant Director of Industries (Silk), Singhbhum, Chaibasa, in the year 1994 on purely temporary and ad hoc basis, subject to further orders; and such appointments were to be treated as cancelled, if the Department objected to the same.

5. Petitioners filed writ petition being W.P. (S) No. 316/2002, challenging memo No. 161, dated 3.12.2001, by which It was directed not to take work from the petitioners and not to allow them to mark attendance register. The State questioned the legality and propriety of their appointments. This Court was not inclined to decide the said issue as no such allegation was made in the said

memo dated 3.12.2001. This Court observed that no order of termination was issued and the petitioners were simply asked not to perform duty and not to sign attendance register. However, this Court held that the petitioners would be entitled to full salary for the period for which they did not work till formal order of termination was issued. This Court further observed that if the respondents intend to terminate the services of the petitioners on the ground of illegal appointment, they may do so in accordance with law after notice and hearing them. This order is annexed as Annexure-5 to this writ petition.

6. By the impugned Order No. 1790, dated 5.6.2003 passed by the Directorate of Industries, the services of the petitioners have been terminated after hearing them and tiller full scrutiny. It came to light that one Paras Nath Das and Sri Hemkant Jha, the then Assistant Director of Industries (Silk), Singhbhum, Chaibasa, made several illegal appointments without following any procedure and in violation of Government notification dated 27.2.1987 and 18.6.1993 (Annexure-A and B). A show cause notice was issued to the petitioners and they were stopped from working. Again on or about 10.5.2003, petitioners were reminded to file show cause along with the required documents. It was ultimately found that petitioners were appointed without following any procedure for appointment and moreover, they were appointed on daily wages alter the cut-off date i.e. 1.8.1985. Thus, the appointments of the petitioners was found to be wholly illegal. It was further noted in the said order that High Court, vide order dated 14.5.2001 passed in CWJC No. 1870/2001, Lallan Kant Jha and Ors. (Annexure-C), has confirmed such order of termination of services.

7. Learned counsel for the petitioners submitted that one Lallan Kumar Singh and other persons were also appointed after the said cut-off date, but they have been retained in service. He further submitted that petitioners were appointment in the year 1994 against the vacant and sanctioned posts as they were working as daily wagers since 1988. He relied on decisions reported in Roshni Devi and Others Vs. State of Haryana and Others, .

8. Regarding Lallan Kumar Singh, State counsel referred to the direction of this Court contained in Annexure-C to the effect that if other similarly situated person have been retained in service, authorities will take similar action after notice and hearing them.

9. The judgment of Roshni Devi (supra) was given in a different situation altogether and as such, that case is of no help to the petitioners Moreover, this case is fully covered by the judgment of this Court passed in CWJC No. 1810/2001 on 4.5.2001 (Annexure- C). In my opinion also, if the initial entry of the petitioners in service is illegal and tainted, the same is void and lapse of time cannot make such appointments legal and valid. Such situation cannot be approved and allowed to continue. Moreover, Hon''ble Supreme Court in the case of Ashwani Kumar and Others Vs. State of Bihar and Others, strongly deprecated such appointments.

10. I reiterate the directions of this Court given in the case of Lallan Kant Jha (supra) by directing the concerned authorities of the State of Jharkhand to take similar action against the similarly situated persons after notice and hearing them.

With these observations and directions., this writ petition is dismissed.