
(2018) 08 JH CK 0060

In the Jharkhand High Court

Case No : Writ Petition (S) (S) No. 3921 of 2009

Sumitra Devi

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 14-08-2018

Acts Referred:

Bihar Jail Manual — Rule 272
Constitution of India, 1950 — Article 311(2)

Citation : (2018) 08 JH CK 0060

Hon'ble Judges : PRAMATH PATNAIK, J

Bench : Single Bench

Advocate : Rajesh Kumar, Gaurav Raj, Apoorva Singh, Shadih Khan, Razaullah Ansari

Final Decision : Disposed Off

Judgement

Pramath Patnaik, J

1. In the captioned writ application, the petitioner has inter alia prayed for quashing order dated 01.12.2008 whereby the services of petitioner, which

was made permanent vide memo dated 28.06.2008 was reverted to temporary basis and further prayer has been made for direction upon the

respondents to forthwith reinstate the petitioner on the post of Lady-Kachpal on permanent basis and also pay the salary equivalent to the said post on

and from 28.06.2008 and further direction to pay the due salary of the petitioner.

2. The facts, as delineated in the writ application, in brief, is that the petitioner has been appointed as Lady-Kachpal in the year 1996 and since then

she is working in the said post with full satisfaction to the authorities concerned. By passage of time, vide order dated 28.06.2008 the services of the

petitioner was approved as permanent basis. But, all of a sudden, vide order

dated 01.12.2008 the services of petitioner, which was made permanent, was reverted to temporary basis. The order of reversion was communicated to the petitioner by Superintendent, District Jail vide memo dated

27.01.2009. Aggrieved thereof, the petitioner represented before the respondents-authorities, but it did not evoke any response.

3. Heard Mr. Rajesh Kumar, learned counsel for the petitioner and Mr. Shahid Khan, learned S.C (Mines) being assisted by Razaullah Ansari, A.C to learned S.C. (Mines) for the respondentsState.

4. Learned counsel for the petitioner submitted that the impugned order has been passed without serving any show cause notice and without giving any opportunity of being heard to the petitioner, which is violative of Article 311 (2) of the Constitution of India. Learned counsel for the petitioner

further submitted that services of the petitioner has been made permanent by higher authorities; hence the same cannot be reverted on daily wages.

Further, referring to Rule 272 of the Bihar Jail Manual, learned counsel for the petitioner submitted that the Jail Superintendent is the competent

authority to appoint the petitioner, hence no illegality has been done by confirming the services of the petitioner vide order dated 28.06.2008.

5. As against this, learned counsel for the respondents submitted that it is true that services of the petitioner was confirmed on the post of female

warder by Jail Superintendent, Central Jail, Dumka vide order dated 28.06.2008, but on scrutiny the said confirmation order was annulled, being found

to be incorrect and illegal as the same was confirmed without concurrence of Home Secretary, Government of Jharkhand, which is a mandatory

provision as mentioned in memo dated 18.06.1993 of the Personnel Department, Govt. of Bihar. Furthermore, learned counsel for the respondents

referring to memo dated 28.04.2015, with regard to Rules of Regularization issued by Personnel Department, Govt. of Jharkhand, submitted that the

irregularly appointed personnel who have been continuously working for 10 years till 10.04.2006 (the cut-off date as mentioned in the order of the

Honâble Supreme Court of India in the case of State of Karnataka Vs. Uma Devi & ors) may be regularized as per the laid down terms and

conditions. Since the petitioner is working from December, 1996, she does not fulfill the basic criteria of working regularly 10 years, hence no relief

can be granted to the petitioner.Â

6. Having heard learned counsel for the parties at length and on perusal of the documents available on record, I am of the considered view that the

petitioner has been able to make out a case for interference for the following facts, reasons and judicial pronouncements:

Â (i).From perusal of the record, in particular Annexure 1 to the writ application, it appears that petitioner, who was continuously working on daily

wages basis since 1996 as Lady Kachpal, his services was confirmed vide order dated 28.06.2008 by the Superintendent, Central Jail, Dumka. But,

from perusal of order dated 01.12.2008 passed by the same authority order of confirmation of services dated 28.06.2008 was withdrawn, as evident

from Annexure 2 to the writ application, on the ground that (1).the appointment of the petitioner has been done without compliance of Jharkhand

Appointment Rules (2).appointment was done without clearance of roster and (3) before confirmation of services of the petitioner, prior approval of

Head of the Department was not taken.Â

Â (ii).Besides, much emphasis has been laid down by learned counsel for the respondents upon memo dated 13.02.2015 -Â with regard to Rules of

Regularization issued by Personnel Department, Govt. of Jharkhand, has been made a basis for reversal of confirmation of services of the petitioner.

The issue of denial of benefit of regularization in the garb of Rules of Regularization of 2015, which has been made in the light of laws laid down in

Uma Devi Case (Supra), has elaborately been dealt in the recent decision of Honâ??ble Apex Court in the case of Narendra Kumar Tiwari Vs.

State of Jharkhand as reported in 2018 SCC Online SC 771, wherein the Honâ??ble Apex Court ordered for regularization of the appellant. For

better appreciation, the relevant paragraph of the said decision is reproduced herein below:

Â â??8. The purpose and intent of the decision in Umadevi was therefore two-fold, namely, to prevent irregular or illegal appointments in the future

and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the

irregular appointments for almost a decade after the decision in Umadevi is a clear indication that it believes that it was all right to continue with

irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly

appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi and Kesari sought to avoid.

Â 9. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi, is to be taken into consideration then

no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15th November,

2000 and the cut-off date was fixed as 10th April, 2006. In other words, in this manner the pernicious practice of indefinitely continuing irregularly

appointed employees would be perpetuated contrary to the intent of the Constitution Bench.

Â 10. The High Court as well as the State of Jharkhand ought Â to have considered the entire issue in a contextual perspective and not only from the

point of view of the interest of the State, financial or otherwise - the interest of the employees is also required to be kept in mind. What has eventually

been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis.

This is hardly good governance.

Â 11. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they

have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by

them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct

etc.â??

Â (iii).From the pleadings available on record, it further appears that there was no mala fide or misrepresentation on the part of the petitioner in getting

her services confirmed, under such circumstances she must not be subjected to suffer because of fault, if any, of the respondents-authorities, as per

the law laid down by Honâ??ble Apex Court in the case of Vikas Pratap Singh & Ors Vs. State of ChhattisgarhÂ & Ors as reported in (2013) 14

SCC 494, where the Honâ??ble Apex Court has unequivocally enunciated that where a wrongful or irregular appointment is made without any

mistake on the part of the appointee and upon discovery of such error or

irregularity, the appointee is terminated, taking a sympathetic view, order of termination ought to be quashed and appointee should be reinstated.

Â (iv).Even otherwise also, the impugned order of reversion has been passed without serving any show cause and without giving any opportunity to the petitioner of being heard in utter violation of principles of natural justice and on this ground alone the impugned order is not sustainable in the eyes of law.Â Â

7. As a logical sequitur to the aforesaid facts and reasons the impugned order as contained in memo dated 01.12.2008, is hereby quashed and set aside and the respondents are directed to take a fresh decision for regularization the services of the petitioner, within a period of four months from the date of receipt/production of copy of this order in accordance with law.

8. With the aforesaid observations and directions, the writ petition stands disposed of.Â