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**(2015) 07 JH CK 0053**

**In the Jharkhand High Court**

**Case No : Writ Petition (S) Nos. 9 of 2003 and 2204 of 2008**

Satyendra Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

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**Date of Decision : 06-07-2015**

**Acts Referred:**

**Citation : (2015) 07 JH CK 0053**

**Hon'ble Judges : Rongon Mukhopadhyay, J**

**Bench : Single Bench**

**Advocate : Vaibhav Kumar, for the Appellant; Sharad Kaushal, Advocates for the Respondent**

**Final Decision : Disposed off**

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## **Judgement**

Rongon Mukhopadhyay, J.

1. In this writ application, the petitioner has prayed for quashing the orders dated 14.06.2002 and 02.08.2002 passed by the Secretary, Department of Health, Government of Jharkhand whereby and whereunder it has been held that there are certain irregularities in the process of appointment of the petitioner and as such he was not entitled to his salary. It has further been prayed that the entire salary of the petitioner since March 2000 be directed to be released by the respondent in favour of the petitioner.

2. The facts emanating from the averments made in the writ application is that the petitioner was appointed as a Clerk in the office of the Civil Surgeon cum Chief Medical Officer, Dhanbad vide Memo No. 1312 dated 28.12.1982. Subsequently, the services of the petitioner was extended for a further period of one month vide Memo No. 877 dated 24.03.1983. While working on the post of Assistant/Clerk in the office of the Civil Surgeon cum Chief Medical Officer, Dhanbad, the petitioner had submitted his application for appointment on the post of Assistant/Clerk pursuant to the advertisement published in the daily newspaper "Awaaz" on 22.02.1983 which was for appointment on various posts

including the post of Clerk. The petitioner being successful in the appointment process, respondents have issued office order No. 589 dated 19.04.1983 by which the services of the petitioner was extended until further orders. During the course of his employment, the petitioner was promoted to the Junior Selection Grade w.e.f. 30.12.1990 vide office order as contained in Memo No. 2998 dated 05.10.1991 and subsequently, he was granted Senior Selection Grade vide office order as contained in Memo No. 1170 dated 21.12.1998. A letter bearing No. 1381 (22) dated 06.10.1998 purported to have been issued from the office of the Director-in-Chief, Government of Bihar, Patna was received in the office of respondent No. 4 wherein a direction was given to make available all the relevant documents regarding appointment of the petitioner within 15 days. This letter was followed by another letter as contained in Memo No. 1721 (22) dated 28.12.1998 by which the respondent No. 4 was once again directed to send all the relevant documents including the documents with respect to the educational qualification of the petitioner. On inquiry by the respondent No. 4 with respect to the letters requiring documents with respect to the case of the petitioner, it came to light that letter No. 1721 (22) dated 28.12.1998 and letter No. 1381 (22) dated 06.10.1998 were forged and fabricated. Since the salary of the petitioner was not being released in spite of recommendations by the concerned authorities, the petitioner had moved this court in W.P.S. No. 2292 of 2001 which was disposed of directing the Secretary, Health Department, Government of Jharkhand to decide the question relating to legality and propriety of the appointment of the petitioner as also the question relating to payment of salary. It is the case of the petitioner that the petitioner in terms of the direction of this Court dated 08.06.2001 had filed a detailed representation and on direction by the respondents had produced all the relevant documents before the Secretary, Department of Health, but since no order has been passed, a contempt case was preferred by the petitioner and during the pendency of the contempt case vide order dated 14.06.2002 the representation of the petitioner was disposed of holding therein that the appointment of the petitioner is illegal as the petitioner had failed to produce the relevant documents in support of his appointment. The concerned respondents during the pendency of the contempt application had passed a further order in 2002 wherein it was held that the petitioner was appointed on a temporary post without following the necessary rules and procedures and since the initial appointment of the petitioner was only for a period of 3 months which was subsequently extended from time to time and since the appointment of the petitioner was itself irregular, he is not entitled to any salary. The rejection of the claim of the petitioner vide order dated 14.06.2002 and 02.08.2002 is under challenge in the present application.

3. Heard Mr. Amit Kumar Das, learned counsel appearing for the petitioner and Mr. Atanu Banerjee, learned Government Advocate appearing for the respondent - State of Jharkhand.

4. The learned counsel for the petitioner has submitted that the petitioner was appointed on a vacant and sanctioned post pursuant to an advertisement issued

by the department and as such it cannot be contended that the appointment of the petitioner was itself illegal or irregular. It has further been submitted that during the course of his employment the petitioner was promoted from time to time as he was granted Junior Selection Grade and subsequently Senior Selection Grade; and that he was treated as a regular and permanent employee of the department and all the rules and regulations were made applicable to the petitioner as is made applicable to the regular and permanent employees. It has further been submitted by the learned counsel for the petitioner that the initial impugned order dated 14.06.2002 passed vide Memo No. 437 (5) was issued in haste on the threat of a contempt proceeding as in spite of the fact that the petitioner had represented the authorities and had deposited all the relevant documents to substantiate his claim that he was a permanent employee, the impugned order dated 14.06.2002 reflects that no documents were produced by the petitioner and therefore, the same leads credence to the fact that the appointment of the petitioner was itself illegal. Subsequently however, the order dated 14.06.2002 was followed by a reasoned order as contained in Memo No. 554 (5) dated 02.08.2002 wherein the claim of the petitioner was once again rejected on the ground that the petitioner was appointed for a period of 3 months which was extended from time to time and which is against the rules and therefore, the appointment itself was illegal; and that the petitioner is not therefore entitled to any salary.

5. The learned Government Advocate appearing on behalf of the respondents, on the other hand, has submitted that the petitioner had failed to show that his claim that he was a permanent employee was well-founded, since the petitioner was appointed by the Civil Surgeon-cum-Chief Medical Officer, Dhanbad for a period of 3 months which was extended from time to time and the said appointment itself was dehors the rules and regulations framed for appointment of a government employee. It has also been submitted that although the earlier order dated 14.06.2002 did not contain any reasons, but the follow up order dated 02.08.2002 was candid and a well reasoned order wherein the claim of the petitioner was rejected on consideration of the factual matrix of the case. It is thus submitted that since the initial appointment of the petitioner was itself found to be illegal and against the rules and procedures of the State Government as such the impugned order dated 14.06.2002 and 02.08.2002 is in accordance with law, and therefore, the claim of the petitioner is not sustainable.

6. Since the petitioner was not being paid salary he was constrained to move this Court in W.P. (S) No. 2292 of 2001 and since the respondents had raised objection with respect to the legality and propriety of the appointment of the petitioner, a direction was passed on 08.06.2001 in which the petitioner was directed to file a representation and the Secretary, Department of Health, Government of Jharkhand was in turn directed to consider the genuinity of the appointment of the petitioner as also the question of payment of salary. Initially on 14.06.2002, the representation of the petitioner was disposed of rejecting his claim and holding that the appointment itself was illegal on the ground that the

documents as was required were never furnished by the petitioner. Subsequently however, vide reasoned order dated 02.08.2002, the respondents have tried to substantiate the earlier order of rejection vide order dated 14.06.2002 by mentioning some additional grounds that the Civil Surgeon cum Chief Medical Officer, Dhanbad had appointed the petitioner on 28.12.1982 for a period of 3 months and on the basis of said initial appointment which was extended from time to time, the petitioner continued in service. The reasoned order dated 02.08.2002 has not entered into the precincts with respect to the claim of the petitioner and it has merely mentioned in a very cryptic fashion that initial appointment of the petitioner was itself not in accordance with the rules and regulations and therefore, since the appointment itself was illegal, the petitioner was not entitled to any salary. No reference has been made in regard to the advertisement which had been issued and in terms of which, the petitioner had applied and was declared successful. Neither was the question of grant of Junior Selection Grade and Senior Selection Grade to the petitioner ever considered by the respondents. Thus the reasoned order dated 02.08.2002 being a cryptic order shorn of detailed reasons and there being no discussion with respect to continuation of the petitioner in service cannot be sustained in the eye of law. In such circumstances, therefore I have no hesitation in quashing the order as contained in Memo No. 437 (5) dated 14.06.2002 as well as the reasoned order as contained in Memo No. 554 (5) dated 02.08.2002 issued by the Secretary, department of Health, State of Jharkhand. Accordingly, upon quashing and setting aside the orders dated 14.06.2002 and 02.08.2002, the matter is remitted back to the Secretary, Department of Health and Family Welfare to consider the case of the petitioner afresh and pass a reasoned order thereto within a period of 6 weeks from the date of receipt of a copy of the order.

7. While considering the legality of the appointment of the petitioner afresh, the question with respect to payment of salary to the petitioner which is a subject-matter of the W.P. (S) No. 2204 of 2008 should also be considered and reflected in the said order.

8. Accordingly, these writ applications are allowed in terms mentioned above.

Pending I.As. If any, also stands disposed of.