

(2021) 02 JH CK 0191
In the Jharkhand High Court
Case No : Writ Petition(S) No. 6315 Of 2016

Sushila Kumari

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 24-02-2021

Acts Referred:

Jharkhand Service Code, 2001 — Rule 220, 227

Citation : (2021) 02 JH CK 0191

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Pradeep Modi, Shruti Shrestha

Final Decision : Allowed

Judgement

1. Heard Mr. Anil Kumar Sinha, the learned Senior counsel assisted by Mr. Pradeep Modi, the learned vice-counsel appearing on behalf of the

petitioner and Ms. Shruti Shrestha, the learned counsel appearing on behalf of 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.

3. The petitioner has preferred this writ petition for quashing the order dated 13.01.2016 whereby after remand by the High Court the claim of the

petitioner has been rejected. Further prayer is made for direction to reinstate the petitioner in the service. The petitioner has also made the prayer to

consider the case of the petitioner in the light of the policy of the Government of Jharkhand dated 13.02.2015 which was framed pursuant to the

judgment of Constitution Bench in the case of 'State of Karnataka v. Uma Devi(3)'. The prayer for consequential benefits is also made in the writ petition.

4. The petitioner was appointed as Correspondence Clerk on the sanctioned and vacant post on specific pay scale i.e. 5th revised pay scale of

Rs.1200-1800/- by the competent authority i.e. Superintending Engineer, Road Construction Department, Road Circle, Ranchi vide office order dated

29.05.1995. The petitioner joined on the said post on 01.06.1995. The petitioner was transferred on the vacant post of Correspondence Clerk from

Road Construction Department, Road Division, Daltonganj (North) to the Road Construction Department, Road Division, Chatra by office order dated

12.08.1996 issued by the then Chief Engineer (Mechanical) of the said Department. Pursuant to the transfer order, the petitioner was relieved to join

her new place of posting at Chatra by the Superintending Engineer, Road Construction Department vide letter dated 17.08.1996. The petitioner passed

Hindi Noting and Drafting examination in the year 1998 itself. The petitioner was granted maternity leave from 16.09.2000 to 15.11.2000 and also

earned leave from 16.12.2000 to 14.01.2001 on full salary and maternity leave on 16.08.2007 to 28.12.2017 and also earned leave from 29.12.2007 to

01.01.2008. The service book of the petitioner was opened. The service book of the petitioner was also verified. The petitioner was granted first time-

bound promotion after passing of the accounts examination, recommendation of ACP and regularization of the service of the petitioner was made by

letter dated 31.07.2010. The petitioner has been granted 5th revised pay scale of Rs.4000-6000/- w.e.f. 01.01.1996 pursuant to the decision of the

Finance Department dated 08.02.1999. The similarly situated persons whose names disclosed in paragraph no.15 of the writ petition have been

allowed to work. After continuous service of 18 years, on a complaint of private person, the service of the petitioner was terminated on 11.06.2013,

that order was challenged before this Court in W.P.(S) No.4061/2013 by order dated 18.06.2015 after quashing of the said order, was disposed of

directing the respondent State to consider the case of the petitioner in the light of the judgment rendered in W.P.(S) No.556/2010 which was affirmed

in L.P.A No.519/2012. Thereafter, the case of the petitioner has been considered and the case of the petitioner was again rejected by office order

dated 13.01.2016. Aggrieved with this, the petitioner has approached this Court again.

5. Mr. Anil Kumar Sinha, the learned Senior counsel appearing on behalf of the petitioner submits that on the flimsy ground, the case of the petitioner

has not been considered in the right direction in view of the order passed by this Court in W.P.(S) No.4061/2013. He submits that when the direction

was there to consider the case of the petitioner in the light of W.P.(S) No.556/2010 which was affirmed in L.P.A No.519/2012, it was incumbent upon

the authority concerned to consider the case of the petitioner in that direction only. He submits that by the impugned order dated 13.01.2016, the case

of the petitioner has been rejected. He submits that only with a view to dismiss the case of the petitioner on irrelevant facts, the case of Harinandan

Singh has been tried to be distinguished by the impugned order. He submits that the case of the petitioner has been distinguished with Harinandan

Singh. Harinandan Singh's service was regularized. He was provided the ACP whereas the petitioner has not been allowed the ACP and on that

ground only, the impugned order has been passed. He submits that this is a case of arbitrary action of the respondent State as the petitioner has

already worked for 18 years. The service book has been opened. The regular pay scale from time to time was also paid to the petitioner. The First

Time-bound promotion was also provided and inspite of that, the termination order has been passed. He submits that in one of the identical case in the

case of 'Kamala Prasad' challenged the said dismissal in L.P.A. No.256/2011 before the Division Bench which was allowed and the direction was

issued to regularize the service of the petitioners of that case, who were served for more than ten years without benefit/protection of an any interim

order by the Court as one-time measure. He submits that the LPA Court has set-aside the order of the writ Court. He further submits that the LPA

order was challenged by the State of Jharkhand before the Hon'ble Supreme Court and the Hon'ble Supreme Court in the light of 'Uma Devi(3)' case

and considering the paragraph no.53 of that case, upheld the order of the Division Bench. He submits that the judgment of the Hon'ble Supreme Court

in the case of ""State of Jharkhand v. Kamal Prasad"" (2014) 7 SCC 223 at paragraph no.36, wherein certain portion of law has been famed by the

Hon'ble Supreme Court which are quoted hereinbelow:

36. With reference to the abovesaid rival legal contentions, urged on behalf of the parties the following points would arise for consideration in these civil appeals:

36.1. (i) Whether the impugned judgment¹ is correct in holding that the respondent employees are entitled for the benefit of Umadevi (3) case as they rendered more than 10 years of service in the State Government of Jharkhand without intervention of the court?

36.2. (ii) Whether the impugned judgment passed by the Division Bench of the High Court is vitiated on account of erroneous finding or suffers from error in law?

36.3. (iii) Whether the impugned judgment warrants interference by this Court in exercise of power under Article 136 of the Constitution of India on the grounds urged in these appeals? 36.4. (iv) What orders?

6. He submits that the case of the petitioner is fully covered in the light of the judgment rendered in the case of 'Kamala Prasad Singh' as well as 'Harinandan Singh' (supra).

7. Per contra, Ms. Shruti Shrestha, the learned counsel appearing on behalf of the respondent State submits that the petitioner was not appointed in accordance with the law. The petitioner's service was not regularized, wherein the case of Harinandan Singh, the service was regularized and that this

is the difference and that is why the case of the petitioner has been rejected by the respondent State. She further submits that in the LPA order of

Harinandan Singh, this regularization aspect of the matter has been considered by the Division Bench and in the case of the petitioner that is lacking.

She submits that in view of the Regularization Rules dated 13.02.2015, the petitioner's case is not fit to be considered. She further submits that the

petitioner was not appointed on the vacant post and the appointment of the petitioner was not by the competent authority, there was no advertisement

and there is no roster clearance, and on these grounds, the writ petition may be dismissed.

8. Having heard the learned counsels appearing on behalf of the parties, the Court has gone through the documents available on record. It is admitted

position that vide Annexure-1 dated 29.05.1995 the petitioner was appointed. By letter dated 12.08.1996, the petitioner was transferred on a vacant

post to join at Chatra. Pursuant thereto, the petitioner joined there. The

petitioner's service book has been opened which has been brought on record as Annexure-4. By letter dated 31.07.2010 contained in Annexure-5, the request for ACP and confirmation of service of the petitioner was made by none other than the Executive Engineer. On perusal of the order dated 11.07.2011 passed in W.P.(S) No.556/2010 in the case of Harinandan Singh, it transpires that the State in that case has also taken the ground of incompetency of the appointing authority and about not following of the procedure.

The writ Court in the case of Harinandan Singh allowed the prayer of the petitioner considering the other judgments of ""Gopal Singh v. State of Jharkhand and Others"" 2005 (4) JLJR 614 which was affirmed by the Apex Court and passed the said order. The 'Gopal Singh' (supra) case was also said to be identical in nature and on that ground the writ Court has allowed the case of Harinandan Singh. The Harinandan Singh case was again challenged in L.P.A No.519/2012 and the order of the writ Court was affirmed by the Division Bench. Harinandan Singh has worked for 20 years whereas the petitioner has worked for 18 years. Thus, there are no major distinguishable factor between the case of Harinandan Singh and the case of the petitioner. In earlier round of litigation, the writ Court quashed the impugned order and directed the respondent State to consider the case of the petitioner in the light of these two orders, however, the case of the petitioner has been rejected on the ground that the service of Harinandan Singh was regularized and he was granted ACP whereas the petitioner's service was not regularized and the petitioner was not provided the ACP, however, it has already been noted above that the petitioner was granted first Time-bound promotion. One of the letter dated 31.07.2010 also suggests that the request for confirmation of service of the petitioner was also made but the respondent State has not acted upon and allowed the petitioner to work for 18 years and no adverse order was passed till the termination order. Thus, it cannot be said that the appointment of the petitioner was illegal. It may be irregular and in the light of the judgments rendered by the Hon'ble Supreme Court in case of ""State of Karnataka v. Uma Devi(3)"" (2006) 4 SCC 1 and in the case of ""State of Karnataka v. M.L. Kesari"" (2010) 9 SCC 247, the petitioner's case comes within that purview. Paragraph no.53 of the judgment rendered in case of ""Uma Devi(3)"" (supra) is quoted hereinbelow :

53. One aspect needs to be clarified. There may be cases where irregular

appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

9. Paragraph no.7 of the judgment rendered in the case of ""M.L. Kesari"" (supra) is also quoted hereinbelow:

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.

10. Pursuant to direction in the case of "Narendra Kumar Tiwari v. State of Jharkhand" (2018) 8 SCC 238, the State of Jharkhand has formulated the regularization policy on 13.02.2015 which has been brought on record as Annexure-10. In the definition clause-2, it has been stated in clear terms that the irregular appointment means as has been said that it has been done by the competent authority but without the advertisement and the employee is having the educational qualification, open competition may not have taken place that is said to be regularized by the said regulation. For the regularization in the light of these rules, it has been stated in definition clause-3(ka)(v) in the said rules that there is no requirement of creating sanctioned post for regularization. Thus, the case of the petitioner in the light of these rules, is also fit to be considered for regularization. The argument of the learned counsel for the respondent State about not working of the petitioner on the sanctioned post is beyond the record. The service book of the petitioner has been brought on record wherein in the service book it has been disclosed that the petitioner was working on temporary but on the sanctioned post. Thus, the argument of the learned counsel appearing for the respondent State that the petitioner was not working on the sanctioned post, has got no legs to stand. So far the confirmation part and the regularization part of the service of the petitioner is concerned, one document dated 31.07.2010 clearly suggests that the Executive Engineer has requested for confirmation of the service of the petitioner. It was incumbent upon the respondent State to proceed further with the recommendation and to decide the case as to whether the case of the petitioner was fit to be regularized or not but no decision was taken and for that, the petitioner cannot be faulted with. The State, being a model employer, is required to treat its employees at par. In paragraph no.15 of the writ petition, the names of some persons have been disclosed who are identically placed and they have been allowed to work whereas the petitioner has been terminated. The case of the petitioner cannot be said to be illegal in view of the fact that the service book of the petitioner has been opened and regular pay scale from time to time was provided to the petitioner. The First Time-bound

promotion was also granted to the petitioner and these facts are not in dispute. It is well known that the service book of a casual employee is not being

opened. The petitioner has been terminated after rendering 18 years of service. The petitioner was allowed to sit in Hindi Noting and Drafting

examination. The petitioner was allowed the maternity leave with full salary with yearly increment. The full salary and yearly increment are being paid

in the light of Rule 220 and 227 of the Jharkhand Service Code to a regular employee. All these things happened in the case of the petitioner. The

Court comes to the conclusion that there is no distinguishable factor between the case of Gopal Singh and Harinandan Singh and the rules of the

Government of Jharkhand for regularization is also helping the petitioner.

11. As a cumulative effect of the above discussions, the impugned order will not sustain in the eye of law. Accordingly, the impugned order dated

13.01.2016 is quashed. The petitioner shall be entitled for consequential benefits.

12. With the above observation and direction, the writ petition stands allowed and disposed of.Â Â Â Â Â Â Â