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**(2003) 08 JH CK 0014**  
**Jharkhand High Court**  
**Case No:** CWJC No. 2027 of 1999 (R)

Ram Sagar Pandey

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision:** Aug. 18, 2003

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2003) 4 JCR 544

**Hon'ble Judges:** Tapen Sen, J

**Bench:** Single Bench

**Advocate:** Praveen Shankar Dayal, for the Appellant; Pankaj Kumar, for the respondent No. 1 and Delip Jerath, for the respondent Nos. 2 and 3, for the Respondent

**Final Decision:** Allowed

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**Judgement**

Tapen Sen, J.

Heard Mr. Praveen Shankar Dayal, learned counsel for the petitioner: Mr. Delip Jerath, learned counsel for the respondent Nos. 2 and 3 and Mr. Pankaj Kumar, learned JC to Mr. A. Allam, learned counsel for the respondent No. 1 (State of Bihar).

2. The petitioner is aggrieved by the order dated 29.5.1999 as contained in Annexure 7 issued by the Managing Director of the Bihar State Seed Corporation Limited by which his services have been terminated. The petitioner has further prayed for a direction upon the respondents to reinstate him together with all consequential benefits and also to pay to him the arrears of minimum pay scale from the date of appointment, i.e., 10.6.1985 till date of termination alongwith the admitted dues of Rs. 34,480/- which was admitted to be payable to the petitioner vide letter dated 21.6.1999 as contained in Annexure 9. The petitioner further prays for interest at least at the rate of 10% on the said amount for non payment till date.

3. The facts of the case are that the petitioner was appointed on 10.6.1985 on the sanctioned vacant post of a Night Guard/Peon on daily wages in the Corporation

and worked continuously from the date of appointment till he was terminated by reason of the impugned order. The said impugned order was served upon the petitioner while he was functioning as a Daily Wager in Hazaribagh within the State of Jharkhand.

4. The petitioner states that subsequently by reason of a decision taken by the Fitment Committee, the pay scale of the Night Guards was approved to Rs. 775-1025/- in place of Rs. 350-425/-. Subsequently, on 29.4.1991 by Annexure 3, the Corporation approved the payment of wages to various daily wagers including the petitioner whose name was inserted at Sl. No. 22. Since they were working on daily wages for several years, but were being paid less than the regular employees, therefore the petitioner along with others made several representations, but nothing happened. Consequently, the petitioner along with 5 (five) others filed CWJC No. 2185 of 1991(R) wherein they demanded inter alia for payment following the principle of equal pay for equal work and also made a prayer for regularization of their services. By Judgment dated 14.1.1998 the aforementioned Writ Application was allowed with an observation that the petitioner had apparently a good case for getting regular pay scale and for being absorbed on regular post. It was accordingly directed that the respondents should give regular minimum pay scale to the petitioners at par with equivalent posts which are being given to other Government Institutions/Undertakings and if they could not be regularized against sanctioned post then the Corporation should evolve a rational principle for purposes of absorption against regular posts as and when available, but till then they should be paid the minimum pay scale. The petitioner has stated that in the aforementioned Writ Application the respondents had filed a counter affidavit wherein they had stated that in the year 1986, 34 posts had been sanctioned by the Bureau of Public Enterprises but since the Managing Director had retired, therefore, no steps could be taken for filling up those posts. Later on however, the Department of Agriculture cleared 78 posts in total including those 34 sanctioned posts. The petitioner has further stated that he was working to fullest satisfaction of all concerned but there was no attempt on the part of the respondents to comply with the judgment delivered in CWJC No. 2185 of 1991(R). This resulted in filing of a Contempt Application bearing MJC No. 383 of 1998(R) in which the opposite parties filed a supplementary show cause wherein they stated on oath that pursuant to the judgment delivered in the Writ Application, the Board of Directors had taken a decision to give minimum pay scale to daily wage earners parallel to permanent employees of the Corporation till the process of regularization of their services was not complete. Consequently, the Contempt Application was dropped by order dated 1.7.1999 (Annexure 5). It appears that before all this had happened and before the Contempt Application had been dropped, a notice to show cause had been issued on 21.5.1998 asking the petitioner to show cause as to why his services should not be terminated on the sole ground that there was a direction from the Agricultural Department that all appointments of daily wagers made after 1.8.1985 should be

terminated. Thereafter it appears that the petitioner's services were terminated by order dated 29.5.1999 (Annexure 7), but this fact appears to have been cleverly suppressed before the Contempt Court when the Contempt Application was dropped on the assurance of the Corporation that the Board of Directors had taken a decision to pay the minimum pay scale to daily wagers parallel to the permanent employees of the Corporation till the process of regularization was not complete.

5. The only ground on which the petitioner's services appear to have been terminated is that he was appointed after 1.8.1985. However, from the judgment itself (see running page 35) it appears that while taking into consideration the facts of the case it was recorded that the petitioner was appointed on 10.6.1985 meaning thereby prior to 1.8.1985. This fact appears to have been stated in paragraph 4(a) of that Writ Application and it does not appear that it was controverted by the respondents.

6. What this Court does not understand is that if the petitioner's appointment was prior to 1.8.1985 then obviously he fell within the parameters of consideration for regularization as was assured by the respondents themselves when they made that statement as a result of which the Contempt Application was dropped. Surprisingly, the fact relating to termination of this petitioner two months earlier, i.e., 29.5.1991 was neither stated by the Corporation nor by the petitioner.

7. Be that as it may, the fact remains that the petitioner has been terminated on the ground that he was appointed after 1.8.1985 whereas the contention of the petitioner is that he was appointed prior to 1.8.1985 and this fact, i.e., his being appointed on 10.6.1995 was taken note of by the earlier Court as has been stated above. That apart, in paragraph 6 of the Writ Application, the petitioner has again stated that he was appointed on 10.6.1985 and this statement has not been controverted in paragraph 12 of the counter affidavit in the manner that it should have been done. However, at paragraph 20 of the counter affidavit, the respondent have stated that the petitioner was engaged as daily wager after 1.8.1985.

8. Other grounds have also been mentioned in the impugned order, i.e., the appointment of the petitioner had been made in an irregular manner, but all the other reasons given in the impugned order apparently lose significance on account of the judgment dated 14.1.1998 passed in CWJC No. 2185 of 1991 (R). The respondents have not stated anywhere that against the aforesaid judgment, whether the same was challenged either in appeal or otherwise and therefore, that judgment has attained finality for all practical purposes. The relevant issues therefore are that on 14.1.1998 when the aforementioned judgment had been pronounced the petitioner was in service, but since that judgment was not being complied with, a Contempt Application was filed. The respondents terminated the services of the petitioner on 29.5.1999 whereas the Contempt Application itself was ordered to be dropped on the assurance of the Corporation. Now in the counter affidavit the Corporation has taken another peculiar stand and that is to the effect

that their financial position has deteriorated to such an extent that it is not able to pay salary/wages to its employees since last 7-8 (seven-eight) months. The attitude of the Corporation is not appreciated because even as early as on 24.6.1999 the respondents themselves had come out with an inter office memo dated 21.6.1999 but signed by the Regional Manager on 24.6.1999 wherein they have admitted that the petitioner was entitled to a sum of Rs. 34,480/- which, according to Mr. Dayal, has not been paid to the petitioner. Moreover, even as early as on 14.1.1999, the respondents themselves had given a scale to the petitioner by Annexure 8.

9. The stand of the respondents in justifying the order of termination on the ground that the petitioner was appointed after 1.8.1985 cannot be accepted in view of the earlier judgment which has attained finality and which recorded the fact that the petitioner was appointed on 10.6.1985, i.e., prior to 1.8.1985. Moreover, the manner in which the Contempt Application was made to be dropped is not at all appreciated by this Court and this Court is compelled to draw adverse inference against the respondents. However, taking into consideration the submission that respondents are totally and completely in a state of utter financial incapability to pay to the petitioner, it would only be just and proper to dispose off this Writ Application with a direction upon the respondents to first pay him the admitted dues and thereafter in view of the judgment dated 14.1.1998 to the effect that if the petitioner cannot be regularized then the Corporation should evolve a rational principle as and when posts are available, they would do the needful but till then, they would pay to the petitioner the minimum pay scale. In that view of the matter, the petitioner may file a representation before the respondents and the respondents would take steps strictly as per the judgment dated 14.1.1998. The respondent must ensure payment atleast of the admitted dues within a period of two months from the date of receipt of such representation. The impugned order as contained in Annexure 7 is therefore, set aside. The Writ Application is allowed. No order as to costs.