
(2003) 02 JH CK 0042
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3007 of 2002

Shiv Shankar Sah

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 JCR 403

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Ananda Sen, for the Appellant; Ritu Kumar, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Heard learned counsel appearing for the petitioner and the learned Government Pleader No. 4.

2. The petitioner has prayed for quashing the order dated 7.6.2001 passed by Conservator of Forest, Singhbhum Afforestation and Social Forestry, Jamshedpur whereby he has disposed of the representation of the petitioner and held that he cannot be regularized in service.

3. There is no need to state the facts of the case as suffice it to refer the order dated 20.4.01 passed in CWJC No. 3170/ 99 (R) which was filed by the petitioner for regularization of his services. The order reads as under :

"The petitioner claims to be daily wage employee working as clerk-cum-typist in the office of Divisional Forest Office (Afforestation Division), Chaibasa, since 28.12.1983. Prayer has been made to direct the respondents to consider this case for regularization of services in the light of scheme framed by the State.

In the counter affidavit respondents have not disputed the fact relating to working of petitioner, but merely taken plea that no scheme has been framed for outright regularization of services of daily wage employee.

Counsel for the petitioner relied on a decision of this court dated 3.4.2001 passed in the case of Motai Sundi, (CWJC No. 2869/99 (R)) and analogous cases. Amongst the aforesaid cases, in the writ petition preferred by one Ashok Kumar Ghatak, (CWJC No. 2898/99 (R)) he claimed to be working as clerk-cum-typist since 1st August 1994. This Court taking into consideration the decision of Supreme Court in Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others, , allowed the writ petition and directed the respondents to consider the cases of those petitioners for regularization of their services and to pass a reasoned order within a stipulated period.

Counsel for the State accepts that the petitioner of the present case is similarly situated and this case is also covered by the decision in Motai Sundi, (supra), being similar to Ashok Kumar Ghatak, (supra).

Accordingly following the decision aforesaid the respondents are directed also to consider the case of present petitioner for regularization of his service and to pass a reasoned order, within two months from the date of receipt/production of copy of this order.

It will be open to the petitioner to bring to the notice of the competent authority that posts are lying vacant to accommodate him or he is actually working against a vacant post.

The writ petition is allowed with the aforesaid observations."

4. In compliance of the aforesaid direction the representation of the petitioner was considered and rejected by the impugned order as contained in annexure 8 to the writ application. The reasons assigned by the respondent for refusing regularization is that the initial appointment of the petitioner is itself irregular in as much as neither any advertisement was issued nor the recruitment rules was followed. Secondly appointment in Class III posts can be made through the Commission and therefore, the respondent have no authority to regularize the services of the petitioner.

5. Mrs. Ritu Kumar, learned GP IV argued that the petitioner seeks regularization of their services in Class III posts which can be done only by the Commission.

6. The admitted fact are that the petitioner was engaged on daily wages on 28.12.1983 and since then he has been working as clerk-cum-typist. It has not been disputed that since the date of his appointment he has been continuously working without any, break in service during the last 17-18 years on the post of clerk-cum-typist. After taking service from the petitioner on the post of typist for about 18 years it is highly unfair on the part of the respondents to refuse regularization on technical ground that the initial appointment was illegal or irregular or the appointment could be made only by the Commission. It is not a case of fresh appointment and therefore, the order passed by the concerned respondent refusing to regularize the services of the petitioner on the post of typist is wholly misconceived. In my considered opinion a person cannot be

thrown on the street by the State Government after taking services about 18-19 years.

7. For the aforesaid reasons this writ application is allowed and the respondent are directed to regularize the services of the petitioner within a period of two months from the date of receipt of copy of this order.