

(2009) 08 JH CK 0007
Jharkhand High Court
Case No: None

Kanhaiya Rout

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Aug. 6, 2009

Hon'ble Judges: Gyan Sudha Mishra, C.J; Dilip kumar sinha, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This appeal has been preferred against the order dated 12.01.2009 passed by the learned Single Judge in W.P(S) NO.2000/2003 whereby the writ petition filed by the petitioner/appellant herein was rejected.

2. The petitioner/appellant herein had filed the writ petition for quashing the order passed by the Deputy Commissioner, Dumka rejecting his representation claiming reinstatement on the post of Peon. The Deputy Commissioner had rejected the representation of the petitioner/appellant herein on the ground that his appointment in the establishment was not regular in nature as the procedure was not followed while granting him appointment and, therefore, he was not fit to be reinstated in service who had been retrenched earlier. The learned Single Judge was pleased to reject the plea of the petitioner/appellant herein and thus, the writ petition was dismissed against which this appeal has been preferred.

3. Counsel for the appellant in support of the plea of the petitioner/appellant herein submitted, that the appellant had been retrenched along with a few other employees and although the others were reinstated in service on the ground that they were in the work charge establishment, the petitioner/appellant herein was not reinstated which amounts to discrimination and hence arbitrary and unconstitutional.

4. We find no substance in this plea for the reason that the employees who had been serving in the work charge establishment obviously had the benefit of

regularization of service under the I.D. Act as the other employees had been discharging duties in the work charge establishment. Obviously their case stands on a different footing than the petitioner/appellant's case who had been granted appointment in the regular scale of pay without even following any procedure or any rule in this regard.

5. Under the circumstance, if he was removed from the service by way of retrenchment, he cannot be permitted to urge that he had the rightful claim of reinstatement like the others who could claim the relief under the Industrial Disputes Act. Thus, we find no illegality in the order of the learned Single Judge.

6. However, we are of the view that the appellant is a low paid employee and has already discharged duty for a period of three years and he had not been removed from the service for any delinquency or misconduct but had been merely retrenched from service from which it can be inferred that the establishment might not have been in the need of service of the appellant. But, if in future, any appointment is made by the respondents, obviously the reason for retrenchment will be treated as no longer existing. We, therefore, deem it appropriate to observe in the interest of equity, that if in future, the respondents make any regular appointment, the appellant be given preference in the matter of such appointment considering the fact that he had been retrenched only on the ground of being surplus.

7. Subject to the aforesaid observation, the appeal is dismissed.