

**(2021) 02 JH CK 0180**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (S) No. 4631 Of 2017**

Surendra Choudhary

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

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**Date of Decision :** 23-02-2021

**Acts Referred:**

**Citation :** (2021) 02 JH CK 0180

**Hon'ble Judges :** Sanjay Kumar Dwivedi, J

**Bench :** Single Bench

**Advocate :** Rajendra Krishna, Shivam Sahay

**Final Decision :** Allowed

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## Judgement

1, Heard Mr. Rajendra Krishna, learned counsel for the petitioner and Mr. Shivam Sahay, learned counsel for the respondent-State.

2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising

due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been

heard on merit.

3. The petitioner has preferred this writ petition for quashing of the order dated 26.04.2017, contained in Annexure-9 of the writ petition, whereby, the

case of the petitioner for regularization in the service has been rejected. The prayer for grant the benefit of 1 st and 2nd ACP is also made in the writ petition.

4. An advertisement has been made for the post of Clerk in Commercial Taxes Department in the erstwhile State of Bihar in the year 1979 and

pursuant to the said advertisement, the petitioner submitted his application

before the Department. The petitioner was called for typing test examination as well as interview. The interview was held and after following the due procedure, the petitioner was appointed as a Clerk by the Joint Commissioner, Darbhanga vide order dated 04.07.1980. The petitioner joined the service at Darbhanga and started discharging his duty to the satisfaction of the concerned authorities. The petitioner was transferred from Darbhanga to Jamshedpur Division vide order dated 16.01.1985. The petitioner joined at Jamshedpur and discharging his duty with full satisfaction of the authority concerned. The petitioner qualified the requisite typing test, which is evident from the letter dated 16.10.1981 issued by the Joint Commissioner, Commercial Taxes, Darbhanga, whereby, recommendation to confirm the service of the petitioner was made. The petitioner has also passed requisite Hindi noting and drafting examination, which is evident from the letter dated 22.12.1983 written by the Joint Commissioner, Raj Bhasha Department. The petitioner has also passed the requisite Accounts examination, which is evident from the letter dated 11.05.1994 issued by the Revenue Department. The petitioner has completed approximately 33 years of regular service, but no order of confirmation was passed till the age of superannuation of the petitioner. The petitioner retired on 31.03.2013 after attaining the age of 60 years. The petitioner earlier moved before this Court in W.P.(S) No. 6480 of 2012, which was disposed of vide order dated 11.12.2012 with a direction to respondent no.2 to take appropriate decision on the representation of the petitioner in accordance with law, preferably within 60 days and thereafter make payment of the monetary benefits, if any, found payable the petitioner. After such order, the case of the petitioner was considered by the respondents and vide order dated 20.02.2013, the claim of the petitioner was rejected. The petitioner challenged the order dated 20.02.2013 in W.P. (S) No. 1437 of 2013, which was allowed vide order dated 13.11.2013 and the order dated 20.02.2013 was quashed and direction was issued to pass a fresh order regarding confirmation of the petitioner's service and also regarding the claim regarding 1st and 2nd ACP maintaining equality with the case of similarly situated employee, as indicated in that order within six weeks from the date of receipt/production of a copy of that order. Pursuant thereto, the department has again considered the case of the petitioner and vide order dated

02.12.2014, contained in Annexure-10 of the writ petition, the claim of the petitioner was again rejected. Again, the petitioner has challenged the order dated 02.12.2014 in W.P. (S) No. 295 of 2015, which was disposed of vide order dated 26.10.2015 directing the respondents to consider the case of the petitioner through the procedure evolved and taking into account the judgment passed by this Court dated 09.09.2015 in the case of Manoj Kumar Sinha v. State of Jharkhand & others , in batch of writ petitions led by W.P.(S) No.259 of 2013. It was also observed in that order that the operation of the impugned order would not come into the way of the respondents in subjecting the case of the petitioner also for such exercise through the duly constituted committee and that writ petition was disposed of in terms of the order dated 09.09.2015 passed in the case of Manoj Kumar Sinha (supra). Pursuant thereto, the case of the petitioner was again considered and the claim of the petitioner was again rejected vide order dated 26.04.2017, contained in Annexure-9 of this writ petition. Aggrieved with this order, the petitioner has again approached this Court by way of filing the present writ petition.

5. Mr. Rajendra Krishna, learned counsel for the petitioner assailed the impugned order dated 26.04.2017 on the ground that the case of the petitioner has not been considered in right direction. He submits that the petitioner has rendered approximately 33 years of service and he retired on 31.03.2013. He further submits that the petitioner is getting pension and he has received other pensionary benefits, but since the formal order of confirmation has not been passed that is why the case of the petitioner has not been considered for grant of 1st and 2nd ACP. He also submits that while passing the impugned order dated 26.04.2017, the regularization notification dated 13.02.2015 of the Government of Jharkhand has not been dealt with in right direction. He further submits that the case of the petitioner is fit to be allowed on the ground of discrimination. He refers to Annexure-12 of the writ petition and submits that the case of similarly situated employee has been considered by a coordinate Bench of this Court in the case of Yogendra Prasad v. The State of Jharkhand & others in W.P.(S) No. 5259 of 2007, whereby, direction was issued to consider the case of that petitioner. He further submits that pursuant to the said order passed by this Court, the case of Yogendra Prasad (supra) was considered by the respondents and

benefits of ACP was granted to him and his service was also confirmed vide letter dated 29.09.2010. He also submits that as said Yogendra Prasad

(supra) has been provided the benefits by the respondents, there was no occasion to discriminate the petitioner. He further submits that when the

earlier impugned order dated 22.10.2013 was quashed by this Court, it was held in clear terms that when the service of Yogendra Prasad (supra) was

confirmed, the benefits of the confirmation was required to be provided to the petitioner. He further submits that when the earlier impugned order was

quashed and the matter was again asked to be considered, the respondent-authorities are required to grant the same benefits to the petitioner.

However, the petitioner has unnecessarily be compelled to move before this Court thrice earlier. This is the fourth round of litigation. He further

submits that the case of the petitioner is fully covered in view of the judgment rendered by the Hon'ble Supreme Court in the case of State of

Karnataka v. M.L. Kesari , reported in (2010) 9 SCC 247.

6. Learned counsel for the petitioner further relied upon the judgment rendered by the Hon'ble Supreme Court in the case of Nihal Singh v. State of

Punjab, reported in (2013) 14 SCC 65 and submits that the Hon'ble Supreme Court has taken into consideration the long period of service rendered by

the employee and even issued direction to regularise the service of employee, who was not working on a sanctioned post.

7. Paragraphs 35 and 36 of the said judgment are quoted herein below:

35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor with reference to which the executive government

is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case

demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or

stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the

State.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a

decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State,

the allocation of the finances is no doubt exclusively within the domain of the legislature. However in the instant case creation of new posts would not

create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have

agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits on a par with the police officers of similar

rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden.

Apparently no such demand has ever been made by the State. The result is--the various banks which avail the services of these appellants enjoy the

supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks.

8. Learned counsel for the petitioner further relied upon the judgment rendered by the Hon'ble Supreme Court in the case of Amarkant Rai v. State of

Bihar, reported in (2015) 8 SCC 265.

Paragraphs 13 and 14 of the said judgment are quoted herein below:

13. In our view, the exception carved out in para 53 of Umadevi (3) is applicable to the facts of the present case. There is no material placed on

record by the respondents that the appellant has been lacking any qualification or bore any blemish record during his employment for over two

decades. It is pertinent to note that services of similarly situated persons on daily wages for regularisation viz. one Yatindra Kumar Mishra who was

appointed on daily wages on the post of clerk was regularised w.e.f. 1987. The appellant although initially working against unsanctioned post, the

appellant was working continuously since 3-1-2002 against sanctioned post. Since there is no material placed on record regarding the details whether

any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary

benefits to be paid from 1-1-2010.

14. Considering the facts and circumstances of the case that the appellant has served the University for more than 29 years on the post of night guard

and that he has served the College on daily wages, in the interest of justice, the authorities are directed to regularise the services of the appellant

retrospectively w.e.f. 3-1-2002 (the date on which he rejoined the post as per the direction of the Registrar).

9. Learned counsel for the petitioner further submits that one identical matter was considered by the Division Bench of this Court in the case of The State of Jharkhand & Ors. v. Sudhir Kumar & anr. , in L.P.A. No. 439 of 2018, which was disposed of vide order dated 14.01.2020 in terms of the

concession provided by the learned Advocate General on instruction to consider the confirmation of service of those appellants. He also submits that

this is the attitude of the State, which cannot be allowed to be continued as in one case, they are liberal and in another case, they are considering the

case differently. He further submits that in light of these submissions, the prayer made in this writ petition may kindly be allowed.

10. Per contra, Mr. Shivam Sahay, learned counsel for the respondent- State submits that pursuant to earlier order of this Court, a Committee was

constituted and the Committee has considered the case of the petitioner and after due deliberation, the case of the petitioner has been rejected. He

further submits that the criteria for regularisation as per notification dated 13.02.2015 has not been fulfilled by the petitioner and that is why the

Committee has rightly rejected the claim of the petitioner.

11. Having heard learned counsel for the parties, the Court has gone through the materials on the record. Annexure-1 dated 04.07.1980 is the order of

appointment of the petitioner, wherein, several service conditions have been stipulated and as per Clause 2 of such conditions, the petitioner was

required to pass typing test till 31.12.1980 and, thereafter only, the service of the petitioner will be confirmed. It is an admitted position that the

petitioner has passed the typing test, as has been discussed supra. The petitioner has also passed the Hindi noting and drafting and Accounts

examinations, which are required for such confirmation. By letter dated 16.10.1981, the competent authority has recommended for regularisation of

service of the petitioner after passing typing test. The petitioner has been transferred from Darbhanga to Jamshedpur Division, which has been stated

in paragraph 5 of the writ petition. Had it been the case that the petitioner was not appointed on vacant and sanctioned post, there was no question of

transfer of the petitioner from Darbhanga to Jamshedpur. The criteria indicated for regularisation vide notification dated 13.02.2015 has not been

considered by the said Committee in right direction, in view of the fact that it clearly stipulates that the persons, who have worked for 10 years on

irregular appointment, their services can be considered for regularisation. The requirement of appointment was made by the competent authority,

which is being fulfilled in the case of the petitioner, in view of the fact that the Commissioner of Commercial Taxes has delegated his power to the

Joint Commissioner of Commercial Taxes to appoint the petitioner. Thus, the criteria is also fulfilled in the case of the petitioner. The educational

qualification and experience is also in favour of the petitioner. Such rule also said that there is no need of sanctioned post and on erroneous ground, the

Committee has said that the petitioner is not fulfilling the condition, as prescribed in the notification dated 13.02.2015. The similarly situated person,

namely, Yogendra Prasad (supra) has been given the benefit of confirmation and benefits of 1st and 2nd ACP have also been granted to him and the

case of petitioner is also on the identical footing. This aspect of the matter has also been considered by this Court in W.P.(S) No. 1437 of 2013 (supra)

and in spite of that the authorities have passed one or another order, which suggest that it is being passed with preoccupied mind. The Hon'ble

Supreme Court in the case of State of Karnataka v. M.L. Kesari , reported in (2010) 9 SCC 247 has considered the general principle for regularisation

in terms of the judgment passed in Uma Devi's case. Paragraph 7 of the said judgment is quoted herein below:

7. It is evident from the above that there is an exception to the general principles against ""regularisation"" enunciated in Umadevi (3), if the following

conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of

any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service

voluntarily and continuously for more than ten years.

(ii) The appointment of such employee 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. But

where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without

undergoing the process of open competitive selection, such appointments are

considered to be irregular.

12. The State being the model employer cannot be allowed to discriminate one employee with another one, which is apparent in the case in hand, in

view of the confirmation order and benefit provided to similarly situated another person, namely, Yogendra Prasad (supra) and further in the case of

Sudhir Kumar (supra) in L.P.A. No.439 of 2018, where concession was given by the learned Advocate General. A person, who has rendered

continuous unblemished service for approximately 33 years, was allowed to retire and if any order of confirmation was not passed during that period, it

is not the fault of the petitioner. The petitioner has already fulfilled the requirement of confirmation. The appointment of the petitioner, in light of his

continuous service, cannot be said to be illegal. It may be irregular. The case of the petitioner is fully covered in view of the judgment delivered by the

Hon'ble Supreme Court in the case of M.L. Keshri (supra).

In the case of M. K. Agarwal v. Gurgaon Gramin Bank, reported in AIR 1988 SC 286, the Hon'ble Supreme Court has considered the confirmation of

probationer and even held that if the service of probationer should either be confirmed or discharged render the inference inescapable that if the

probationer was not discharged at or before the expiry of the maximum period of probation, then there would be an implied confirmation as there was

no statutory indication as to what should follow in the absence of express confirmation at the end of even the maximum permissible period of

probation. In the case in hand, the petitioner has rendered approximately 33 years of service and in earlier rounds of litigation, the earlier impugned

order was quashed on cogent reasons and in spite of that the present impugned order dated 26.04.2017 has been passed, which is against the mandate

of law, as discussed herein above.

13. In view of the earlier directions issued by this Court for consideration of the case of the petitioner, the case of the petitioner has been considered.

Thus, this Court is not inclined to again pass order for consideration of the case of the petitioner. Accordingly, the impugned order dated 26.04.2017,

contained in Annexure-9 of the writ petition is quashed. The respondent- State is directed to issue confirmation order with regard to the petitioner

within a period of eight weeks from the date of receipt/production of a copy of this order and after issuing confirmation order, consequential order for



grant the benefits of 1st and 2nd ACP shall be issued to the petitioner by the respondents within further period of eight weeks thereafter.

14. With the above observations and directions, this writ petition stands allowed and disposed of.