
(2014) 04 JH CK 0084
In the Jharkhand High Court
Case No : L.P.A. No. 349 of 2012

Zabir Ansari

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 21-04-2014

Acts Referred:

Citation : (2014) 2 JLJR 643

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Jay Shankar Tiwary, Advocate for the Appellant; Abhay Kr. Mishra, S.C. III, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. Being aggrieved by the order of dismissal of the writ petition, being W.P. (S) No. 307 of 2008, declining issuance for a direction of regularization, the appellant has preferred this appeal.

2. Brief facts of the case are that the appellant joined the post of Cattle Guard/ Forest Guard on 1.06.1982 on daily wage basis and he continued in the said post for more than seventeen years. Earlier the appellant filed C.W.J.C. No. 2054 of 1994(R) seeking regularization and the same was disposed of vide order dated 22.05.1995 with a direction to file representation to the concerned authority who shall dispose of the same within six weeks. Since the respondents did not take any action, the appellant filed Contempt Application in M.J.C. No. 227 of 1996(R). In the said contempt petition, the respondents had given assurance that the case of the appellant would be considered and in view of the assurance given, the appellant withdrew the contempt petition on 8.08.1995. Vide letter dated 30.7.1996, the appellant was informed by the 5th respondent that the grievance of the appellant is being sent to the higher authority. In November-December, 1996, the State Government had also forwarded the matter to respondent No. 2; but nothing had happened.

3. The appellant again filed CWJC No. 3738 of 1997(R) which was disposed of, vide order dated 4.06.2001, directing the appellant to file representation before the respondents. The request of the appellant for regularization was declined, vide order dated 5.9.2001. The appellant again filed writ petition, being W.P. (S) No. 3572 of 2002 and the same was dismissed on 7.11.2006. Against that order, the appellant filed L.P.A No. 642 of 2006 and the same was disposed of, vide order dated 13.3.2007, with the direction to the respondents to consider the case of the appellant in the light of the observations made by Hon''ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , in particular paragraph 53. The 5th respondent issued communication under memo No. 4052 dated 4.12.2007 rejecting the claim of the appellant.

4. Challenging the same, the appellant filed writ petition, being W.P. (S) No. 307 of 2008. The respondents resisted the writ petition contending that the appellant was engaged as casual labourer on daily wage and had never been appointed on sanctioned post and therefore, rejection of his request for regularization is in accordance with the provisions of law and as per the law laid down by Hon''ble Supreme Court. Learned Single Judge dismissed W.P. (S) No. 307 of 2008, holding that there is no material to show that the appellant was appointed against the sanctioned post after following the procedure of appointment and therefore, no interference is called for. Being aggrieved by the dismissal of the writ petition, the appellant has filed this Letters Patent Appeal.

5. Heard Mr. Jay Shankar Tiwary, learned counsel appearing for the appellant and Mr. Abhay Kumar Mishra, learned counsel appearing for the respondents-State.

6. Learned counsel for the appellant submitted that the appellant was engaged as a Forest Guard for more than 17 years and while so the respondents cannot contend that the appellant has only worked as daily wager. Learned counsel further submitted that as per the directions contained in L.P.A. 642 of 2006 (dated 13.03.2007), the Divisional Forest Officer has not considered the matter in the light of paragraph 53 of the judgment rendered in the case of Uma Devi (Supra). In so far as the allegation against the appellant that he has produced the fabricated documents, learned counsel for the appellant submitted that the criminal case lodged against the appellant has already ended in acquittal. Learned counsel urged that in view of the length of service rendered by the appellant, the authorities ought to have passed the order for regularization of the appellant and the learned Single Judge did not keep in view the long term of service, which the appellant has worked as daily wager Forest Guard.

7. Learned counsel for the respondents submitted that regularization of the appellant cannot be made since the appellant has not worked against any sanctioned post in the division and the appellant was just working as daily wager. Learned counsel further submitted that paragraph 53 of the judgment of Uma Devi's case is applicable only to those temporary/casual workers, who were temporarily working as against the sanctioned post and since the appellant has not worked against the sanctioned post, the benefit of the observations in

paragraph 53 of the Uma Devi's case cannot be extended to the appellant and the learned Single Judge has rightly dismissed the writ petition.

8. We have considered the submission of learned counsel for the parties and perused the material available on record.

9. Even though the appellant has been working from 1982, the fact remains that he was engaged as a casual worker or daily wager and furthermore, he was not appointed as against any sanctioned post. In the earlier rounds of litigations, the Court has directed the respondents to consider the case of the appellant. Pursuant to the direction issued in L.P.A. No. 642 of 2006 dated 13.03.2007, the Divisional Forest Officer, Ranchi has passed a detailed order stating that the appellant has not worked as against any sanctioned post of a Forest Guard in Lohardaga, Ranchi.

10. In paragraph 53 of the case rendered in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , the Hon''ble Supreme Court has issued direction for regularization of those employees, who were continuously working for 10 years on the sanctioned posts. Since the appellant has not worked as against any sanctioned post nor he was appointed to the post by following the procedure laid down by the Government vide Office Order No. 176 dated 04.12.2007, the Divisional Forest Officer, Ranchi West Forest Division, Lohardaga has clearly stated that the decision of the Hon''ble Supreme Court in Uma Devi's Case (Supra), cannot be applicable to the case of the appellant.

11. Since, the appellant has not produced any material to show that he was working as against the sanctioned post, the learned Single Judge has rightly held that there is no material to show that the petitioner-appellant was appointed against the sanctioned post, after following the procedure of appointment. As such, we do not find any infirmity in the order passed by the learned Single Judge warranting interference. Hence, this Letters Patent Appeal is dismissed.