
(2020) 01 JH CK 0017

In the Jharkhand High Court

Case No : Letter Patent Appeal No. 327, 329 of 2017, I.A. No. 9689 of 2017, 9688 of 2017, 3888, 3890 of 2019

State of Jharkhand And Ors

APPELLANT

Vs

Raj Nath Singh And Ors

RESPONDENT

Date of Decision : 14-01-2020

Acts Referred:

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

Citation : (2020) 01 JH CK 0017

Hon'ble Judges : H.C. Mishra, J;Deepak Roshan, J

Bench : Division Bench

Advocate : Atanu Banerjee, R. Krishna, S.P. Roy

Final Decision : Dismissed/ Disposed Of

Judgement

1. As both these appeals arise out of the same common Judgement passed by the Writ Court, they have been heard together and are being disposed of by this common Judgement.
2. Heard learned counsel for the appellant State of Jharkhand, learned counsel for the private respondents-writ petitioners, and the learned counsel for the State of Bihar.
3. The appellant State of Jharkhand is aggrieved by the impugned Judgement dated 10.02.2017, passed by the Hon'ble Single Judge in W.P.(S) No. 4837 of 2009 and W.P.(S) No. 3310 of 2011, whereby the writ applications filed by the private respondents challenging their termination from service vide order No. 645 dated 29.05.2001, issued by the appellant No. 4, the Chief Conservator of Forests-cum-Chief Wild Life Warden, Jharkhand, has been allowed by the Writ Court.
4. The necessary facts of the case are that the private respondents were appointed on the post of Assistant-cum-Typist, in the pay-scale of Rs.580-860/-, along with twenty seven persons, who were similarly appointed, and they

claimed to have been appointed on sanctioned posts. Two of them had also worked on daily wages, prior to their appointment in the regular pay-scale. All these appointments were made in the year 1985. Subsequently, the services of these private respondents were terminated vide office orders Nos. 5, 6 and 7 dated 29.05.1986, terminating their services w.e.f. 31.05.1986. The said termination orders were issued without giving any reason for termination of service, and they were only single sentence orders, which read as follows:- (English Translation of one such order)

"Office Order No.5.

Dated 29th May, 1986,

The services of Sri Brajesh Kumar, Assistant-cum-Typist are terminated w.e.f. 31.05.1986 afternoon.

Sd. /-

Additional Chief Conservator of Forest

-cum-

Chief Wild Life Warden, Bihar."

5. This orders were admittedly, issued without giving any notice, or without affording any opportunity to the concerned respondents to show cause. The said orders, however, were subsequently stayed / kept in abeyance by order dated 27th June, 1986, issued by the same officer, pursuant to a letter dated 21.06.1986 issued by the Chief Conservator of Forests, Bihar, Ranchi, until further orders. It is not in dispute that the private respondents continued in service thereafter, and all the benefits of service including regularization / confirmation in service, were allowed to the private respondents. Finally, the impugned order, contained in letter No. 645 dated 29.5.2001 was passed by the Chief Conservator of Forests-cum-Chief wild life warden, Jharkhand, Ranchi, whereby the private respondents were informed that by order dated 29.05.1986 their services had been terminated w.e.f. 31.05.1986 afternoon, which was subsequently stayed by the Chief Conservator of Forests, Bihar, vide order dated 21.06.1986, which order was cancelled vide order dated 10.05.2001 by the Chief Conservator of Forests, Jharkhand, Ranchi. The private respondents were accordingly, informed that thereby, the office order Nos. 5, 6 & 7 dated 29.05.1986, by which their services were terminated w.e.f. 31.05.1986, have become operational, and accordingly, their services stand terminated automatically. It is this order, which had been challenged by the private respondents in this Court by filing W.P.(S) No. 4837 of 2009 and W.P.(S) No. 3310 of 2011, which were adjudicated and allowed by the Hon'ble Single Judge by the common Judgement dated 10.02.2017.

6. The impugned Judgement passed by the Hon'ble Single Judge shows that the stand of the State before the Writ Court, in the counter affidavit filed on behalf of

the State, was that the appointments of the writ petitioners were illegal and irregular, as they were appointed without observing the due process of appointment, which fact was however, challenged by the writ petitioners before the Writ Court by filing the rejoinder to the counter affidavit. The Writ Court also took notice of the fact that in all 30 persons were similarly appointed by the authorities, but the termination of services were made with respect to only three writ petitioners, and no such order was passed with respect to 27 other persons, who perhaps were working in the State of Bihar, after the bifurcation of the State of Bihar, in the year 2000. The Writ Court, while allowing the writ applications filed by the petitioners gave the following reasons for allowing both the writ applications:-

"12. After hearing the learned counsel for the respective parties at length and on perusal of the records, I am of the considered view that the petitioners have been able to demonstrate foundational facts and law to make out a case for interference due to the reasons stated hereinbelow:-

(i) The impugned order of termination is not sustainable in the eyes of law since, it cannot be passed to give the order of termination effected with retrospective effect, which has been done in the instant case by issuing the order dated 29.05.2001 since the retrospective dismissal is not permissible in the service jurisprudence and the order if passed for termination or removal of a person from service will always be prospective and it cannot be retrospective.

(ii) The services of the employee once regularized cannot be revoked and that the doctrine of promissory estoppel is not really based on the principle of estoppel, but it is a doctrine evolved by equity in order of prevent injustice and it can be the basis of a cause of action. The view of this Court is further fortified by the judgment of the Hon'ble Apex Court rendered in the case of Surya Narain Yadav and others-versus-Bihar State Electricity Board and others, reported in (1985) 3 SCC 38.

(iii) Since, this Court, while exercising the writ jurisdiction under Article 226 of the Constitution of India, is not supposed to enter into the complicated question of fact, as to whether, the respondents have given clean chit to 27 persons and penalized the 3 persons including the petitioners is justified and proper in the eye of law therefore, it would be appropriate to quash the impugned order.

(iv) The appointment of such employees should not be illegal, even if irregular, where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. The view of this Court is further fortified by the judgment of the Hon'ble Apex Court rendered in the case of State of Karnataka and others-versus-M.L. Kesari and others reported in (2010) 9 SCC 247."

7. For the aforesaid reasons the impugned order dated 29.05.2001 was held to be not legally sustainable and was accordingly, quashed and set aside, and both

the writ applications were allowed by the Writ Court. Aggrieved by the said Judgement, the present L.P.As. have been filed by the State of Jharkhand.

8. Learned counsel for the appellant State has submitted that the impugned Judgement passed by the Hon'ble Single Judge cannot be sustained in the eyes of law, for the simple reason, that the appointment of the writ petitioners were illegal and were made without following the procedure prescribed for appointment. It is submitted by learned counsel that in the facts of the case, there was no requirement of following the principles of natural justice, and since the appointments could not be sustained in the eyes of law, the order of termination could not be interfered by the Writ Court.

9. In support of his contention, learned counsel for the appellant State has placed reliance upon the decision of the Hon'ble Apex Court in Rakesh Kumar Sharma Vs. State (NCT of Delhi) & Ors., reported in (2013) 11 SCC 58, wherein the law has been laid down as follows :-

"23. There is no obligation on the court to protect an illegal appointment. The extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible. The process of verification and notice of termination in the instant case followed within a very short proximity of the appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance."

10. Further reliance has been placed by the learned counsel for the State upon the decision of the Hon'ble Apex Court in the State of Haryana & Ors. Vs. Ram Kumar Mann, reported in (1997) 3 SCC 321, wherein it has been held that the wrong order cannot be the foundation for claiming equality for enforcement of the same order. The right must be founded upon enforceable right to entitle a person to the equality treatment for enforcement of the legal right.

11. Learned counsel has also placed reliance upon the decision of the Hon'ble Apex Court in the State of Jammu & Kashmir and Ors. Vs. District Bar Association Bandipora, reported in (2017) 3 SCC 410, wherein the Hon'ble Apex Court has laid down the law that all recruitments in the matters of public employment must be made in accordance with the rules and orders, there should be no back-door appointments dehors the rules, the regularization is not a source of recruitment nor it is intended to confer permanency upon appointments which have been made without following the due process envisaged by Articles 14 and 16 of the Constitution, and that the State and its instrumentalities cannot be permitted to use this window to validate illegal appointments.

12. Learned counsel has also placed reliance upon the decision of the Hon'ble Apex Court in State of Orissa and Anr. Vs. Mamata Mohanty, reported in (2011) 3 SCC 436, wherein the law has been laid down as follows :-

"37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (Vide Upen Chandra Gogoi V. State of Assam, Mangal Prasad Tamoli V. Narvadeshwar Mishra and Ritesh Tewari V. State of U.P.)

38. The concept of adverse possession of lien on post or holding over are not applicable in service jurisprudence. Therefore, continuation of a person wrongly appointed on post does not create any right in his favour. [Vide M.S. Patil (Dr.) V. Gulbarga University.]"

13. Learned counsel for the State has also placed reliance upon the decision of the Hon'ble Apex Court in U.P.S.C. vs. Girish Jayanti Lal Vaghela & Ors., reported in (2006) 2 SCC 482, wherein it is held that any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article-16 of the Constitution. Learned counsel has also placed reliance upon the decision of the Hon'ble Apex Court in M.P. State Coop. Bank Ltd. Vs. Nanuram Yadav & Ors., reported in (2007) 8 SCC 264, wherein it is held that those who come by backdoor should go through that door.

14. Learned counsel for the State, lastly placed reliance upon a decision of this Court in Sunil Dutt Mishra & Anr. Vs. State of Jharkhand, reported in 2017 (4) JBCJ 646 (HC), holding that no person can be appointed without following the rules and regulations for the appointment, the public at large must be given an opportunity to compete with each other so that the best suitable and most eligible candidate can get the public post and that in cases of such illegal appointments, the amount, which is found payable to the illegal appointees, must be recovered from the officer or authority, who has given appointment, either from his salary or from his pension or from his properties.

15. Placing reliance on these decisions learned counsel for the appellant State has submitted that the impugned Judgement passed by the Hon'ble Single Judge, setting aside the order of termination of the illegally appointed private respondents cannot be sustained in the eyes of law.

16. Learned counsel for the private respondents on the other hand has opposed the prayer submitting that the appellants were appointed in the year 1985 itself, and their services have also been regularised and their services were illegally terminated on 29.05.2001 with retrospective effect from 31.05.1986, without giving any notice, or without giving an opportunity to defend themselves, which

cannot be sustained in the eyes of law. It is submitted by learned counsel that their termination order has rightly been quashed by the Writ Court, and there is no illegality in the Judgement passed by the Hon'ble Single Judge.

17. Having heard learned counsels for both the sides and upon going through the records, we find that it is not in dispute that the writ petitioners were given the appointments in the pay-scale of 580-860/- in the year 1985. Thereafter, their services were terminated by order dated 29.05.1986 by a one sentence order dated 29.05.1986 quoted above, that their services are terminated w.e.f. the afternoon of 31.05.1986. No reason whatsoever was assigned in this termination order of the writ petitioners, and the same was kept in abeyance / stayed by the concerned authorities themselves.

18. In that view of the matter, the first termination order itself was not sustainable in the eyes of law, there being no reason whatsoever assigned for terminating the services of the writ petitioners, and also in view of the fact, as held by the Hon'ble Single Judge, that the said termination order was issued without giving any notice or without giving any opportunity to the writ petitioners to defend themselves. The reasons whatsoever as detailed above, have been supplied by the State Government only after the subsequent termination order passed in the year 2001, on 29.05.2001, was challenged by the writ petitioners by filing the writ applications in this Court, in which, the State Government by filing counter-affidavit, for the first time assigned the reasons, which was not permissible in the eyes of law, as it is well settled principle of law, that the order has to be read by its contents only and the reasons cannot be substituted by filing further affidavits or subsequent orders.

19. Admittedly, thereafter, the said order was kept in abeyance / stayed for about fifteen years and in the meantime the services of the writ petitioners were also regularised by the State Government and finally the impugned order dated 29.05.2001 was passed. A bare perusal of the termination order as contained in letter No. 645 dated 29.05.2001, also shows that no reason whatsoever was assigned for terminating the services even in this order as well. All that was stated in the order dated 29.05.2001 was that the services of the writ petitioners were terminated by order dated 29.05.1986 w.e.f. the afternoon of 31.05.1986. The said order was kept in abeyance by order dated 21.06.1986, and after due consideration the order dated 21.06.1986 has been cancelled by order dated 10.05.2001, and accordingly, the termination of services of the writ petitioners which was terminated by order dated 29.05.1986, got revived, and accordingly, their services stood terminated. In the said order also there is no reason whatsoever assigned, as to why their services were terminated.

20. In the impugned Judgement passed by the Hon'ble Single Judge, the Hon'ble Single Judge has taken note of the fact that thirty persons were similarly appointed with the petitioners and the services of only three persons have been terminated and no action has been taken against other similarly situated twenty seven persons.

21. By order dated 26.06.2019, we had given the liberty to the learned counsel for the State to file the status about those 27 persons who were similarly appointed. Pursuant to that order a supplementary counter affidavit has been filed by the State, stating that they could get the details of only one person out of those twenty seven persons, and he was appointed after following the process of appointment. Admittedly, even in this supplementary counter affidavit the State is silent about other twenty six similarly appointed persons and it is submitted that they could not get hold about the nature of their appointment or action taken against them, if any.

22. Faced with this situation, we find that when even the first termination order which was one sentence termination order, without giving any reason, was ex-facie was not sustainable in the eyes of law, and was put under abeyance by the respondent officials themselves, and subsequently, after about fifteen years the same very order has been restored without giving any reason whatsoever again, by the impugned order dated 29.05.2001, the order which was ex-facie illegal and void ab-initio, could not be revived by the subsequent order, and that too without giving any reason. We are of the considered view that the decision cited by the learned counsel for the appellant State in Mamata Mohanty's case (supra), holding that it is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage, fully covers the case of the writ petitioners, and their illegal order of termination could not be sanctified by issuing the subsequent order. Indeed there is yet another patent illegality, that only the three writ petitioners, out of thirty similarly appointed persons were chosen for the impugned action, and no action had been taken against the rest 27 persons.

23. For the forgoing reasons, we find no illegality in the impugned Judgement dated 10.02.2017, passed by the Hon'ble Single Judge in W.P.(S) No. 4837 of 2009 and W.P.(S) No. 3310 of 2011, worth any interference in exercise of the L.P.A. jurisdiction.

24. There is no merit in both these appeals, and the same are accordingly, dismissed. The pending Interlocutory Applications also stand disposed of.