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Pankaj Rana Vs The State of Jharkhand and Others

Writ Petition (S) No. 7944 of 2012

Court: Jharkhand High Court

Date of Decision: July 17, 2013

Citation: (2013) 4 AJR 376

Hon'ble Judges: Shree Chandrashekhar, J

Bench: Single Bench

Advocate: Suchitra Pandey, for the Appellant; Rakhi Rani, J.C. to Sr. S.C. II, for the Respondent

Final Decision: Allowed

Judgement

Shree Chandrashekhar, J.
The petitioner has approached this Court for the following reliefs:

(i) For quashing of order contained in Memo. No. 895/Ranchi dated 26.04.2012, passed by Principal Secretary, Water Resource Department,

Jharkhand revising the earlier order passed vide departmental memo No. 783 dated 10.04.2012, whereby and whereunder the petitioner''s

application for this appointment/regularisation in service against class IV vacancies, was rejected.

(ii) For a direction to the Commissioner-cum-Secretary, Water Resources Department, Government of Jharkhand, Ranchi to reinstate/reappoint

the petitioner in service in Class IV post under his administrative control and to regularise his service after reinstate/reappointment.

(iii) Further directing the respondent authorities to allow consequential benefits of service to the petitioner to which he is entitled to.

The brief facts of the case are that, the petitioner was appointed on daily wages in May, 1981 in the office of the Executive Engineer, Waterways

Division No. II, Chakardharpur and he worked there till May, 1990. By an administrative arrangement the charge of Waterways Division-II,

Chakardharpur was taken over by the Executive Engineer, Laghubitarani Division No. 10 and thus, the service of the petitioner was also

transferred under him. The petitioner continued to work there till December, 1992. When the service of the petitioner and other similarly situated

daily wage employees was terminated, some of the employees moved the Hon''ble High Court in C.W.J.C. No. 614 of 1993 (R), which was

disposed of by order dated 18.03.1993 with a direction to the respondents to advertise the post and make appointment. Several other employees

had also filed writ petitions and the matter went upto the Hon''ble Supreme Court in SLP (C) No. 18154 of 1999 and batch cases. The Hon''ble

Supreme Court directed the respondents to make appointment in terms of Resolution dated 18.06.1993. The employees who had worked for

more than 240 days prior to 01.08.1985, were to be considered for appointment. Subsequently, a meeting was convened by the Secretary, Water

Resource Department, Government of Jharkhand on 12.06.2002 and a list of all such employees who had worked for more than 240 days prior

to 01.08.1985, was prepared and the name of the petitioner was also included in the said list. An advertisement was issued in the year, 2003 and

the petitioner also applied. However, no decision was communicated to the petitioner and therefore, the petitioner moved this Court in W.P. (S)

No. 1049 of 2004, which was disposed of by directing the Chief Engineer, Water Resource Department to communicate the decision taken in the

matter of appointment of the petitioner. By letter dated 10.05.2004, the petitioner was intimated that since the petitioner was not working under

Chief Engineer, Water Resource Department, the application of the petitioner was rejected. The petitioner again moved this Court in W.P. (S) No.

4344 of 2004 and this Court by order dated 02.12.2009 directed the respondents to consider the case of the petitioner giving him priority in terms

of the direction of the Hon''ble Supreme Court. An advertisement was published on 05.09.2010 and the petitioner again applied for appointment

on a class-IV post, however, the application of the petitioner was returned. The claim of the petitioner was considered in the light of direction

passed in W.P. (S) No. 4344 of 2004 and it has been rejected by order dated 26.04.2012.

2. A counter-affidavit has been filed stating as under:

6. That it is stated that in the light of order passed by the Hon''ble Supreme Court in SLP (C) No.-18154/1999 in the matter of regularization of

daily wage workers of Minor Irrigation Zone, the Water Resources Department published an advertisement No.-PR-36349 (Irr)-10-11 for

appointment in Class-3 and Class-4 posts.

7. That it is stated that in the aforesaid advertisement the applicants were directed to submit their applications through Employment Exchange, The

applicants, who were working in the Minor Irrigation Zone and are covered by the judgment dated 30.10.2000 in SLP (C) No. 18154/1999,

were directed to submit their applications directly to the Department.

8. That the case of the petitioner is not covered by the judgment passed in SLP (C) No.-18154/1999. Hence, he should have submitted his

application through the Employment Exchange.

9. That it is stated that the petitioner has sent his application directly to the Department through registered post, which was not accepted in

accordance with the conditions marked in the aforesaid advertisement. The copy of the advertisement has already been annexed in Annexure-18

of the writ petition.

10. That it is stated that That however, in compliance of order of the Hon''ble Court passed in W.P. (S) No. 3444/2004, the case of regular

appointment of the petitioner has been considered in the light of criteria fixed for appointment of daily wage workers of Minor Irrigation Zone.

11. That it is stated that ""Adhimanta"" Committee constituted in the light of resolution No. 5940 dated 18.06.1993 has fixed one point per working

year as weightage (Adhimanyata) in appointment in regular service to the daily wage workers. The Committee had also recommended to appoint

only those daily wage workers who get minimum 20 points.

12. That it is stated that in accordance with the aforesaid criteria the petitioner got 10 points and hence his claim for appointment in regular service

has been rejected vide the impugned order contained in departmental memo No. 895 dated 26.04.2012.

3. The petitioner was held not to be continuously engaged as his engagement was terminated in the year, 1992 and therefore, it was held that he

does not fulfill the required qualification for appointment and therefore, he was not given appointment. By order dated 26.04.2012, the claim of the

petitioner has been considered and rejected on the ground that since the petitioner could obtain only 10 marks as against 20 marks as prescribed

by the Adhimanta Committee and hence, the petitioner does not fulfill the criteria and therefore, he could not be granted appointment.

4. Heard learned counsel for both the parties and perused the documents on record.

5. Ms. Suchitra Pandey, the learned counsel for the petitioner has submitted that although, there is specific direction given by the Hon''ble Supreme

Court to consider the case of the eligible candidates for appointment in terms of Resolution dated 18.06.1993, the respondents have acted in a

manner unknown to the procedure established by law and on their own they have fixed a criteria which is not prescribed in the Resolution dated

18.06.1993. She has further submitted that the order of the Court cannot be altered or modified by the Authorities and the order passed in earlier

writ proceedings and order of the Hon''ble Supreme Court are binding on the respondents and therefore, the action of the respondents are

arbitrary and cannot be sustained in the law.

6. Per-contra, Mrs. Rakhi Rani, the learned counsel for the respondents submits that there are disputed question of fact involved in the case,

therefore, this writ petition cannot be maintained. Admittedly, the date on which the advertisement was issued, petitioner was not working and

therefore, the exemption of not applying through the employment exchange, is not applicable in the case of the petitioner. She has further submitted

that in terms of Resolution dated 18.06.1993, a Committee was constituted and for the purpose of making appointment, the Committee has

prescribed the criteria of 20 marks for considering the case of the eligible candidates for appointment and admittedly the petitioner who worked for

only about 10 years and thus, was granted 10 marks, was not eligible and therefore, his case was not considered and he could not be appointed.

7. A perusal of the documents on record, would indicate that the petitioner continued to work between the period 01.08.1984 to 28.02.1986

continuously and therefore, he satisfies the requirement as prescribed in the Resolution dated 18.06.1993, as he worked for more than 240 days

continuously. This is recorded in paragraph-7 of the proceeding of meeting dated 03.01.2012.

8. In the said proceeding, the period of engagement of the petitioner has been noticed in paragraph No. 7, which is as under:

7. From the perusal of the report submitted by the Chief Engineer, Subernarekha Multi Purpose Scheme, Ichagarh, Adityapur, Jamshedpur sent

vide letter No. 1044 dated 08.04.2005, it is clear that on the basis of the details of pay the incumbent was engaged as Watchman from May 1981

to April 1990 as a daily wage worker. The period of engagement has been from May 1981 to 31.08.81, 24.11.82 to 31.01.83, 01.04.83 to

21.06.83, 01.08.83 to 30.11.83, 01.08.84 to 28.02.86, 01.04.86 to 31.12.86 and 01.08.88 to 30.04.90 under the jurisdiction of the Chief

Engineer, Ranchi. Subsequently, the scheme was transferred as Laghu Vitarani, Div-10, Ghatsila under the Chief Engineer, Ichagarh, Jamshedpur.

He was engaged there since May 90 to July 91 and September, 91 to December, 92. The incumbents engagement was terminated vide letter No.

1258 dated 16.12.92 of S.E. Laghu Vitarani Circle-2, Dimna, Jamshedpur.

9. Moreover, in the earlier writ proceedings also this Court has recorded that the petitioner worked for 240 days continuously and therefore, his

case should be considered for granting appointment by extending preference to him and the direction of the Court has not been challenged by the

respondents in any proceeding.

10. A perusal of the documents on record would also indicate that an advertisement was issued in the year, 2003 in which applications were

invited from the employees who were working prior to 01.08.1985. The said advertisement was issued in compliance of order passed by Hon"ble

Supreme Court and in terms of Resolution dated 18.06.1993. The direction issued by the Hon"ble Supreme Court and the Resolution dated

18.06.1993 do not provide that the employees who were not working as on the date of advertisement, were required to apply through the

Employment Exchange and that is the reason, in the advertisement issued in the year, 2003, it has not been provided that the applications should be

forwarded through the Employment Exchange. In the advertisement issued on 05.09.2010, a clause has been added for making application

through Employment Exchange, however, it has been clarified that those who were working prior to 01.08.1985 were not required to submit their

applications through Employment Exchange and they were permitted to submit their applications directly. It appears that the said condition was

made applicable for the persons who were not working prior to the cut-off date and since appointment was to be made against fresh vacancies. If

a restriction is imposed upon the employees who were not working on the date of advertisement, though worked for 240 days prior to

01.08.1985, to submit their applications through Employment Exchange, such a restriction would be in the teeth of directions passed by the

Hon''ble Supreme Court and therefore, I am of the opinion that the application of the petitioner was wrongly returned by the department on the

ground that it was not sent through the Employment Exchange.

11. It appears that on 03.01.2012, a meeting of Departmental Committee was called for deciding the matter of regularization of daily wage

employees. In the proceeding of the said meeting, it has been observed:

2. Vide memo. No. 5940 dated 18.06.1993 a memorandum was issued by the Personnel, Administrative Reforms and Rajbhasha Department,

whereby it was stipulated that a committee should be constituted in the concerned department for regularization. Weightage should be given to

regularise those daily wage workers who have worked continuously for more than 240 days before the cut-off date i.e. 01.08.1985.

3. In SLP (Civil) No. 18154/99, delivered by the Hon''ble Supreme Court on 30.10.2000, it was decided that regularization should be done in

accordance with the procedure indicated in the scheme dated 18.06.2003 and on the basis of necessary Committee constituted for this purpose.

4. Vide memo. No. 3001 dated 23.12.2001 a committee for regularization of the concerned daily wage workers was constituted in this

Department. Vide memo No. 2345 dated 12.06.2003, the committee took a general decision to regularize daily wage workers of this department

by fixing cut-off marks on the basis of academic qualifications and completed numbers of years of service in the department. Those who attain a

minimum of 20 marks this way shall be considered for regular employment.

5. Subsequently, this department has advertised for filling of vacancies of class-3 and 4 employees vide Advertisement No. PR 36346 (Irrigation)

10-11 dated 05.09.10. In para-5 of the said advertisement, it was mentioned that those daily wage workers who are working for 240 days before

cut-off date 01.08.1985 shall be given preference. In para-6 of the said advertisement, it was also mentioned that all the applications should be

sent through Employment Exchange. This provision was not binding for daily wage workers who were engaged in this department.

12. From the directions issued by the Hon''ble Supreme Court and the Resolution dated 18.06.1993, it would appear that no cut-off marks was

provided therein. The advertisement dated 05.09.2010 itself provides that the persons who were working prior to 01.08.1985, would be given

priority. This has been completely ignored by the authorities, when the eligibility of 20 marks fixed for selecting the eligible candidates, has been

applied in the case of the petitioner also. The petitioner has been denied such benefit and was not given preference over the others. The specific

direction issued by this Court has been ignored by the respondents. In the proceeding of W.P. (S) No. 4344 of 2004, this Court has directed as

under:

However considering the fact that the petitioner has not been working, as a daily wage employee since after December, 1992 this Court can not

possibly issue any direction to the respondents to regularise his service. Nevertheless, since the petitioner had worked continuously for a period of

240 days and more prior to 01.08.1985, the concerned authorities of the respondent shall consider his case, giving him priority as per the direction

of the Supreme Court, against future vacancies that may be advertised by the respondents, who shall consider sympathetically the need of the

petitioner''s age relaxation.

13. It is settled law that the order of the Court cannot be modified by the Authorities. It was open to the Authorities to take the matter in Appeal

which has not been done in this case. The authorities cannot be permitted to sit in appeal over the directions of the Court. The specific direction of

the court has not been complied with by the Respondents.

14. In S. Nagaraj and Others Vs. State of Karnataka and Another, the Hon''ble Supreme Court has observed as under,

12. ...Law on the binding effect of an order passed by a court of law is well settled. Nor there can be any conflict of opinion that if an order had

been passed by a court which had jurisdiction to pass it then the error or mistake in the order can be got corrected by a higher court or by an

application for clarification, modification or recall of the order and not by ignoring the order by any authority actively or passively or disobeying it

expressly or impliedly. Even if the order has been improperly obtained the authorities cannot assume on themselves the role of substituting it or

clarifying and modifying it as they consider proper. In Halsbury''s Laws of England (Fourth Edn., Vol. 9 p. 35, para 55) the law on orders

improperly obtained is stated thus:

The opinion has been expressed that the fact that an order ought not to have been made is not a sufficient excuse for disobeying it, that

disobedience to it constitutes a contempt, and that the party aggrieved should apply to the court for relief from compliance with the order.

Any order passed by a court of law, more so by the higher courts and especially this court whose decisions are declarations of law are not only

entitled to respect but are binding and have to be enforced and obeyed strictly. No court much less an authority howsoever high can ignore it. Any

doubt or ambiguity can be removed by the court which passed the order and not by an authority according to its own understanding.

15. I find that the petitioner has approached this Court by filing W.P. (S) No. 1049 of 2004, W.P. (S) 4344 of 2004 and Cont. Civil 213 of

2011. I am of the view that the respondents instead of dragging the petitioner into a series of litigation, should have given appointment to the

petitioner, in view of the specific directions issued by the Court. Initially the application of the petitioner was wrongly returned by the respondents

and thereafter, the petitioner has been denied preference over the others and his claim has been excluded by applying a criteria which could not

have been made applicable in his case. In view of the aforesaid, this writ petition is allowed. The impugned order is hereby quashed. Since the

petitioner has been agitating his claim since last more than 10 years and his claim has been wrongly rejected, no purpose would be served by

remanding the matter for fresh consideration and I am of the opinion that in the peculiar facts of the case, a direction to the respondents to appoint

the petitioner, would serve the ends of justice. Accordingly, the respondents are directed to appoint the petitioner on a class IV post within a

period of 6 weeks from the communication of the order. The Writ Petition is allowed in the aforesaid terms.