

(2019) 03 JH CK 0047
In the Jharkhand High Court
Case No : Civil Review No. 62 Of 2015

State Of Jharkhand through Secretary And Ors	APPELLANT
Vs	
Ramkrit Mahto	RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 03 JH CK 0047

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Vikash Kumar, M.M. Sharma

Final Decision : Disposed Off

Judgement

This review petition has been preferred by the State of Jharkhand for review of the order dated 21.11.2014 passed in W.P.(S) No.6712 of 2011, whereby and whereunder the review of the aforesaid order has been sought for to the effect that the writ petitioner was never in continuance of employment for a period of 29 years, warranting his case to be considered in the light of ratio laid down by the Hon'ble Apex Court in the case of State of Karnataka & Ors. vs. Uma Devi & Ors. reported in (2006) 4 SCC 1.

Learned counsel for the writ petitioner, Mr. M.M. Sharma, has submitted that the review petition may be rendered to be infructuous for the reason that after passing of the aforesaid order due representation was made but the claim of the petitioner for regularization has been rejected which has been challenged before this Court be a separate petition, being W.P.(S) No.6353 of 2017 which is lying pending for its consideration before this Court.

He has further submitted by referring to the order passed by the concerned Executive Engineer in terms of the order passed by this Court in W.P.(S) No.6712 of 2011, the remark recorded by concerned Executive Engineer in the said order that the order passed by the Hon'ble Judge seems to be beyond the fact and,

therefore, the same is contemptuous and for which, against the concerned Executive Engineer, the signatory of the order dated 08.01.2015 a contempt proceeding may be initiated under the Contempt of Court's Act 1971.

Learned counsel for the review petitioner upon such submission of the learned counsel for the writ petitioner had filed a show cause and by referring to the said show cause, as contained vide office order dated 07.03.2019 submits that the remark as has been made in the order dated 08.01.2015 due to inadvertence and bona fide mistake and due to which unqualified apology has been sought for and the said part of the order has been recalled from the order dated 08.01.2015 and, therefore, submission has been made that the unqualified apology by the concerned respondent may be accepted.

Having heard learned counsel for the parties and after going across the rival submission this Court deem it fit and proper to deal with the merit of the issues.

The writ petition has been filed being W.P.(S) No.6712 of 2011 for quashing the order dated 25.08.2011 by which the petitioner while working as Mali has been discharged from service and also pressed for consideration of his case for regularization in service, since according to the writ petitioner he was working since last 29 years i.e. 15.07.1982, therefore, discharging him from service vide order dated 25.08.2011 instead of regularization is not proper in view of ratio laid down by the Hon'ble Apex Court in the case of State of Karnataka & Ors. vs. Uma Devi & Ors. (supra) wherein at paragraph 53 the inception has been carved out that if a daily rated employee against the sanctioned post is continuously in service for ten years without any support of interim order passed by the court of law, his case should be considered for taking his own establishment, this Court has passed the order while disposing dated 21.11.2014, directing the authority to consider the case of the petitioner in the light of the judgment in the case of Uma Devi (3) on the pretext of accepting the submission of the writ petitioner that he had rendered 29 years of service.

The review petitioner has taken ground that the petitioner is working since 15.07.1982 continuously is not correct and in order to strengthen the submission, certain documents have been annexed along with the pleading that the petitioner has never been appointed by virtue of issuance of appropriate appointment letter and not against the sanctioned post, rather the petitioner has been engaged as seasonal worker and intermittent work has been taken and therefore, he has never completed 240 days before 01.08.1985 warranting his case to be considered to take him under regular establishment.

Counter affidavit has been filed by the writ petitioner-respondent wherein stand has been taken that he was engaged as Mali on daily wage with effect from 15.07.1982 yet time and again the service of the petitioner was extended with the approval of the Superintending Engineer, Road Circle, Jamshedpur vide letter dated 12.11.1982 and thereafter other letters have been issued and therefore it has been submitted that the petitioner has completed 240 days before

01.08.1985 and his name is also appearing at serial no.2 of the list prepared by the respondent no.4 along with the appointment letter and departmental letters along with the policy meant for regular appointment but the said document could not have been produced by the petitioner since in spite of sincere endeavor the office has not supplied the aforesaid document.

In view of the pleading made by the review petitioner as also the statement made by the writ petitioner in the counter affidavit, it is evident that the continuous service of discharging for last 29 years is seriously in dispute but while passing the order under writ jurisdiction, reference has been made that the petitioner has been working since 15.07.1982 continuously, thus, he has rendered 29 years of service, therefore, needs to be recalled from the said order in exercise of power of review conferred to this Court under Article 226 of the Constitution of India and, therefore, direction would be given to consider the case of the petitioner be determining as to whether the petitioner has fulfilled the criteria of taking regularization in service warranting as per the proposition laid at paragraph 53 of the judgment passed by the Hon'ble Apex Court in the case of Uma Devi (3).

Before parting with the order, it needs to be ordered that scope of judicial review under Article 226 of the Constitution of India is very limited and the same is to be exercised, if any inherent defect is crept up in the original order and if a fact which could not have been brought by the parties in spite of due diligence.

Here, in the instant case, the fact about the continuous service of 29 years since was in serious dispute and, therefore, this Court in exercise of power of judicial review conferred under Article 226 of the Constitution of India recall the said part of the order. Accordingly the part of the order wherein it has been reflected that the writ petitioner is working continuously since last 29 years is hereby recalled.

In the peculiar facts of the case, this Court is not issuing any direction for reconsideration of the petitioner afresh for the reason that the authority has already taken decision which has been assailed by the petitioner by way of filing W.P.(S) no.6353 of 2017 which is still lying pending for its consideration.

So far as concerned Executive Engineer is concerned, remarks has been made by the concerned Executive Engineer is serious one since he has made the said remark treating himself to be an Appellate Forum sitting over order passed by this Court under Article 226 of the Constitution of India, even though is holding the post of Executive Engineer which heads the division and Class-I engineering service within the provision of PWD Code, it is not expected from an engineer belonging to Class-I service to act like this.

If any Court of law has passed an order, if according to the respondents on wrong facts, parties are at liberty to file review or appeal by assailing the same but the authority has got no power to make any comment upon the order without questioning the Court of law.

Although the statement recorded in the order dated 08.01.2015 to the effect that note given by Hon'ble Judge seems to be beyond the fact is uncalled for and contemptuous having passed by one Manoranjan Kumar Sinha, said part of the order has been recalled by the present incumbent as would be apparent from the show cause dated 11.03.2019.

This Court intends to proceed for Contempt of Court Act but as has been informed by the learned counsel for the review petitioner that the said Executive Engineer, signatory of the order dated 08.01.2015, has been superannuated from service, hence this Court is not taking up the matter for initiating regular proceeding against him under Contempt's of Court Act.

In view thereof, the review petition is disposed of.