

(2005) 05 JH CK 0012

Jharkhand High Court

Case No: Writ Petition (S) No"s. 1083 of 2002 and 1658, 2223 and 2333 of 2004

Nand Kishore Pandey and
Others, Birendra Kumar,
Narendra Nath Sharma and
Bhubneshwar Mishra

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: May 5, 2005

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 21

Citation: (2005) 2 JCR 560

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Narendra Nath Tiwari, J.

These writ applications raise common questions of law on almost identical set of foundational facts and as such the same as being disposed of by this common order.

2. The grievance of the petitioners of all the writ petitions is that their services have been illegally terminated, purportedly on the basis of the Judgment passed in LPA No. 675/2000 by Patna High Court which according to the petitioners has no application in their cases, in as much as, in Special Leave to Appeal (Civil) filed against the said judgment, the Supreme Court has passed an interim order for maintaining status quo existing as on 13.10.2003. Before adverting to the main issue, it is relevant to notice the brief facts of each case separately.

W.P. (S) No. 1658/2004

The petitioner has prayed for quashing the order as contained in Memo No. 310, dated 3.2.2004 (Annexure-21) whereby terminating the petitioner's services. The petitioner was appointed as Amin (Mapak) in the office of the Special Land Acquisition Officer, Medium Irrigation Project, Ranchi. His initial posting was at Muzaffarpur and from there he had been transferred to Khunti in the year 1988. By office order dated 19.9.88 his services were dispensed with along with several other persons. He was thereafter re-employed as a retrenched employee of the department by the order of the director, Rehabilitation and Land Acquisition, by Memo No. 121, dated 24.5.89 (Annexure-4). He was then posted at Dumka as Amin, and thereafter in the year 1995 he was transferred to the Medium Irrigation Project, Ranchi where he remained as such till the service of the impugned order of dismissal. In the year 1995 a notice was issued to the petitioner asking him to furnish the relevant details and documents for consideration in a scheme for the retrenched employees. He had submitted all the required documents immediately, but nothing was done thereafter. Again another similar show cause notice was issued to which the petitioner filed his reply, but the impugned order of dismissal has been passed on the ground that his initial appointment was not in accordance with the prescribed procedure and the appointment letter was not issued by a competent authority and that the appointment letter was issued by the confidential section, against the usual practice and procedure.

W.P. (S) NO. 1083/2002

The petitioner's services have been sought to be terminated by Memo No. 1733 dated 21.9.2001 (Annexure-8) issued by the Director, Water Resources, Flood Control & Irrigation Department, Government of Bihar on the ground that his initial appointment was not in accordance with the prescribed procedure and the petitioner was appointed on the ground of he being the retrenched employee of the department but he failed to produce any certificate of retrenchment and that the appointment was made on 27.7.89 when there was bar on the appointment, in the department. The petitioner's case is that he was initially appointed on 27.7.89 on the post of Mapak (Amin) by the competent authority in Kosi Project. His service book was opened. The petitioner's services were extended by the competent authority in the year 1993. The government, had directed all the Special Land Acquisition Officers of the department to submit the relevant information in prescribed forms of all the persons appointed on ad hoc basis for the purpose of their regularization. Altogether 270 posts of Mapak (Amin) were sanctioned by the State Government and the petitioner was one of the Amins posted against the sanctioned posts. He was transferred to different places during his service tenure. Ultimately notice was issued dated 4.6.94 asking the petitioner along with, others to furnish the necessary details. The petitioner filed his reply giving all the required particulars. Thereafter nothing was heard for years. A notice was then published in the newspaper "Ranchi Express" dated 29.9.98 with a list of the concerned persons asking them to file reply with their service details. The petitioner's name stood at

Serial No. 187 of the said notice. In compliance thereof, the petitioner filed his reply dated 9.10.98. Thereafter, there was no further order. Again a notice was issued by letter dated 14.2.2001 asking the petitioner as to why his appointment be not declared illegal. The petitioner again submitted his reply on 3.4.2001. The said reply submitted by the petitioner was not considered and suddenly the impugned letter dated 21.8.2001 was issued terminating the services of the petitioner on the ground above mentioned. The petitioner has stated that his appointment was made by the competent authority and there was no illegality in the same.

W.P. (S) No. 2333/2004

The petitioner has prayed for quashing the letter dated 1.4.2004 (Annexure-15) whereby terminating his services. The ground for his termination, as mentioned in the letter is that the petitioner was illegally appointed during the period when there was a bar on appointments and that due procedure was not followed and the reservation policy was not considered. The petitioner's case is that he was appointed on 12.6.89 on the post of Mapak (Amin) by the Special Land Acquisition Officer, who had power for such appointment. His service book was opened in March 1990. Thereafter he was transferred to several places. In course of his service he completed Hindi Noting and Drafting Examination in 1990. The petitioner was given a show cause notice asking him to explain about the validity of appointment on 4.6.94. The petitioner had filed reply. No order was passed. Another show cause was issued on 21.9.2001 on the ground that his appointment was made illegally in the State of Bihar to which also he had filed a detailed reply. Thereafter there was no order. Again a show cause was issued on 13.2.2004 by the respondents of the State of Jharkhand alleging that the petitioner was illegally appointed during the period when there was bar on appointment and the person, who appointed him, had no authority and due procedure of appointment and reservation policy were not followed. The petitioner denied the allegations by filing the effective reply, but without giving any consideration, the respondents issued the impugned letter.

W.P. (S) No. 2223/2004

The petitioner has prayed for quashing the letter dated 1.4.2004 (Annexure-17) by which the services of the petitioner has been terminated on the ground that his initial appointment was illegal and at that time there was a bar on appointment and the prescribed procedure and the reservation policy were not followed. According to the petitioner he was appointed on 29.3.89 to the post of "Mapak" by the Director, Land Acquisition and Rehabilitation on the ground of he being a displaced person in Kosi Project on due recommendation of a duly constituted establishment committee. Thereafter the petitioner's service book was opened on 30.5.89. He was initially appointed at Supaul and thereafter he was transferred to Rehabilitation Office, Medium Irrigation Project, Ranchi on the post of Mapak in 1989. On 30.6.2000 from that place he was transferred to Special Land Acquisition Office No. 1, Mango Jamshedpur where he was working till issuance of impugned termination

order. After a number of years a show cause notice was issued on 6.6.94 asking about the validity of the petitioner's appointment. The petitioner filed his reply, but no order was passed. Again in the year 1996 a show cause notice with the same allegations was issued and the petitioner again filed reply stating therein that he was appointed by the competent authority and there was no illegality in his appointment. Again a show cause dated 17.6.97 was issued on the same line against which the petitioner replied. The fourth time, on 29.9.98 a notice was published in the newspaper "Ranchi Express" and the petitioner again filed his detailed reply. According to the petitioner his appointment was against the permanent sanctioned post and there is no illegality in his appointment, but by the impugned order, his services have been terminated without giving any consideration.

3. In spite of several time given to the respondents, no counter affidavit has been filed in W.P. (S) Nos. 2223/2004 and 2333/ 2004. Learned counsel appearing on behalf of the respondents submitted that all the writ applications are covered by the stands in the counter affidavits filed in other cases. The respondents have taken common plea in their counter affidavits contesting the claim(s) of the petitioner(s) in all the writ petitions. It has been stated that the appointments of the petitioners were made through back door and without following the due procedure of appointment and the reservation policy was also not followed. The appointments were made by the person who had no power to appoint and also at the relevant time there was a bar on appointments in the department. The petitioners even on the basis of the said appointments were not entitled to remain in service as their appointments were on purely temporary basis and reappointments of the petitioners were made on the ground of their being retrenched employees but in fact in some cases forged certificates, showing them retrenched employees, were submitted. The Director, Land Acquisition and Rehabilitation also had not followed the due procedure of appointment at the time of reappointing the petitioners of some cases and there was violation of Article 16 of the Constitution as well as of recruitment rules. The appointments made by the authorities were also held illegal by the Patna High Court in LPA NO. 675/2000. It was stated that notices were issued to the petitioners asking them to file their reply and before passing their respective termination order the petitioners were given proper opportunity of representation and there is no violation of principles of natural justice. It has been also stated that the petitioner's case is not covered by the order of status quo passed by the Supreme Court as they were not party to the LPA against which the said SLP (Civil) was preferred. The respondents have thus supported the termination of the services of the petitioners on the abovesaid grounds.

4. Learned counsel appearing for the petitioners one after the other submitted that the impugned orders of termination are wholly arbitrary and illegal. Learned counsel submitted that the question of irregularity in the appointments of the petitioners is being raised after a number of years, in some cases after 14-15 years, and the same is wholly without any basis. Their initial appointments were made by

the authorities who were then competent to appoint the petitioners. Though initial appointment of the petitioners were on temporary basis, yet their services were extended from time to time by the competent authority. The petitioner's service books were opened and they were treated as regular employees and they were transferred from one place to other like other permanent government servants. According to them the irregularity, if any, in the initial appointments, lost its meaning after so many years and the respondents have no authority to raise the question of such irregularity after a long lapse of time. Learned counsel submitted that in a number of writ applications filed by the similarly situated persons who were also terminated on the same ground, it has been held in the judicial pronouncements that the services cannot be terminated on the ground of irregularity after so many years. In the said writ applications the termination orders on such grounds have been quashed. Series of the said orders have been annexed with W.P. (S) No. 1658/2004. The said orders passed in different writ applications are Annexures-11, 12, 13, 14, 15, 16, 23 & 24. It has been submitted that on the basis of one of the orders passed by the Patna High Court, the said impugned orders have been issued but the order has been challenged in SLP (Civil) No. 7233-7235/2003 before the Supreme Court where specific interim order has been passed by the Supreme Court to maintain status quo. But violating the said order the respondents have issued the impugned illegal orders of termination. It has been additionally argued in W.P. (S) No. 1083/ 202 that in this case the order of termination has been issued by the State of Bihar although the petitioner has been working under the State of Jharkhand after reorganization of the State and it has been already held by this Court that the authority of the State of Bihar has no jurisdiction to issue such order. Learned counsel appearing on behalf of the petitioner in this writ application relied on a decision of this Court in Arvind Vijay Billing v. State of Jharkhand and Ors., reported in (2001) 2 JCR 155 JHR and submitted that the impugned orders of these writ applications are liable to be quashed even on this ground alone.

5. Learned counsel appearing on behalf of the State- respondents supported the impugned orders reiterating their grounds taken in the counter affidavit. It has been submitted. that the appointment of the petitioners were illegal and contrary to the prescribed rule and the same are against the provisions of Article 14 of the Constitution of India. According to the learned counsel the initial appointments of the petitioners were on purely temporary basis and the same were irregularly made by the authority and even in that view, the petitioners have not acquired any legal right. Learned counsel contended that mere passage of time cannot legalize the illegal appointment and can not create any new right to equate their appointments at par with the regular appointments and that there is no infirmity or illegality in the impugned orders of termination of the petitioner's services.

6. After hearing the learned counsel for the parties and perusing the relevant records, I find that in all the impugned orders of termination of the petitioner's services, common grounds have been taken that at the relevant time there was bar

on such appointment in the department and that the person who issued appointment letters had no authority and that their appointments were made in violation of the prescribed rules and reservation policy. However, there is nothing on record to show that the petitioner's appointments at the relevant time were made against any un-sanctioned post or by an authority who had no power. It has been mentioned that at the time of issuance of the appointment letters to the petitioners, the power to make such appointments was withdrawn from the Director of the department. However, no such document withdrawing the power has been brought on record by the respondents. It is also amazing that the appointments made in numbers were not questioned at the initial stage by any authority rather their service books were opened and the petitioners were transferred from one place to other within the State of Bihar. They were paid their salary regularly for more than a decade without any demur. From perusal of the counter affidavit filed in different writ applications, it appears that the respondents were well aware of the nature of the initial appointment of the petitioner(s) but they allowed the petitioners to continuously work for more than a decade. It does not appeal to the reason that the question of irregularity in the appointment can be raised at any point of time without any limitation. In the case of [Roshni Devi and Others Vs. State of Haryana and Others](#), the Supreme Court of India applied equity in favour of the persons who were in the service for more than nine years. The Supreme Court of India, invoked equity in case of an irregular appointment and directed not to annul the appointments. In the instant case after about 15-20 years the respondents have sought to terminated the services of the petitioners on the plea that their initial entry was made when there was a bar on appointments. However, it has not been denied that the petitioners have otherwise eligibility and required educational qualification and that they were appointed against the sanctioned vacant post. No such order has been produced to show that there was a stoppage on the appointment during the relevant period. It has been held earlier by this Court that the Special Land Acquisition Officer was delegated with the power to make appointment of class III & IV posts.

7. The petitioners were thus retained in the service for a long period. They were given their salary fixing their pay scale. Their services were extended by the competent authority including the Director of the department. Their service books were opened. The government even collected their required particulars for the purpose of regularization. The petitioners were transferred from one place to other and in that view after having allowed to remain in service for a considerable length of time, the respondents are estopped from raising the ground of the alleged irregularity after the passage of such a long time. Those irregularities in the initial appointments of the petitioners can be deemed to have been waived by allowing the petitioners to continue in service for such a long time by the competent authority with due notice and knowledge of the nature of their appointments. A valuable right has accrued to the petitioners and that right of livelihood which has

now been equated with the right to life under Article 21 of the Constitution of India, cannot be denied and taken away in the manner it has been done. From the records it appears that there was a large number of sanctioned posts. The petitioner's services have not been sought to be terminated on the ground that they are posted against any unsanctioned posts. The case of the petitioners cannot be equated with an appointment made without testing the eligibility or made on any unsanctioned post or by any authority who had no power to appoint. This Court while disposing of similar writ applications (CWJC No. 5692/1998, dated 14.10.99, CWJC No. 6586/98 and other cases) already noticed that the Special Land Acquisition Officer at the relevant time had power to make such appointment and has quashed termination of similarly situated persons. In view of the above, the impugned orders of termination of the petitioner's services issued by the respondents are wholly arbitrary, unjust and illegal and the same are unsustainable. The impugned orders of termination of the petitioner's services i.e. Memo No. 310 dated 3.2.004 [Annexure- 21 to W.P. (S) No. 1658/2004], Memo No. 1733 dated 21.9.2001 [Annexure-8 to W.P. (S) No. 1083/2002], Letter dated 1.4.2004 [Annexure-15 to W.P. (S) No. 2333/2004] and Letter dated 1.4.2004 [Annexure-17 to W.P. (S) No. 2223/2004] are hereby quashed. Consequently, all the petitioners of the aforesaid writ applications stand reinstated on their respective posts without any break in their services with all consequential benefits.

8. The writ applications are, accordingly, allowed. However, there shall be no order as to costs.