
(2017) 03 JH CK 0122
In the Jharkhand High Court
Case No : 3361 of 2016

Tripurari Sharan T.Sharan

APPELLANT

Vs

M/S.Steel Authority Of India

RESPONDENT

Date of Decision : 08-03-2017

Acts Referred:

Constitution of India, Article 14, Article 16 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Dissolution of a Distr

Citation : (2017) 03 JH CK 0122

Hon'ble Judges : Pramath Patnaik

Bench : SINGLE BENCH

Advocate : Rajeev Ranjan, Abhay Kumar Mishra, Yogesh Modi

Judgement

1. In the accompanied writ application, the petitioners have sought for a direction upon the respondents to forthwith pass an appropriate order in the light of the order passed in the writ petition being W.P. (S) No. 4837 of 2003, dated 03.04.2012 (Annexure-27) and for a direction for quashing of the Memo No. 802, dated 24.05.2016 (Annexure-36), issued by the Director, Animal Husbandry Department pertaining to termination of the petitioners from services and further direction to the respondents by setting aside the impugned order, as contained in Memo No. 802 dated 24.05.2016, the petitioners may be reinstated with all consequential benefits.

2. Heard learned senior counsel for the petitioners and learned J.C. to A.A.G. appearing for the respondent-State.

3. That facts, as disclosed in the writ petition in a nutshell is that all the petitioners are appointed in the year 1988-89, as evident from Annexures enclosed to the writ petition. It has been submitted in the writ petition that the petitioners' appointment was made on vacant existing posts after due process of selection and they have been working from the date of their initial service till the

impugned orders, dated 24.05.2016 vide Annexure-36, issued by the respondents.

4. Learned senior counsel for the petitioners during course of hearing, has submitted that the action of the respondents in issuing the order of termination is highly arbitrary, illegal, since earlier the petitioner filed W.P. (S) No. 744 of 2016, praying for regularization in services. Since, during pendency of the said writ applications, the impugned termination order has been issued, the writ petition was dismissed with liberty to the petitioners to challenge the order of termination in a separate writ application. The respondents in an arbitrary and cavalier fashion, have terminated the services of the petitioners. Learned senior counsel for the petitioners submits that the impugned order of termination has been issued without resorting to the departmental proceeding, since the petitioners have completed more than 28 years of service and therefore, the impugned order of termination is assailable on the ground of breach of principles of natural justice and due to non-resorting to regular departmental proceeding. Moreover, the action of the respondents in issuing the impugned order of termination without full-fledged opportunity of hearing and without issuance of charge, cannot be justified on the touch-stone of Articles 14 and 16 of the Constitution of India. Learned senior counsel further submits that the State being the model employer could not have adopted two-fold policy, one set of employees have been regularized and for other set of employees, the State's position is that they are illegally appointed, therefore, the State cannot be allowed to blow hot and cold at the same time and on that score, the action of the State cannot, but, be held, to be unlawful. Learned senior counsel for the petitioners further submits that the case of the petitioner is squarely covered by the decision, rendered by this Court in W.P. (S) No. 4837 of 2003 decided on 03.04.2012 vide Annexure-27 to the writ petition. Learned senior counsel for the petitioners refers to the supplementary affidavit, dated-19.08.2016, wherein, it has been, inter alia, submitted that this writ application has been filed with a prayer to pass an appropriate order in the light of the order passed in W.P. (S) No. 4837 of 2003, dated 03.04.2012, wherein, this Court has been pleased to direct the respondents to consider the case of the appointment of the petitioners as similarly situated persons have been granted relief by the respondents-authorities pursuant to the order passed by the Hon"ble Apex Court in the year 2003 in Civil Appeal No. 5342 of 2003, 5376 of 2003 and analogous cases. Learned senior counsel for the petitioners has further submitted that in Civil Appeal No. 5342 of 2003 with 5343 of 2003 and analogous cases, has directed the State Government to consider at the earliest for recruiting Technical Assistant for the Semen Bank Project and to fill up the existing vacancy within a period of three months and further directed the State Government to constitute a Selection Committee for the existing rules within a period of three months from the date of order and the Hon"ble Apex Court has also directed the appellants whose services were terminated, may apply to the Secretary, Animal Husbandry Department within a period of one month for being re-appointed or for

regularization of their services. The committee shall consider their eligibility, suitability past record as well as the educational qualification of the appellant as per the rules, as on today. Further direction was given to the committee that they shall give relaxation of age and weightage over outsider as directed by the High Court. The order of the Hon''ble Apex Court has been annexed as Annexure-38 to the supplementary affidavit. Learned senior counsel further submits that pursuant to the order passed by the Hon''ble Apex Court, the State Government published the advertisement in the different newspaper to fulfill the existing vacancies. Learned senior counsel further submits that in pursuance to the advertisement examinations were held and thereafter 72 persons were appointed by the Respondent-authorities vide order dated-07.02.2005, contained in Memo No. 247, dated 07.02.2005, as evident from Annexure-40 to the writ petition. Since the petitioners were appointed between 1988 to 1990 and thereafter in pursuance to the order passed by the Hon''ble Patna High Court in C.W.J.C. No. 1955 of 1999, the petitioners remained in service and they also continued in the service and the respondents-authorities have considered the case and have granted promotions and other benefits to all these petitioners. Learned senior counsel further submits that after bifurcation of the State of Bihar, the petitioners were posted in the State of Jharkhand in the year 2014 Gradation list was published by the State of Jharkhand for the post of Technical Assistant and the name of the petitioners appeared in the list from serial nos. 1 to 8, as per Annexure-41 to the writ application. It has further been stated that the petitioners have worked for more than 27 years and they were appointed after due process of law and thus, the termination order is illegal as the State on the one hand are appointing the similarly situated persons in pursuance to the order passed by the Hon''ble Apex Court and now the services of the petitioners have been terminated by the respondents-authorities, which smacks of the illegal, arbitrary, and mala fide action on the part of the respondents in gross-violation of the principles of natural justice.

5. A counter affidavit has been filed by the respondent nos. 1 to 4, repelling the contentions made in the writ application. In the counter affidavit, it has been, inter alia, submitted that the petitioners were appointed on ad hoc basis on the post of the Technical Assistant in between 1988-89 by the order of the Regional Director and Regional Joint Director, Animal Husbandry Department (AHD). In course of verification of appointment in general, it was found that illegal appointments were made by incompetent authorities. Accordingly, the State Government had decided to terminate the services of the petitioners and other Technical Assistants who had been appointed by the Regional Authority after giving a show-cause notice to them. It was also decided to revert the services of the petitioners illegally promoted to the aforesaid post. After bifurcation of the erstwhile State of Bihar, new State of Jharkhan was created on and from 15.11.2000. It has further been submitted that several other persons who were appointed on ad hoc basis on the post of Technical Assistant, whose services were terminated by a common order vide order no. 5530, dated 23.10.1998, a

number of writ petitions being C.W.J.C. No. 3503 of 1998 (R), 3769 of 1998 (R), 3934 of 1998 (R), 3813 of 2000 (R) and 2228 of 2001 have been preferred before the Hon''ble Patna High Court (Ranchi Bench). However, subsequently after creation of State of Jharkhand, the said writ petitions were transferred to Jharkhand High Court, Ranchi which were taken up analogously and the same were dismissed vide order dated 26.07.2001, vide Annexure-A to the counter affidavit. It has further been stated that being aggrieved by the aforesaid order, a Letters Patent Appeal bearing L.P.A. No. 505 of 2001 was preferred by the petitioners, which was also dismissed vide order dated 17.08.2001. Thereafter, the petitioners preferred S.L.P. bearing S.L.P. (Civil) No. 16958, 16959 of 2001 and S.L.P. (Civil) Nos. 21983, 22388, 21108 of 2001 and 13227 of 2002. The aforesaid S.L.Ps were converted into Civil Appeal Nos. 5342, 5343 of 2003 and Civil Appeal Nos. 5346, 5344, 5345, 5376 of 2003 and 5376 of 2003 which were heard and disposed of analogously by the Hon''ble Apex Court with directions as per Annexure-C to the counter affidavit. It has further been stated that thereafter, in Civil Appeal No. 2018 of 2006 along with Civil Appeal No. 2034 of 2006, the Hon''ble Supreme Court, in the case of similarly situated persons, held that right to be selected under the order dated 23.07.2003 passed earlier by the Court can not continue, indefinitely and therefore, the Hon''ble Apex Court passed the order with directions. In pursuance to the order passed by the Hon''ble Supreme Court in Civil Appeal No. 5342 of 2003 and other analogous cases, an advertisement being advertisement No. 1/2004-2005 had been published for filling up vacancies of Technical Assistants as evident from Annexure-E to the counter affidavit. In the aforementioned vacancy, opportunity was given to the terminated ad hoc Technical Assistants who had applied and appeared in the examination. Finally 89 terminated Technical Assistants were appointed. Subsequently, pursuant to the order passed by the Hon''ble Apex Court in Civil Appeal No. 2018 of 2006 and other analogous cases, a fresh advertisement was issued bearing no. 1/2006 for appointment of ad hoc employees, who were appointed in Frozen Semen Bank Project 1988 to 1992. This was a special vacancy wherein, no outsiders were permitted to apply as per Annexure-F to the counter affidavit. The petitioners who were continuing in service pursuant to the interim order dated 13.03.2000, did not choose to apply in any vacancy published by the department under the direction of the Hon''ble Apex Court for appointment on the post of the Technical Assistant in Frozen Semen Bank Project for the reasons best known to them. Therefore, the petitioners can not be appointed since the petitioners themselves chose not to appear in the selection process pursuant to the aforesaid advertisement. Since all the petitioners were posted in the districts then falling under the Ranchi Bench of the Hon''ble Patna High Court, but surprisingly they have preferred the instant writ petition in the Patna High Court. It has further been submitted that the petitioners earlier filed a writ petition being C.W.J.C. No. 1955 of 1999 and the said writ petition was withdrawn. After disposal of the said writ petition, earlier order dated 23.10.1998 became operational as the interim order dated 13.03.2000 passed in C.W.J.C. No. 1955 of 1999 stands vacated, therefore, a

show cause notice was issued against the petitioners vide letter contained in memo No. 1459, dated 02.12.2015. The petitioners subsequently have challenged the show cause notice vide W.P. (S) No. 744 of 2016, which was dismissed vide order dated 14.06.2016 as per Annexure-H to the counter affidavit. Thereafter, the respondents, finding the show cause filed by the petitioners to be unsatisfactory, terminated the services of the petitioners vide order dated 24.05.2016 vide Annexure-I to the counter affidavit.

6. Learned counsel for the respondents has more or less reiterated the submissions made in the counter affidavit and has assiduously defended the action of the respondents in terminating the services of the petitioner.

7. After bestowing my anxious consideration to the arguments advanced by the respective counsels at the bar and on perusal of the records, I am of the considered view that the petitioners have been able to make out a case for interference on the following grounds :- (i) That the case of the petitioners is squarely covered by the decision rendered in W.P. (S) No. 4837 of 2003 vide Annexure-27 of the writ petition. On perusal of the order of the Hon''ble Apex Court Civil Appeal Nos. 5342, 5343, 5344, 5345, 5346 and 5376 of 2003 it appears that the Hon''ble Supreme Court while passing the said order made it clear that ad hoc appointees have no right to claim regularization in the service but because of erroneous procedure adopted by the concerned authority in appointing such persons and thereafter continuing them for years together, on occasions, relief is required to be moulded in favour of such employees. In the present case, undisputedly, the petitioners were appointed as back as in the year 1988-89 have worked on the posts for more than 27-28 years together. The Hon''ble Apex Court issued certain direction as contained in above order dated 23rd July, 2003. Thus in view of the above, the writ petition and the letters patent appeals referred by the learned counsel for the State were in respect of the employees, whose appointments were made in the year 1991 and onwards. The stand taken by the respondent State in respect of the present petitioners can not be accepted by this Court and the orders of termination dated 24.05.2016 vide Annexure-36 is liable to be quashed and set aside. Accordingly, the orders of termination dated 24.05.2016 (Annexure-36) is quashed and set aside.

(ii) From perusal of order dated 23.7.2003 (Annexure-C series to the counter affidavit), passed by the Hon''ble Apex Court, it became clear that the issue before the Hon''ble Apex Court was also in respect of the employees, whose recruitments were made in the year 1988-89 and, therefore the direction given by the Hon''ble Apex Court is required to be followed by the respondent-State in respect of such employees. Under the circumstances, the petitioners are required to be directed to submit detailed representations addressed to the Secretary, Animal Husbandry Department, Govt. of Jharkhand for reinstatement in their services and upon receipt of such representations, the Secretary of the Animal Husbandry Department, Govt. of Jharkhand shall consider and decide the same within a period of two months thereafter. It is clarified that while considering the

representations, submitted by the petitioners, the Secretary, Animal Husbandry Department shall also consider the factum of initial appointments of the petitioners, which were done by the Regional Directors, in pursuance to the power given by the State Government as also the date of their initial appointments as well as the orders passed by the Hon"ble Patna High Court in CWJC Nos. 5480/1998 and 5533/1998, LPA Nos. 243, 466, 480, 539, 467, 572 and 588 of 2001 and the orders passed by the Hon"ble Apex Court in Civil Appeal Nos. 5342, 5343, 5344, 5345, 5346 and 5376 of 2003. Since the petitioners were not a party in the proceedings, which was decided by the Hon"ble Apex Court, the Secretary, Animal Husbandry Department, Govt. of Jharkhand shall also consider the factum of initial appointment, which was done by the Regional Deputy Director, State Government in pursuance to the direction given by this Court in W.P. (S) No. 4837 of 2003 dated 03.04.2012. It is further clarified that before taking any final decision in the matter, the respondent authority shall give an opportunity of being heard to the petitioners. It is also clarified that in the event of allowing the representations, submitted by the petitioners, the respondent-authorities shall reinstate the petitioners in services and shall pay all consequential benefits, permissible under the law, within eight weeks, thereafter. The respondent-authorities are further directed to communicate the order passed on the representations that may be made by the petitioners.

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