
(2012) 04 JH CK 0067
In the Jharkhand High Court
Case No : L.P.A. No. 255 of 2008

Uma Shankar Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-04-2012

Acts Referred:

Citation : (2012) 3 JCR 670 : (2012) 3 JLJR 574

Hon'ble Judges : Prakash Tatia, J; Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Shresth Gautam, for the Appellant;

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The appellant is aggrieved against the order dated 1st May, 2008, by which, the appellant's writ petition, C.W.J.C No. 5199 of 1996 (P) was dismissed.

2. The brief facts of the case are that the respondents published an advertisement, in response of which, number of persons applied for the post of clerks and peons. The appellant also applied for the post of clerk and he was duly selected for appointment on 04.12.1987. The petitioner's case was considered for regularization in service by the Divisional Establishment Committee on 6.12.1989 and the committee regularized the services of the petitioner. After six years of his continuous service, the petitioner along with others were removed from service by memo no. 1398 dated 07.12.1993 issued by the Director, Secondary Education. The petitioner to challenge the said order of removal from service preferred a writ petition, being C.W.J.C. No. 1539 of 1994, which was disposed of with a direction to the respondents to consider the petitioners' representation. Accordingly, the petitioner submitted his representation, which was rejected and, therefore, the petitioner preferred present writ petition being C.W.J.C. No. 5199 of 1996 (P) to challenge the order dated 21.09.1995.

3. Petitioner's contention before the learned Single Judge was that several other persons also submitted representations after approaching this Court in the case

of Kavindra Kumar Singh, order of reinstatement was passed. It is also submitted that not only this but one another person, Sadanand Thakur, whose representation was rejected, approached this Court by filing writ petition, being C.W.J.C No. 1752 of 2001, which was allowed by learned Single Judge vide judgment dated 10th March, 2003. Against the said judgment dated 10th March, 2003, L.P.A. No. 397 of 2003 was preferred which was dismissed by the Division Bench of this Court vide order dated 14th July, 2005. According to learned counsel for the appellant against that order of Division Bench, the State preferred Special Leave to Appeal, which was dismissed by the Hon''ble Supreme Court. It is further submitted that in view of the above facts, learned Single Judge committed error by dismissing the writ petition of the writ petitioner, because of the reason that similarly situated persons have already been given appointment by setting aside the order of removal from service and the persons whose termination order was not set aside then this Court has allowed the prayer of such writ petitioner in the case of Sadanand Thakur and it has attained finality.

4. It appears from the impugned order dated 1st May, 2008 that judgment of Sadanand Thakur was not brought to the knowledge of the learned Single Judge.

Be that as it may be, in the Sadanand Thakur''s case which has been challenged by the State but the State failed in that and question of validity of appointment of such candidates has already subject matter in earlier round of litigation and after considering said issue, order of termination of similarly situated persons were set aside. The petitioner also approached this Court in time but time was consumed in litigation and the petitioner was not fortunate as were others. The petitioner was duly selected in a process started by issuing an advertisement and therefore, selected in a fair competition. He was given appointment and thereafter, his case was again considered by a competent committee i.e., Divisional Establishment Committee on 6.12.1989 and regularized, which is two years after the appointment of writ petitioner. Thereafter, admittedly his service has been terminated without enquiry and giving any opportunity of hearing to the writ petitioner. Therefore all illegalities have been committed in passing the order dated 07.12.1993.

In view of the above fact that issue has already been decided by this Court, which has attained finality after dismissal of the S.L.P filed by the State, there is no reason not to follow the said decision by this Court and hence, order dated 07.12.1993 is quashed and set aside The petitioner shall be taken back in service treating that order dated 07.12.1993 has never been passed. However, the petitioner will not be entitled to back wages, in view of passing of long period from the date of termination dated 07.12.1993 and there is no material on record, on the basis of which, it can be held that petitioner was not in gainful employment during this entire period. Hence, the petitioner shall not be entitled to any monetary benefit up-to the time of his joining duty again. However, he shall be entitled to all other consequential benefit as continuation of service.

With the aforesaid observation and direction, this L.P.A is allowed and the

impugned order dated 1st May, 2008 is set aside.