
(2017) 01 JH CK 0248
In the Jharkhand High Court
Case No : 3429 of 2015

Vidyadhar Kumbakar

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 13-01-2017

Acts Referred:

[Jharkhand Service Code, 2001](#), Rule 76

Citation : (2017) 01 JH CK 0248

Hon'ble Judges : Dr. S.N. Pathak

Bench : SINGLE BENCH

Advocate : Abhishek Sinha, Dhananjay Kr. Dubey

Judgement

I.A. No.69 of 2017

1. Mr.Abhishek Kumar Sinha appearing on behalf of learned counsel for the petitioner fairly submits that he has brought on record the rejection order dated 6.12.2016 incorporating in the order of the prayer portion of the writ petition by way of interlocutory application.

2. Prayer is allowed as per the averments made in paragraph nos. 1 and 4 of the Interlocutory application.

3. Mr. Dhananjay Kr. Dubey, learned Senior Standing counsel for the respondents has no objection to it.

4. I.A No. 69 of 2017 stands disposed of. W.P.(S) No. 3429 of 2015

Heard the parties.

5. The present writ petition has been preferred praying, inter-alia, for quashing the order dated 06.06.2015 by which the claim of the petitioner for appointment on the post of Clerk on compassionate ground has been rejected.

6. The short facts giving rise to filing the writ petition is that, the father of the present petitioner was appointed on the post of Peon in Rajkiyakrit

Gandhi High School, Palamau and he was in service from 1993 to 2004. From 6.12.2004 the father of the petitioner was absent from duty without intimating the respondents i.e about more than three years seven months. It is stated that the father of the petitioner had made representation on 02.08.2008 for rejoining the service. Again on 01.02.2010 the father of the petitioner made representation to the respondents-District Education Officer, Palamau for rejoining his service. The respondents authorities forwarded the representation to the Director, Secondary Education, Government of Jharkhand, Ranchi on 13.07.2013 regarding rejoining of the father of the petitioner in service. It is stated that on 07.08.2013 father of the petitioner died and the death certificate was issued by the competent authority. It also stated that service of the father of the petitioner was neither terminated nor he was suspended prior to 15.08.2013. After the death of his father, the petitioner applied for compassionate appointment on 29.12.2013 in a duly prescribed format. The petitioner made representation before the respondents and sought information about the appointment of the petitioner on compassionate ground. The petitioner was informed vide order dated 06.06.2015 that the claim of the petitioner has been rejected regarding appointment on compassionate ground, as he is not entitled for the same.

7. Mr. Abhishek Sinha, learned counsel for the petitioner submits that the respondent authorities have illegally and arbitrarily rejected the claim of the petitioner on compassionate ground without any legal and cogent ground. He further submits that the service of the father of the petitioner was never terminated by the respondents nor the father of the petitioner was ever suspended from service and hence the father of the petitioner was a government servant at the time of his death and was employed under the government. He further submits that without initiating any

proceeding and without passing any order of termination against the petitioner, the ground of absence taken for rejection of the case of the petitioner on compassionate ground is non-est in the eyes of law. He further submits that Rule 76 of Jharkhand Service Code does not have a deeming clause and father of the petitioner could not have automatically been removed from service in view of his absence and as such the impugned order becomes illegal and invalid and he place reliance on the judgment rendered in (2006) 11 SCC 42, 1971 (1) SLR 175 (Pat) and AIR 1966 SC 492.

8. Mr. Dhananjay Kumar Dubey, learned Senior Standing counsel appearing on behalf of the respondents vehemently opposes the prayer of the petitioner and justifies the impugned order, quoting Rule 76 of Jharkhand Service Code and drawing the attention to the court to paragraph nos.11 and 12 of the counter-affidavit. Learned senior counsel argued that there is no room for accepting the case of the petitioner for allowing

him appointment on the compassionate ground because his father was no more a government servant when he died on 07.08.2013.

9. Considering the rival submissions of the parties and after going through the impugned order dated 06.12.2006, it transpires that the petitioner's father's case has been rejected solely on the ground that he was absent from duty without any prior information and in view of provisions laid down in Rule 76 of Jharkhand Service Code the respondents have rejected the case of the petitioner for appointment on compassionate ground. The contention raised by the counsel for the respondents is not well founded. The respondents have themselves mentioned in the supplementary counter-affidavit that the petitioner was absent as he was under treatment with effect from 07.10.2004 to 06.06.2011 and on 30.01.2012 a letter has been submitted along with

medical certificate, which is contrary to the provisions of Rule 76 of Jharkhand Service Code as the respondents were aware that petitioner is under treatment and information to that effect was also given to the respondents. The respondents authorities never bother for initiating any departmental proceeding during his service period and considered the case of the petitioner as a deemed termination. In view of the judicial pronouncement as referred above there cannot be deemed termination in case of unauthorised absence. In view of the settled principle of law, rules, guidelines and the judicial pronouncement, the impugned order dated 06.12.2006 is quashed and set aside and the respondent no.2-Deputy Commissioner, Palamau is directed to re-consider the case of the petitioner for appointment on compassionate ground within a period of two months from the date of receipt of this order. Further, if the petitioner is found fit for appointment on compassionate ground a letter should be issued within further period of one and half months.

10. With the aforesaid observations the writ petition is disposed of.