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(2008) 10 JH CK 0016

Jharkhand High Court

Case No: None

Smt. Siya Devi	APPELLANT
Vs	
Union of India (UOI) and Others	RESPONDENT

Date of Decision: Oct. 23, 2008

Citation: (2009) 2 JCR 464

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

Bench: Division Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. This appeal has been filed against the order dated 10.9.2008 passed by learned single Judge in WP (S) No. 1901/2008 wherein the petitioner/appellant herein had challenged the order dated 5.3.2008 passed by the Commandant, officiating ADIG(ADM) for DIG and Commandant by which her appointment on the post of "Aya" was ordered to be discontinued with effect from 5.3.2008.

2. The relevant details under which the controversy arose leading up to the filing of this appeal, emerges out of an unfortunate situation when the appellant-Smt. Siya Devi lost her husband in the year 1981 who was in the service of Border Security Force as a Constable who died in harness. The appellant, Siya Devi, thereafter, filed an application for granting appointment on compassionate ground on account of the death of her husband. The request of the appellant-Siya Devi was acceded to and an order of appointment dated 14.8.1981 was issued in her favour by the Commandant, Boarder Security Force, Gujarat and she was granted appointment as a sweeper in the maternity centre against the existing vacancy on a consolidated salary of Rs. 200/- per month. This appointment was thereafter duly approved by the D.I.G., B.S.F., Gujarat. The petitioner continued in this capacity up to 2.7.1993 and in the year 1993 itself she was transferred to her native place at Hazaribagh in the State of Jharkhand by order dated 2.7.1993 as

contained in Annexure-4 to this memo of appeal and the order further indicated that she will draw a basic salary of Rs. 560/- per month. The order further states that this transfer shall not be treated as a break in her service.

3. The miseries of the appellant Smt. Siya Devi started after her transfer from Gujarat to Hazaribagh in the State of Jharkhand as she was still drawing consolidated salary inspite of the fact that she is in the service since 1993. She therefore filed an application that her services should be treated as that of a permanent employee and she should be allowed to draw regular salary for the post. However, the appellant did not receive any response either by a written order or by an oral order. Thus, no permanent status to her appointment was granted. She therefore, filed a writ petition bearing WP (S) No. 5463/2001 wherein she had contended that although she had been appointed on compassionate ground initially on a temporary basis, she should be granted permanent status as she had discharged duties for a period of more than 11 years. The writ petition was disposed of by order dated 11.7.2006 by which liberty was granted to the appellant to file representation before the competent authority for grant of permanent status to her appointment and also to confirm her service after taking into consideration the long period of service rendered by her. Since categorical order granting her permanent status was not allowed in her favour by the learned single Judge she preferred a Letters Patent Appeal bearing L.P.A. No. 351/2006 but the Division Bench was pleased to dismiss the appeal by order dated 6.12.2007. However, the Division Bench was of the view that right of the petitioner/appellant herein has already been protected by the learned single Judge himself. However, since the petitioner/appellant did not get the desired relief of securing a categorical order in her favour as permanent status was not granted, she was allowed partial relief as she was permitted to file a representation before the competent authority and the authorities were directed to take into consideration her long length of service while considering her claim for awarding permanent status. But, unfortunately the appellant, instead of getting the desired relief of securing permanent status, her appointment itself was given ago by as the Commandant-cum-Officiating ADIG, B.S.F. by order dated 5.3.2008 ordered for discontinuance of her service with effect from 5.3.2008. The order indicated that the case of the petitioner, Siya Devi claiming permanent status to her appointment, could not be allowed as there was no provision to make permanent appointment out of special relief fund. Hence it was ordered that her service would be discontinued with effect from 5.3.2008 as already indicated hereinbefore.

4. The petitioner/appellant thus, instead of getting the relief of permanent status, practically suffered a shock by receiving an order of termination of her service although her request all through was to grant her permanent status. This obviously gave rise to a cause for the petitioner/appellant to file a writ petition and she did so by filing a writ petition bearing WP (S) No. 1901/2008. The said writ petition however, was dismissed by the learned single Judge by order dated 10.9.2008 as the learned single Judge was of the view that her claim for granting her permanent status was barred by the principle of constructive res judicata also as she has already approached this Court claiming

permanent status. The petitioner/appellant herein feeling aggrieved, has preferred this Letters Patent Appeal.

5. Learned Counsel for the appellant has related the background and the entire history of the matter giving rise to this appeal and in the process he has also invited our attention to the order by which the service of the petitioner/appellant was ordered to be discontinued. He further explained that the learned single Judge treated the case of the appellant as if it was a case of seeking a fresh appointment on the post completely missing her case, as she was all through contesting merely to confer permanent status to her existing appointment since she had already completed 26 years by 2008. But the learned single Judge failed to take notice of the fact that her claim at the initial stage when she had moved this Court claiming permanent status the same was practically allowed in the sense that although the Court itself did not grant her the relief of permanent status, the Division Bench on the earlier occasion had clearly observed that the interest of the petitioner/appellant had already been protected since the learned single Judge had clearly recorded that considering her long length of service which she had rendered, the authority may consider her case for absorption in the capacity of permanent employee. But the poor hapless lady instead of securing permanent status, lost her job itself as the office of the Commandant B.S.F. practically misconstrued the direction of the learned single Judge and also the Division Bench.

6. Learned Counsel for the respondents under the aforesaid circumstance although submitted that the appellant is not entitled to secure an order of permanent status, it was not possible for him to argue that she could have been removed even from service although she was in the service for the last 26 years.

7. We may clarify at this stage that the entire controversy arose since the petitioner/appellant had claimed permanent status considering her long length of service and therefore, when the matter was allowed to be considered by the authorities by entertaining her representation, it was obviously open to the authority either to grant permanent status or refuse it. Assuming that the same was not acceptable to the authority, it was not open for them to terminate her service as she was still in service and had been discharging duties without any break. Hence it was not open to. the authority to terminate her services since she had already discharged her duties uninterruptedly for long number of years.

8. To avoid any confusion we reiterate that the authority concerned all through had recognized her appointment so much so that they had transferred her from the State of Gujarat to the State of Jharkhand at Hazaribagh and had been recognizing her service all through which she had secured on compassionate ground after she had lost her husband in the year 1981. Therefore her contest was limited to the extent, as to why she should not be granted permanent status. But, in the process, the authorities not only misconstrued and botched up the whole controversy by not according permanent status but also removed her from the post on which she was functioning.

9. Thus, it is quite clear that the order dated 5.3.2008 passed by the Commandant-Cum-Officiating ADIG (Admn.) for DIG & Commandant was clearly erroneous as it was not open for him to state that the appointment of the appellant should be discontinued even it were to be accepted that she was not entitled to secure an order of permanent status.

10. Hence, the order dated 5.3.2008 passed by the Officiating ADIG (Admn.) as contained in Annexure-9 to this memo of appeal is fit to be quashed and set aside and hence, the appellant, Siya Devi is legally entitled to be reinstated in service of "Aya" in her erstwhile status in the office of DIG, Training Centre and School, Hazaribagh with all consequential benefits including the arrears of salary.

11. The view taken by the learned single Judge that the claim of the appellant is barred by the principle of constructive res judicata do not appear to be correct for although the appellant rightly or wrongly might not have been entitled to secure permanent status, the fact remains that the authority could not have removed her from service compounding her misery as it was never the case of the respondents that she had been removed from service. Hence, the impugned judgment in so far as denial of reinstatement on the erstwhile post is concerned, cannot be sustained.

12. The question however, still remains whether the petitioner/appellant herein can be granted permanent status on the post of Aya. We think that it would be a futile exercise to enter into the correctness in this regard considering the fact that she had been discharging duties continuously in the department for the last 26 years and as we have been informed that she is also drawing the salary of a permanent employee, we fail to understand what prevented the authority from granting her permanent status giving rise to further litigation.

13. Hence, we prefer to put a complete stop to any future litigation in this regard and direct the respondents that as the appellant is already drawing the salary of a permanent employee even prior to her illegal termination and she had also been discharging her duties continuously for the last 26 years, we see no ground to deny her the benefit of a permanent employee and hence she will be entitled to the benefit of a permanent employee for all intent and purpose.

14. The appeal, thus is allowed but there snail be no order as to costs considering its chequered history leading to endless confusion and in the process passing of an unjust and erroneous order which we have already quashed and set aside.