
(2010) 01 JH CK 0181
In the Jharkhand High Court

Shankar Ghosh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-01-2010

Acts Referred:

Citation : (2010) 01 JH CK 0181

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present petition has been preferred mainly for the reason that though the present petitioner was working with the respondents since last 36 years as a peon, he has been dismissed from the services on 17th December, 2007 mainly for the reason that before 36 years his appointment was illegal and, therefore, the present petition has been preferred.

2. I have heard learned Counsel appearing on behalf of the petitioner, who has vehemently submitted that the petitioner has been legally appointed as a peon and he has served sincerely, honestly, diligently and to the satisfaction of the Government. Never any memo has been received by the petitioner nor any inquiry has been initiated against the present petitioner. In service book also, his name and photograph has been reflected correctly, which has been signed by high ranking officer of the respondents year by year for more than three long decades and, thereafter, on one fine morning, respondents can not terminate the service of the petitioner on the ground that the petitioner was wrongly appointed before 36 years and, therefore, the services, which were terminated by the respondents vide order at Annexure-6 to the memo of petition, deserves to be quashed and set aside. It is also submitted by learned Counsel for the petitioner that initially also a writ petition bearing W.P. (S) No. 3135 of 2007 was instituted by the petitioner for release of the salary and by the order of this Court vide order dated 5th July, 2007, withhold salary was released. It is further submitted by learned Counsel for the petitioner that after appointment of the petitioner, he

was given first time bound promotion and, thereafter, second time bound promotion was also given to the petitioner and thus the petitioner has proved his efficiency in the services as a peon. Learned Counsel for the petitioner has relied upon the decisions rendered by the Hon''ble Patna High Court in the case of Komalam Amma Vs. Kumara Pillai Raghavan Pillai and Others, and has submitted that the services of the petitioner can not be terminated after 36 years on the ground of illegality in the appointment when he was appointed especially when the service book is maintained by the Government with name and photograph of the petitioner. Thus, the stand taken by the Government at Annexure-6 for termination of the services of the petitioner, after putting 36 years honest service record, is absolutely illegal and dehors the aforesaid decision. Likewise, counsel for the petitioner has also relied upon the decision rendered by the Hon''ble Patna High Court in the case of Surajmal Prasad Vs. The State of Bihar and Others, and submitted that as per this decision also, the services of the petitioner can not be terminated after 36 years long tenure on the ground that he was not legally appointed.

3. I have heard learned Counsel appearing on behalf of the respondent-State, who has submitted that it is true that the petitioner has served for much longer period, but, inquiry was conducted and it has been brought out to the notice of the Government that the present petitioner was not legally appointed and, therefore, he is not entitled for continuation in the services nor he is entitled for any retirement benefits. This aspect has been properly appreciated in the dismissal order dated 17th December, 2007 at Annexure-6 to the memo of petition. It is also submitted by learned Counsel for the respondent-State that once there is illegal appointment, the petitioner can not take the benefit of such illegal appointment. It is further submitted by learned Counsel for the respondent-State that the petitioner could not present his appointment letter before the respondent authority, therefore, the order of termination passed by the Government is in accordance with facts and law and, therefore, the present petition deserves to be dismissed.

4. Having heard learned Counsels for both the sides and looking to the facts and circumstances of the case, it appears that:

(i) The present petitioner was appointed as a peon and has worked, as such, for 36 long years with the respondents.

(ii) It appears that there is service record of the petitioner with the respondents, which is also having photograph and name etc., which reveals the photograph of the present petitioner. It appears that in the service book, every year there is signature of the high ranking officer of the petitioner. If there is mis-identity of the petitioner's name and photograph, both were always there in the service book and, therefore, the contention raised by learned Counsel for the respondent-State that the petitioner was never appointed, is not accepted by this Court. The State had enough opportunity to verify it within 36 years of services.

(iii) It appears from the facts of the case that after the initial appointment, the petitioner was confirmed in the services, thereafter, looking to the efficiency of the petitioner, first time bound promotion was also given and, thereafter, the petitioner was also given second time bound promotion. When a person is given two time bound promotions, it must have been given by all verifications by the Government and, therefore, after 36 years long services, it can not be said that the petitioner was never appointed as a peon.

(iv) It also appears from the facts of the case that from 2006, the salary of the petitioner was stopped, therefore, a writ petition bearing W.P. (S) No. 3135 of 2007 was instituted by the petitioner for getting salary. The said writ petition was allowed by this Court vide order dated 5th July, 2007 and withhold salary was released. Thus, the petitioner is also getting salary for all the period, for which, he has worked. Now, when he is on verge of his retirement i.e. on 31st January, 2010 after long career of his service, it can not be said that the petitioner was not legally appointed. No action has been taken by the Government upon the high ranking officers, who have signed in the service book of the petitioner for all these years and also upon, who have given him more than one promotion.

(v) It has been held by the Hon'ble Patna High Court in the case of Kabir Mahto Vs. The State of Bihar and Others, especially in paragraphs 7, 8 and 11 as under:

7. The petitioner was appointed as Assistant Teacher on 23.2.1972. There is a presumption in law that when he was appointed after his eligibility, qualifications, certificates, and testimonials were verified. That is further emboldened in the present case from the facts that from 1972 till 1999 none found any illegality in his appointment or quality of education imparted by him. Twenty-seven years after his appointment suddenly an issue of the illegality of the appointment is sought to be raked up. He is then made to run to the lawyer and to the Court room and balance his budget for running his house. The casualty is to the education being imparted by him. This Court in 2003 granted liberty for an enquiry. The respondents still chose to sit over the matter. The pronouncement of the illegality of the appointment has been made after superannuation of the petitioner. For what purpose and with what achievement? Even this determination is contrary to elementary principles of law which is so well established by now and needs no reiteration that no man shall be condemned unheard. The respondents chose to do exactly opposite to condemn the petitioner without hearing him. The so-called enquiry which resulted into the order dated 14.9.2004, it was never considered necessary to associate the petitioner with the same when decisions were taken on photocopies of the documents.

8. If the petitioner was an illegally appointee as is sought to be contended quite obviously it was a collusive appointment. If, it was a collusive appointment, why should the petitioner suffer alone? Those who made hay while the sun shone must equally see cloudy days. If the petitioner has to be denied his arrears of salary and retiral benefits all those in the Government who were associated with

the appointment of the petitioner and released all salary to him as Assistant Teacher from 1972 to 1999 are equally required to be proceeded with against departmentally or under the criminal laws of the land, as the case may be. The counter affidavit of the respondents is completely silent on this issue, perhaps intentionally.

11. The impugned orders dated 14.9.2004 and 20.9.2004 are quashed. The Court holds that the petitioner is entitled to his entire arrears of salary withheld from 1999 till his retirement on 30.6.2004 as also his retirement benefits. The only justification for the same would be institution of simultaneous departmental or criminal proceedings against those who dealt with his appointment and continuance from 1972 to 1999 as noticed above.

(Emphasis supplied)

From the aforesaid decision also, when any person has served for much longer period and especially as a Class-IV type of services and also when his service book is maintained by the Government coupled with the fact that such employee is confirmed and two promotions have also given, then his services can not be terminated on the ground that he was initially not appointed in accordance with law or he has worked on somebody else's appointment letter. This type of allegation is thoroughly a baseless allegation.

(iv) The aforesaid view has also been confirmed by the Hon''ble Patna High Court in the case of Surajmal Prasad Vs. The State of Bihar and Others, .

5. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, I hereby quash and set aside the order of termination of the petitioner dated 17th December, 2007 at Annexure-6 to the memo of petition and I, hereby, direct the petitioner to work as peon with the respondents wherever he was lastly working with the respondents and all the consequential benefits including arrears of salary and such other monetary benefits and the like, will be paid to him forthwith.

6. The petition is, hereby, allowed and disposed of.