

(2018) 12 JH CK 0065
In the Jharkhand High Court
Case No : Writ Petition No. 4715 Of 2015

Satyendra Kumar

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 15-12-2018

Acts Referred:

Citation : (2018) 12 JH CK 0065

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Satyendra Kumar, Bhawesh Kumar

Final Decision : Disposed Off

Judgement

This writ petition is filed for issuance for a direction upon the concerned respondent-competent authority of the State-respondent to regularize the service of the petitioner on the post of Anusewak since 2000 as he is still working against the sanctioned post.

Learned counsel for the petitioner by referring to Annexure-1 has submitted that after death of one Rameshwar Mochi, the post of Anusewak was vacant and therefore, the petitioner has been appointed in anticipation of the approval of his appointment and since then he is working on the said post, as such, his case is required to be considered for regularization. He has relied upon the judgment rendered by the Hon'ble Supreme Court in the Case of "Narendra Kumar Tiwari Vs. State of Jharkhand" reported in (2018) 8 SCC 238 in support of his claim for regularization.

Learned counsel appearing for the State-respondent by referring to the stand taken in the counter-affidavit has submitted that there is no provision to regularize the services nor there was engagement of the petitioner on any substantive post and as such his case is not fit to be considered for regularization.

Heard learned counsel for the parties and after appreciating their rival

submissions, it is evident from the material available on record particularly Annexure-1, which is the appointment letter issued in favour of the petitioner on 27.6.2000 by which he has been appointed against the vacant post of Anusewak by the competent authority, which has been fallen vacant after the death of regular employee namely Rameshwar Mochi.

It is evident from the counter-affidavit that the contention of the petitioner for appointed in service has not been disputed, rather only ground has been taken that his appointment has not been approved by the competent authority as there is no provision for regularization.

This Court is of the view that so far as the question of regularization as to whether there is any provision in any of the services for regularizing the service of the petitioner it is based upon judicial pronouncement, in service has been given. The leading judgment is on this rendered by the Hon'ble Supreme Court in the case of State of Karnataka vs. Uma Devi reported in (2006) 4 SCC 1 wherein, at paragraph 53 it has been laid down that by way of an exception the decision of regularization of service of an employee, can be taken subject to the condition that the said employee has been appointed against the sanctioned post and continued regularly for 10 years without any aid of an interim order passed by the court of law.

The said judgment contained direction upon the respective State Governments to take one time measure to complete the process of regularization of service within a period of six months which commences from the date of pronouncement of the said judgment i.e., on 10.04.2006.

At this juncture, reference also needs to be made of the judgment rendered by Hon'ble Supreme court in the case of " State of Karnataka vs. M.L Kesari " reported in 2010(9) SCC 247 wherein, the period of six months has been clarified observing and laying down therein that if name of even one candidate containing in the panel has been left out till the decision, regarding the left out candidate would be taken the period of six months said to be not concluded.

In the light of the aforesaid ratio regarding the period of six months the matter has been decided in "Narendra Kumar Tiwari Vs. State of Jharkhand" wherein, the subject matter before Hon'ble Supreme Court was regarding the policy formulated by the State Government, Jharkhand known as Jharkhand Sarkar Ke Adhinasth Aniyamit Rup se Niyukt Ewam Karyarat Karmiyo ki Sewa Niyamitikaran Niyamawali, 2015, which has been brought into effect in the year 2015 and on the basis of which the cases of regularization on the basis of continuous service of 10 years from the date of judgment rendered by Hon'ble Supreme Court in the case of Uma Devi (Supra) has been decided to be done. In the said case, it has been observed after taking into consideration the fact that the State of Jharkhand has come into being only 15.11.2000 and as such the cut-off date fixed vide Uma Devi case i.e., 10.04.2006, none of the employee of the State of Jharkhand could ever be regularized since they would not have completed their

continuous 10 years of service.

Here the petitioner is working since 2006-07 and as such, his case is also required to be decided on the basis of judgment of Supreme Court in the Uma Devi case (supra), read with Narendra Kumar Tiwari (supra) and as such the writ petition stands disposed of directing the Secretary-cum- Transport Commissioner, Government of Jharkhand-respondent no. 1 to take decision with respect to claim of the petitioner strictly in the light of the ration laid down by Hon'ble Supreme Court in the Case of Uma Devi (Supra) as per para 53 contained therein, within a period of two weeks' from the date of receipt of a copy of this order.

The writ petitions stands disposed of.