

(2008) 02 JH CK 0087
In the Jharkhand High Court

Sudhansu Prasad Mandal

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 2 JCR 149

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—After the order was dictated on 1.2.2008, certain clarification was sought on 8.2.2008.

2. This writ petition was filed on 17.10.2001 claiming up-to-date salary since January 1994.

3. Admittedly petitioner worked on daily wages under the then Deputy Director, Health Services (Tuberculosis), Bihar, Patna - Dr. A.A. Mallick and as per his order he was adjusted temporarily at Dumka on or about 26.6.1987 (Annexures-1 and 5).

4. Petitioner's case is that his name was inserted in the list of the employees terminated on 11.5.1993 by hand, as would appear from the subsequent show-cause notices issued to him regarding validity of his appointment.

5. On 19.7.2006, a Bench of this Court disposed of this writ petition observing that no finding can be given on the aforesaid disputed question of fact under Article 226 of the Constitution of India and the petitioner may move before the appropriate authority, subject to limitation, if any.

6. Against the said order, petitioner filed an appeal being L.P.A. No. 362 of 2006 which was disposed of on 15.2.2007 with the following observations:

It cannot be disputed that the original document does not contain the name of the petitioner-appellant even though the name of the petitioner-appellant has been inserted through handwriting in other documents. Further, the petitioner-appellant has received show-cause notices on 14.9.1994 and 2.5.1998 for which suitable reply has been given but no final order has been passed in respect of those show-cause notices. Such being the case, we fail to understand as to how the respondents can take a plea that he has been terminated on 11.5.1993 itself.

In our view, this question has to be gone into by the learned single Judge on the basis of the documents in question. Therefore, the order is set aside and the learned single Judge is requested to take up the matter and decide the issue as expeditiously as possible.

7. One Dr. Mallick, the then Deputy Director, Health Services (Tuberculosis), Bihar, Patna, had inducted several thousands of persons through back-door. Such appointments having been made in excess of sanctioned strength and budgetary provisions, wages/salaries were not paid. Several writ petitions were filed, claiming wages/ salary. Pursuant to the directions of the High Court, a Screening Committee was constituted. When the Committee sought to serve notice on some of the employees, ugly law and order situation was created. Therefore, notices were published on different dates in different newspapers inviting submission of the claims by all the employees appointed at the instance of Dr. Mallick, together with supporting material justifying their appointments. About 1,000 employees only appeared before the Committee. The Committee found that the appointments made by Dr. Mallick were wholly invalid and illegal. In terms of the said findings an order was issued on 30.4.1993 by the Health Department in terms whereof all appointments made by Dr. Mallick after 1.1.1980 were terminated/directed to be terminated (Annexures-E and E/1).

8. The legality and validity of the said order dated 30.4.1993 was questioned in a batch of cases. The Division Bench of Patna High Court affirmed the said order dated 30.4.1993 and dismissed such writ petitions 1995 (2) PLJR 309. Lalan Kumar Singh and Ors, etc. The matter was taken to the Supreme Court. The Supreme Court affirmed the said order of termination dated 30.4.1993 and the judgment of Patna High Court - Ashwani Kumar and Others Vs. State of Bihar and Others, of the judgment of Ashwani Kumar (supra) shows the magnitude of the illegal actions of Dr. Mallick in connivance with other officers of the Health Department in making thousands of back-door appointments. The Supreme Court in Paragraph 12, inter alia, found that:

12...There cannot be an employee without a vacancy or post available on which he can work and can be paid as per the budgetary sanctions. It appears that Dr. Mallick suffering from wrong notions of power and authority under the said Government Resolution and without bothering to find out whether there were vacancies or not under the Scheme indulged in self-help to recruit as many Class 111 and Class IV employees as suited him and the result was that he loaded a dead weight of burden of these employees on the State Exchequer by resorting

to a completely unauthorised exercise. The State authorities were justified in refusing to release salaries for paying this unauthorized army of staff which represented a host of unwelcome guests. They were all persona non grata and were not employees in the real sense of the term. It must, therefore, be held that the appointments of 6000 employees as made by Dr. Mallick in the Tuberculosis Eradication Scheme were exfacie illegal As they were contrary to all recognized recruitment procedures and were highly arbitrary, they were not binding on the state of Bihar....

On the question of regularization of such employees, in Paragraph 13 it was held that:

13...Whether they are posts or vacancies they must be backed up budgetary provisions so as to be included within the permissible infrastructure of the Scheme. Any posting which is de hors the budgetary grant and on a non-existing vacancy would be outside the sanctioned scheme and would remain totally unauthorized. No right would accrue to the incumbent of such an imaginary or shadow vacancy....

Regarding observance of the principles of natural justice, in Paragraphs 16 and 17 it was held as follows.

16...Similarly whether show cause notices were issued to them or not also would be besides the point as we will see while deciding Point No. 3 that public notices were given to appointees to have their say before the competent authority in connection with their appointments and basic principles of natural justice were followed in these cases also....

17...Thus the basic principles of natural justice cannot be said to have been violated by the Committee which ultimately took decision on the basis of the personal hearing given to the employees concerned and after considering what they had to say regarding their appointments. Whatever was submitted by the employees concerned was taken into consideration and then the committee came to a firm decision to the effect that all these appointments made by Dr. Mallick were vitiated from the inception and were required to be set aside and that is how the impugned termination orders were passed against the appellants. On the facts of these cases, therefore, it cannot be said that principles of natural justice were violated or full opportunity was not given to the employees concerned to have their say in the matter before their appointments were recalled and terminated....

9. Thus it is clear that the said order of termination dated 30.4.1993 (Annexure-E and E/I) was upheld up to the Supreme Court.

10. In Paragraph 13 of the said order dated 30.4.1993 it was ordered that the persons who had filed their show causes, (as per the list) were terminated with immediate effect i.e, 30.4.1993.

In Paragraph 14. it was further ordered that other persons appointed in similar

manner and working in different departments who did not give reply to the show-cause notices, could also not be allowed to continue as being illegal appointees and their appointments were also terminated with immediate effect and their controlling officers were directed to inform them about the order of termination within fifteen days.

In Paragraph 15, it was ordered that if any payment is made to any of such employee appointed at the instance of Dr. Mallick after 1.1.1980, such amount will be recovered from the Drawing and Disbursing Officer.

In Paragraph 16, it was ordered that the said Paragraphs 13, 14 and 15 will be effective from the date of the order and all the concerned officers were directed to ensure compliance of the order.

11. Thus it is clear that not only the persons, named in the list, were terminated, but direction was issued to terminate all such persons, within fifteen days and accordingly the impugned order dated 11.5.1993 was issued in compliance of the order dated 30.4.1993. As already noticed above, opportunity to file show cause, was given to all employees by several news paper publications. Therefore, whether petitioner was named in the list or not, he stood terminated w.e.f. 11.5.1993, in terms of the order dated 30.4.1993. It is undisputed that petitioner was one of the person inducted at the instance of Dr. Mallick after 1.1.1980. It is not known how and for whose benefit, the purported show-cause notices were issued to the petitioner on 14.9.1994 and then on 2.5.1998, which were clearly in the teeth of the said orders dated 30.4.1993 and 11.5.1993. It appears that such show-cause notices and other correspondences were managed by the petitioner, in collusion with some of the officers and at the instance of the In charge Minister only for claiming payment of wages/ salary. All these notices/correspondences were clearly against the said orders dated 30.4.1993 and 11.5.1993. It has been held in Paragraphs 21 and 22 of the Full Bench Judgment reported in 1986 PLJR 149 Chetlal Sao etc. that State is not bound by the wrong actions of its officers.

12. It may also be noted that it has been categorically stated in Paragraph 7 of the counter-affidavit that in spite of termination, petitioner got salary till December 1993 by misrepresenting the Department. It has also been categorically stated in Paragraph 8 of the said affidavit that petitioner is not entitled to get any salary after his termination and that he is not working in the department of Health on any post at any place after December 1993. (The said statements matches with the said orders dated 30.4.1993 and 11.5.1993). In Paragraph 9 of the rejoinder, vague and evasive reply has been given whereby the petitioner is asking this Court to presume, on the basis of the aforesaid notices/correspondences (issued after the said order dated 30.4.1993); that he has not been terminated and he is entitled to salary. Thus it becomes uncontroverted position that petitioner did not work after December, 1993.21.

13. From the facts and circumstances and the legal position noticed above, it is clear that (i) petitioner is one of the person illegally inducted by Dr. Mallick, (ii)

by order dated 30.4.1993 all the persons inducted by Dr. Mallick were terminated. (iii) this order was upheld by Patna High Court Lalan Kumar Singh (supra), and by the Supreme Court Ashwani Kumar (supra), (iv) petitioner's engagement also stood terminated by the order dated 11.5.1993 issued pursuant to the said order dated 30.4.1993. (v) petitioner did not work after December 1993, and is not entitled to any salary, and (vi) the notices/correspondences relied by the petitioner are clearly 20 against the said orders dated 30.4.1993 and 11.5.1993 and on that it cannot be presumed that petitioner is entitled to salary.

14. With these observations, directions and the findings, this writ petition is dismissed. However, no cost is imposed on the petitioner. Petition dismissed.