
(2008) 07 JH CK 0023
In the Jharkhand High Court

Umesh Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-07-2008

Acts Referred:

Citation : (2008) 4 JCR 692

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Petitioner in this writ application has prayed for issuance of an appropriate writ in the nature of mandamus commanding upon the respondents not to act in pursuance of the termination order issued under the seal and signature of the respondent No. 3 vide letter No. 327 dated 23.7.1992, whereby the petitioner's services have been terminated from the post of Clerk in a sanctioned post at J.K.R.R. High School, Chirkunda along with 23 others. Further prayer has been made to quash the order dated 29.4.2003 issued by the respondent No. 3, whereby the petitioner's representation filed in compliance with the order passed in CWJC No. 3540 of 1993 (R), was rejected purportedly on illegal grounds. Further prayer has been made to direct the respondents to reinstate the petitioner at his original post as has been done to other 19 similarly situated persons whose services were also terminated in the same manner as that of the petitioner and who were subsequently reinstated in their respective services.

2. Counsel for the petitioner submits that the petitioner was appointed in the year 1988 against the permanent sanctioned post of Clerk and since the date of his joining service, he had remained in continuous service under the respondent up to 23.7.1992. Furthermore, since the month of March 1992, payment of salary to the petitioner and the 12 similarly situated other employees was stopped and consequently, the petitioner and 12 others had to prefer writ application before this court vide CWJC No. 1670 of 1992 (R). Subsequently, vide

order dated 23.7.1992, services of the petitioner and 32 others were terminated on the ground that sanction for their appointment was not obtained from the competent authority namely, the D.E.O. of the concerned District. The order was challenged by the petitioner and other similarly situated employees before this court. While disposing of the writ application, this court vide order dated 25.1.1995 passed in CWJC No. 3740 of 1993 (R) held that no sanction order was required to be obtained from the D.E.O. and the ground on which the services of the employees were terminated, was not tenable. However, the petitioners in the aforesaid writ application were directed to file fresh representation before the respondent No. 3 and direction was given to the respondent no 3 to consider the same and pass appropriate orders. Accordingly, the employees whose services were terminated, filed their respective representations. However, out of total number of employees whose services were earlier terminated, respondents had reinstated altogether 36 employees including class-III and IV employees either on the ground that direction for their reinstatement was passed by the court or on the ground that it was by way of superior order/directions. Learned Counsel explains further that representation of the petitioner seeking his reinstatement was rejected on frivolous and misleading grounds which are not applicable to the case of the petitioner.

3. Counsel for the respondent-State though objected the maintainability of the present writ application as barred by res-judicata, but concedes that according to the judgment passed by this court in CWJC No. 520 of 1996 (R) which was preferred by certain set of employees whose services were terminated under similar circumstance and on similar grounds, it was directed by the court that the respondents should consider the case of such persons whose services were terminated on the ground that their appointment were subsequently found to be illegal and invalid and they should be given priority in the appointment on sanctioned vacant posts in the Department.

4. It appears from the facts pleaded by the petitioner that his service was terminated on the ground that sanction for appointment was not taken from the competent authority. Several other employees whose services were terminated on the same grounds, along with the petitioner, had filed writ application before this court vide CWJC No. 3740 of 1993 (R) and while disposing of the writ application, a direction was given to the writ petitioners to file their respective representations for their reinstatement in services with corresponding direction to the respondent to consider their representation. It also appears that pursuant to the direction, petitioners therein filed their respective representations and quite a few of them were reinstated in services. The petitioner too had submitted his representation, but the same was rejected by the impugned order of the respondent No. 3. From perusal of the impugned order passed by the respondent No. 3, it does not appear that reasons for rejecting his representation have been adequately assigned. On the contrary, reason which appears to be suggested is with reference to the portion of the order of this court in the aforesaid writ application wherein it has been observed that appointment of some of the

appointees was illegal and they were illegally allowed to continue in service and direction was given to the respondents to hold inquiry into the appointment of such employees. The impugned order does not suggest that the case of the petitioner also falls in the same category as of those persons whose appointments were found to be illegal on account of the reasons other than the reason of mere non-obtaining of sanction for appointment. If the only ground for termination of the petitioner's service was non-obtaining of sanction for appointment from the purported competent authority, then such ground being held not tenable by the order of this court passed in the former writ application, then no other legal and valid ground subsists for terminating the service or for refusal of the petitioner's representation containing his prayer for reinstatement.

In the light of the above facts and circumstances, this writ application is allowed. The order dated 23.7.1992 whereby the petitioner's services were terminated and the order dated 29.4.1997 whereby the petitioner's representation for his reinstatement was rejected, is hereby set aside. Respondents are directed to reinstate the petitioner at, his original post in regular vacancy against the sanctioned post within three months from the date of this order.