

(2014) 08 JH CK 0030
In the Jharkhand High Court
Case No : L.P.A. No. 640 of 2006

The State of Jharkhand

APPELLANT

Vs

Ram Pravesh Kumar(Mapak)

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Citation : (2014) 143 FLR 90 : (2014) 4 JLJR 74

Hon'ble Judges : R. Banumathi, C.J.; Amitav Kumar Gupta, J

Bench : Division Bench

Advocate : Ratnakar Bhengra, Advocate for the Appellant; D.K. Dubey and Saurav Arun Advocates, Advocate for the Respondent

Judgement

Amitav Kumar Gupta, J.—The instant Letters Patent Appeal is directed against the order dated 22.03.2004 passed in W.P.(S) NO. 1110/2002 whereby Memo no. 600 dated 05.06.1998 issued by the Director, Land Acquisition and Rehabilitation, Water Resources Department, Government of Bihar terminating the services of the petitioner/respondent was quashed.

2. The respondent/petitioner in the aforesaid writ averred that the respondent/petitioner was appointed as Janzeerbahak or Chainman on temporary basis in the pay scale of Rs. 350--425/- vide Memo no. 169 dated 11.12.1986 issued by the Rehabilitation Officer of Medium Irrigation Project, Ranchi; that vide letter no. 194 dated 12.01.1989 issued by the Director, Land Acquisition and Rehabilitation, Water Resources Department, Government of Bihar he was promoted to the post of Mapak; that the Director, Land Acquisition and Rehabilitation by letter dated 18.03.1993 directed the Special Land Acquisition Officer of the Department to submit the relevant information in the prescribed form so that the services of the persons who had been appointed on ad hoc basis could be regularized; that by letter no. 1618 dated 31.05.1994 a show cause was issued to the petitioner/respondent as to why his services be not terminated and the petitioner/respondent submitted his reply; that again after two years another show cause contained in letter no. 3854 dated 29.11.1996 was issued by the

Director, Land Acquisition and Rehabilitation to which petitioner replied; that again a show cause was served on the petitioner/respondent vide letter dated 19.06.1997; that thereafter vide Office Order no. 600 dated 05.06.1998 the order of termination of the petitioner/respondent from service was issued against which the aforesaid writ petition was filed.

3. Learned counsel for the State/appellant has submitted that 17 employees who were similarly situated had challenged their termination orders before the Patna High Court in CWJC NO. 3348/1997 and analogous cases and the Patna High Court by a common order dated 10.01.2002 had quashed the termination orders of the writ petitioners against which State of Bihar had preferred L.P.A. No. 678/2000 with analogous cases and the Division Bench of the Patna High Court was pleased to allow the appeal filed by the State Government and dismissed the appeals filed by the writ petitioners which is at Annexure-10 of the present appeal.

4. Learned counsel for the State/appellant has further submitted that the writ petitioners/respondents of the aforesaid L.P.A. NO. 678/2000 had preferred Civil Appeal nos. 5682-5684/2004 before the Hon"ble Supreme Court and the Hon"ble Supreme Court, in view of the decision rendered in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , had dismissed the appeal. It has been argued that the learned Single Judge failed to appreciate that the writ petitioner/respondent was appointed purely on temporary basis and in the letter of appointment it was mentioned that the services are likely to be terminated at any time; that the learned Single Judge failed to consider that the Rehabilitation Officer is not the competent authority to appoint the petitioner and the writ petitioner comes under Category "C"(as categorised by the learned Single Judge of Patna High Court in C.W.J.C. NO. 3348/1997) as his entry was opened by a person who had no authority to make an appointment and the extension order of the Director General can not be considered to be a legal and authorized appointment; that the petitioner was given sufficient opportunity of hearing and considering the fact that his initial appointment was not in accordance with law neither any procedure of law was followed, letter of termination was issued which is in accordance with law; that in view of the illegal appointment and in the light of the decision in the case of State of Karnataka vs. Uma Devi(3) (Supra) the Hon"ble Supreme Court had dismissed the Civil Appeal of other similarly situated employees. Thus, on above ground, it is submitted that the impugned judgment of the learned Single Judge is not sustainable in law or on facts and is fit to be set aside.

5. Per contra, learned counsel for the petitioner/respondent has submitted that though initially appointment was made by the Rehabilitation Officer but subsequently, the same was approved by the Director who is a competent authority and the Director had given tacit approval meaning thereby the appointment had been made/approved by a competent authority and accordingly, learned Single Judge, after taking into consideration the decision

rendered in the writ petition filed before the Patna High Court, as aforesaid, had quashed the termination letter. It is also submitted that the writ petitioner/respondent was working against a sanctioned post and the termination orders of the similarly situated employees, who were appointed by the Rehabilitation Officer, were quashed by the Patna High Court. That in the case of Gopal Singh Vs. State of Jharkhand the Division Bench of this Court had upheld the order of the learned Single Judge against which the State had preferred Civil Appeal No. 918/2008 before the Hon''ble Supreme Court and the said appeal was dismissed and the case of the writ petitioner/respondent stands on similar footing.

6. Learned counsel for the appellant/State has not controverted the fact that though the appeals of other employees were dismissed by the Apex Court in Civil Appeal Nos. 5682-5684 of 2004 but the appeal preferred by the appellant/State before the Supreme Court in Civil Appal no. 918/2008 of similarly situated employee in the case of State of Jharkhand Vs. Gopal Singh(Supra), the appeal of the State was dismissed with direction to the State Government to consider the matter of regularisation of the persons working against sanctioned post.

7. In the instant case it is not disputed by the appellant-State that the writ petitioner/respondent was working against a sanctioned post for substantial number of years and the facts of the respondent/petitioner's in this case is squarely covered by the decision of the Apex Court in Civil Appeal No. 918/2008 in the case of State of Jharkhand vs. Gopal Singh (Supra). Accordingly, we deem it proper to direct the State Government to consider the case of the respondent/petitioner in view of the direction of Hon''ble Supreme Court in the aforementioned case.

8. With the aforesaid direction and observations, the appeal is hereby dismissed.