
(2014) 11 JH CK 0105
In the Jharkhand High Court
Case No : W.P.(S) No. 6751 of 2011

Vijay Singh Gope

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Citation : (2015) 1 JLJR 645

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : M.M. Sharma, Advocates for the Appellant

Judgement

Sujit Narayan Prasad, J.—The petitioner has approached this Court by challenging the order dated 25.8.2011 by which he has been discharged from service as Choukidar. It has been argued by learned counsel appearing on behalf of the petitioner that the petitioner was engaged as Choukidar on daily wages basis on 17.6.1983 initially for a period of one month. Thereafter, he has been permitted to continue in service, ultimately he has been disengaged from service vide order dated 25.8.2011 issued by the Executive Engineer, Road Construction Department, Road Division, Chaibasa stating therein that the petitioner has been removed from the service w.e.f. 1.9.2011. Learned counsel for the petitioner has submitted that the petitioner has been engaged on 17.6.1983 and since then he has regularly discharged his duty till 1.9.2011. Thus, the petitioner has been permitted to remain in service as daily rated employee for a period of 28 years, as such after rendering 28 years of service a person cannot be thrown out in this way. It has been submitted on behalf of the petitioner that there is a circular of the Government dated 18.6.1993 wherein it has been provided that if daily rated employees have remained regularly for a period of 240 days prior to 1.8.1985, they will be given priority in future appointment.

2. On the other hand, learned counsel appearing for the respondents has submitted that the petitioner has been engaged in daily rated capacity and as such he has got no vested right to remain in service. However, specific statement

has been given by the respondents-State in paragraph-10 of the counter affidavit, which is as follows:--

"10. That in reply to the statements made in paragraph 3(i) of the writ petition under reply, it is stated and submitted that the petitioner was not a regular employee of R.C.D. He was only a daily wages worker. Hence, the impugned order cannot be termed as termination order. As a matter of fact, the list of probable candidate who performed duties for 240 days prior to 1.8.1985 was received vide Under Secretary, R.C.D., Jharkhand, Ranchi letter No. 3664(S) dated 25.9.2004. In the letter, it was clearly mentioned that the petitioner will get priority in regular appointment. No appointment has been made since then. Now there is no need of Godown Choukidar in the Department hence, this letter was served."

3. In view of the statements made in the counter affidavit by the respondents-State, the petitioner was disengaged from the service hence the same needs no interference.

4. Heard the parties.

5. The petitioner has been working since 17.6.1983 continuously, thus, he had rendered 28 years of service. In this regard, in the judgment rendered by a constitutional Bench of the Hon''ble Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, at paragraph-53 Ed.--Para 44 of JLJR it has been held that the State Government was supposed to make out a policy within a period of six months, but it is unfortunate that even after expiry of more than eight years no such resolution/decision has been taken, by the State authorities. At para-53 Ed.--Para 44 of JLJR it has been specifically laid down by the Hon''ble Apex Court that the Government has to formulate a resolution regarding daily rated employees who are working for last ten years without any aid or interim order passed by the competent court. However, taking into consideration the fact that the petitioner has discharged service for a period of 28 years, taking into consideration the ratio of Secretary, State of Karnataka and Others Vs. Umadevi and Others, this writ petition is disposed of giving liberty to the petitioner to make appropriate representation before the competent authority, who will take proper decision in accordance with law within a reasonable period, preferably within a period of eight weeks from the date of receipt/production of a copy of this order and communicate the same to the petitioner thereafter.