
(2008) 08 JH CK 0007
In the Jharkhand High Court

Sushree Sweta Mukherjee

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-08-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 1 JCR 121

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been preferred to regularize the services of the petitioner, who is working since May, 1999 on daily wages as Office Assistant under the Deputy Commissioner, Koderma.

2. The contention raised by the petitioner is that she was appointed on 10th May, 1999 on daily wages as Office Assistant under the Deputy Commissioner, Koderma, and on 9th March, 2000 the Deputy Commissioner, Koderma, stopped taking work from her without any reason. Initially the petitioner filed a writ petition being W.P.(S) No. 3012 of 2001, which was disposed of on 16th July, 2001 whereby, this Hon'ble Court gave liberty to the petitioner to approach the Deputy Commissioner, Koderma, who "was to decide the claim of the petitioner by a reasoned order within three months from the date of receipt/production of a copy of the order. The petitioner approached the Deputy Commissioner along with the aforesaid order and an office order was issued on 6th March, 2002, whereby, the petitioner was allowed to join on daily wages as Assistant under the District Panchayati Raj. It was also indicated that the wages will be paid from the date of her joining. The petitioner further submits that she gave representations to the Deputy Commissioner to regularize her services on 10th August, 2002 and again on 24th September, 2002 but nothing has happened and it is in these background that the present writ petition has been filed to regularize the services of the petitioner on the ground that she has completed 240 days of work in. one

calendar year.

3. The contention raised by the respondents is that the petitioner was purely engaged on daily wages casual basis as an Assistant to assist the office in disposal of files. She cannot have any rightful claim to be regularized. It was further submitted that the respondents will be making an open advertisement to provide equal opportunity to all the deserving candidates, depending upon the exigency for filling up all the vacant posts of Clerk/Assistant. It has also been stated that the petitioner has not worked regularly for 240 days as claimed and her wages were paid in accordance with the actual member of days worked.

4. The petitioner has further submitted that during pendency of the writ petition, she was stopped from work with effect from 16th March, 2004. The petitioner, accordingly, filed an application for amendment (I.A. No. 2862 of 2004), wherein, it has been stated that she was stopped from work since 16th March, 2004 and has also contended that many juniors, including one Smt. Gitashree Banerjee, were regularized, superseding the rights and claim of the petitioner.

5. The aforesaid contention has been specifically denied in the reply, filed by respondent No. 3 to the Interlocutory Application, wherein, it has been stated that pursuant to an advertisement, all the 36 persons applied and upon being selected got fresh appointment in the year, 2004. The contention of the petitioner regarding Smt. Gitashree Banerjee having superceded the petitioner has also been denied and in reply it is submitted that though Smt. Gitashree Banerjee was also engaged on daily wages, but she applied for Class-IV post, in response to the Advertisement No. 4-5/01 and appeared at the Test Examination in the year, 2004 and upon selection was appointed along with 35 other persons. This will be evident from reading the appointment letter of Smt. Gitashree Banerjee dated 4th November, 2004 as well as the proceedings of the meeting dated 16th September, 2004, which have been annexed with the reply to the Interlocutory Application.

6. After considering the aforesaid submissions and the arguments it appears that the petitioner in any case was appointed on casual daily wage basis and her payment of wages was made as per the work done. Assuming but not admitting that the petitioner has worked for 240 days in one calendar year, but that by itself does not give her any right to be regularized in view of settled law as laid down by Hon''ble Supreme Court in a catena of decisions. The law in this regard is well settled that any appointment, which is illegal in nature and has not been made pursuant to an advertisement and selection, is against the constitutional mandate of Articles 14 and 16 of the Constitution of India and it does not confer any legal, accrued or vested right to be regularized even, if a person has continued for several years on daily wages.

7. The contention of the petitioner that juniors were appointed and she was discriminated is also incorrect and misconceived. All the 36 persons, including Smt. Gitashree Banerjee, were fresh appointees and were appointed pursuant to

the advertisement and selection to which they had applied whereas the petitioner did not even apply pursuant to the advertisement published.

8. In the aforesaid background, this writ petition, being devoid of any merit, is, accordingly, dismissed but without any order as to costs.