

(2015) 09 JH CK 0116

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5424 of 2008

Sanjay Kumar and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226

Citation : (2015) 4 JLJR 515

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : Saurabh Arun and Deepak Kr. Dubey, for the Appellant; Atanu Banerjee, G.A. and Kaustav Panda, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Pramath Patnaik, J—In the instant writ application, the petitioners call in question the legality and propriety of the order passed by the respondents and have inter-alia prayed for issuance of a writ of certiorari for quashing of letter issued vide memo No. 1835 dated 27.09.2008 (Annexure-8) pertaining to dismissal from services and the petitioners further pray for issuance of an appropriate writ/direction in the nature of mandamus commanding upon the respondents not to give effect to the aforesaid impugned letter dated 27.09.2008 and also for reinstatement in services and for payment of arrears of salary since the date of their respective appointments.

2. The factual matrix, bereft of unnecessary details in a nutshell is that an advertisement was published in the daily newspaper namely "Prabhat Khabar" dated 17.07.2007 for appointment on the post of Assistant Engineer/Junior Engineer on contractual basis vide Annexure-1 to the writ application. The petitioners applied accordingly for their respective posts of Assistant Engineer and Junior Engineer. In terms of advertisement, a direction was given by Principal Secretary, Rural Development Department, Government of Jharkhand, Ranchi to all the Deputy Commissioner-cum-District Programme Co-ordinator for

preparation of the panel as per Annexure-2 to the writ application. A panel was prepared, which was published in daily newspaper namely "Prabhat Khabar" dated 04.10.2007, where petitioners' name figured, as per Annexure-3 to the writ application. After preparation of the panel, the petitioners were informed that their names have been included in the selection list and they have been selected for the post of Assistant Engineer/Junior Engineer and were directed to give written consent before the District Rural Development Authority, Deoghar accepting the terms and conditions before starting the work by 12.11.2007, as per Annexure-4 series to the writ application. Accordingly, the petitioners submitted written consent to work accepting the terms and conditions of the respondents vide letter dated 12.11.2007 as per Annexure-5 series to the writ application. Thereafter, the appointment letters were issued in favour of the petitioners vide memo No. 1953 dated 29.11.2007 by which some of the petitioners like petitioner Nos. 3 and 15 were appointed under category of Assistant Engineer and petitioner Nos. 1, 2, 4, 5 and 14 were appointed under category of Junior Engineer vide Annexure-6 to the writ application. Likewise petitioner Nos. 6, 7 and 11 were appointed under category of Assistant Engineer and petitioner Nos. 8, 9, 10, 12, 13 and 16 were appointed under category of Junior Engineer as per memo dated 04.03.2008 vide Annexure-7 to the writ application. After issuance of the appointment letter as contained in Annexures-6 and 7, all the petitioners submitted their joining to the respective place of posting in between December, 2007 to March, 2008 and they worked continuously till 28.09.2008 without salary being paid since the date of appointment. However, all of a sudden vide memo dated 27.09.2008, all the petitioners have been dismissed from services without issuing any show cause in violation of principles of natural justice, as per Annexure-8 to the writ application under the signature of the Deputy Commissioner stating therein that all the petitioners, who were appointed in terms of the aforesaid advertisement on contractual basis are dismissed from their services, as they have been appointed to the post, which was not sanctioned rather the same was sanctioned with effect from 18.01.2008. It has further been stated that the Deputy Commissioner again issued a letter on 27.09.2008 itself to the Secretary, Rural Development Department, Government of Jharkhand, Ranchi stating therein that the similarly situated persons were dismissed as they were appointed on the post, which was not sanctioned rather the same was sanctioned w.e.f. 18.01.2008 and if any direction be given, they can be reinstated and services can be taken from all the dismissed Assistant Engineers/Junior Engineers, as evident from Annexure-9 to the writ application. Left with no other alternative, efficacious and speedy remedy the petitioners approached this Court invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India for redressal of their grievances.

3. Per-contra, counter-affidavit has been filed on behalf of respondent No. 5 controverting the averments made in the writ application. In the counter affidavit, it has been stated that after getting the applications from the intending applicants, a list was published in the daily newspaper "Prabhat Khabar" on

04.10.2007 consisting 12 persons as Assistant Engineer and 65 as Junior Engineer and it was directed in the same advertisement that the applicants have to produce their educational and Technical Qualification Certificate and in the said advertisement it was clearly mentioned that their services would be terminated at any point of time without explaining/stating any cause, as per Annexure- A series to the counter-affidavit. It has further been submitted that in the 2nd phase, as per the circular (Memo No. 722 dated 18.01.2008) of the State Government 08 posts of Assistant Engineer and 20 posts of Junior Engineer was sanctioned and these appointments were to be done up-to Divisional Level by the duly constituted Committee under the Chairmanship of Divisional Commissioner. As per the directions of the Memo No. 722 dated 18.01.2008 appointment against the sanctioned post of Assistant Engineers/Junior Engineers were done by the Divisional Commissioner w.e.f. 18.01.2008, hence the petitioners were rightly dismissed from their services with effect from 28.08.2008 vide letter dated 27.09.2008 as per Annexure-C series to the counter-affidavit. It has further been submitted that so far as the payment of salary is concerned which has been made in due course of time, as evident from Annexure-D to the counter-affidavit. It has further submitted in the counter-affidavit that the posts were contractual and those were not sanctioned posts and therefore, the writ petitioners were rightly dismissed from their services.

4. Heard Mr. Saurabh Arun, learned counsel appearing for the petitioners and Mr. Atanu Banerjee, G.A., learned counsel appearing for the respondents. Perused the records.

5. Learned counsel for the petitioners has assailed the impugned order of dismissal vide Annexure-A on the ground that the impugned order of dismissal has been passed without following the principles of natural justice and without issuing any show cause notice. The second limb of the submission of the counsel for the petitioners is that the impugned order of dismissal has been passed by the respondents-authorities only on the ground that the petitioners were appointed to the post which was not sanctioned rather the same was sanctioned with effect from 18.01.2008. Learned counsel for the petitioners assiduously argued that in the instant case posts were sanctioned prior to dismissal of services. Learned counsel for the petitioners has further submitted that the impugned order of dismissal from services passed with retrospective effect is bad in law.

6. As against this, learned counsel for the State has referred to the supplementary counter-affidavit filed on behalf of the respondent No. 5 wherein it has been submitted that according to the letter No. 5368 dated 19.06.2007 (Annexure-A to the counter-affidavit) issued from the Principal Secretary, Rural Development Department, Ranchi, the post of Accredited Engineers under NREGA has not been sanctioned as yet. In fact, sanctioned posts relates for appointment of contract basis under NREGA and for this contractual appointment, Commissioner, S.P. Division, Dumka is authorized from Rural

Development Department, Ranchi. Learned counsel for the respondents has dexterously submitted that as per the terms and conditions of the services, the contractual employees have been dismissed from their services, therefore, no illegality and irregularity has been committed by the respondents in dismissing the services of the contractual employees.

7. Learned counsel for the petitioners during course of argument has submitted that NREGA project is instrumentality of the State under Article 12 of the Constitution of India. In course of argument, learned counsel for the petitioners has referred to the judgment rendered by Hon''ble Apex Court in the case of ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, (2004) 118 CompCas 213 : (2004) 1 CTLJ 1 : (2003) 10 JT 300 : (2003) 10 SCALE 81 : (2004) 3 SCC 553 , in particular paragraphs 23 and para 53, as follows:

"23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India....."

"53. From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitutional....."

8. Learned counsel for the petitioners has further referred to the case of Karnataka State Forest Industries Corporation Vs. Indian Rocks, AIR 2009 SC 684 : (2008) 2 CTLJ 465 : (2008) 12 JT 388 : (2009) 1 SCC 150 , in particular paragraph 38, wherein same ratio was reiterated which reads as follows:-

"38. Although ordinarily a superior court in exercise of its writ jurisdiction would not enforce the terms of a contract qua contract, it is trite that when an action of the State is arbitrary or discriminatory and, thus, violative of Article 14 of the Constitution of India, a writ petition would be maintainable."

9. Further the same proposition of law has been held by the Hon''ble Apex Court in the judgment rendered in the case of East Coast Railway and Another Vs. Mahadev Appa Rao and Others, AIR 2010 SC 2794 : (2010) 127 FLR 880 : (2010) 6 JT 522 : (2010) 7 SCC 678 : (2010) 5 SLR 563 : (2010) 6 UJ 3027 wherein at para 9, it has been held as under:

"9. There is no quarrel with the well-settled proposition of law that an order passed by a public authority exercising administrative/executive or statutory powers must be judged by the reasons stated in the order or any order or file contemporaneously maintained. It follows that the infirmity arising out of the absence of reasons cannot be cured by the authority passing the order stating such reasons in an affidavit filed before the court where the validity of any such order is under Challenge. The legal position in this regard is settled by the

decision of this Court in Commr. of Police Vs. Gordhandas Bhanji wherein this Court observed:(AIR p.18, para 9)

"9.....Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

10. To buttress his argument on the question of retrospective dismissal, learned counsel for the petitioners, has referred to the decision rendered by Hon"ble Apex Court in the case of R. Jeevaratnam Vs. The State of Madras, AIR 1966 SC 951 : (1967) 14 FLR 285 : (1967) 1 LLJ 391 : (1966) 2 SCR 204 wherein the Hon"ble Apex Court has been pleased to hold as under:

"An order of dismissal with retrospective effect is in substance an order of dismissal as from the date of the order with the super-added direction that the order should operate retrospectively as from an anterior date. The two parts of the order are clearly severable. Assuming the second part of the order mentioning that dismissal would operate retrospectively is invalid, there is no reason why the first part of the order stating that the appellant is dismissed, should not be given the fullest effect. The Court cannot pass a new order of dismissal but surely it can give effect to the valid part of the order."

11. As against this, learned counsel for the State has dexterously countered to the submissions of the learned counsel for the petitioners by submitting that the petitioners being contractual employees do not have any indefeasible right to continue on the posts since the posts were not sanctioned and as per the terms and conditions of advertisement it has been clearly mentioned that their services would be terminated at any point of time without explaining/stating any cause. Therefore, the action of the respondents cannot be dubbed as arbitrary or colourable exercise of power under Annexure-8 as their services were dispensed with due to want of sanctioned post.

12. Having heard learned counsel for the respective parties and on perusal of the documents on records it appears that the impugned order dated 27.09.2008 (Annexure-8) pertaining to dismissal from services of the petitioners is not legally sustainable due to the following facts, reasons and judicial pronouncement:-

(a) On perusal of the impugned order of dismissal, vide Annexure-8 of the writ application, it appears that the impugned order of dismissal has been passed without following the principles of natural justice and without issuing any show cause notice to the petitioners. Therefore, the action of the respondents in terminating the services of the petitioners is violative of Articles 14 and 16 of the Constitution of India.

(b) Assuming for the sake of argument that the posts against which the petitioners were appointed, were not sanctioned but it appears from the impugned order that the posts were sanctioned with effect from 18.01.2008 whereas the services of the petitioners have been dispensed with on 27.09.2008. Therefore, it is quite apparent from the impugned order that the posts were sanctioned prior to dismissal from services so there is no justification on the part of respondents in dispensing with the services of the petitioners.

(c) Furthermore, the impugned order of termination of services passed with retrospective effect is bad in law as has been held by the Hon"ble Apex Court in the case of R. Jeevaratnam (Supra).

13. On the conspectus of the facts and judicial pronouncements referred to hereinabove and reasons stated in the forgoing paragraphs the impugned order of dismissal vide Annexure-8 dated 27.09.2008 is quashed. However, the matter is remitted back to the competent authority to decide the matter afresh on merit after affording sufficient opportunities to the petitioners preferably within a period of two months from the date of receipt/production of copy of this order.

14. With the aforesaid observations and directions, the writ petition stands disposed of.