

**(2003) 12 JH CK 0013**

**Jharkhand High Court**

**Case No:** Writ Petition (S) No. 7022 of 2002

Devendra Nath Pandey

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision:** Dec. 19, 2003

**Citation:** (2004) 1 JCR 367

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

**Bench:** Single Bench

**Advocate:** A.K. Sahani, for the Appellant; K.K. Jhunjhunwala, G.P. III, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Tapen Sen, J.

Heard Mr. A.K. Sahani, learned counsel for the petitioner and Mr. K.K. Jhunjhunwala, learned Government Pleader No. III for the respondents and with their consent, the writ petition is being disposed of at this stage.

2. By order dated 3.8.2002 as contained in Annexure 4, the petitioner was removed from service on the ground that he was appointed irregularly after the cut off date i.e. 1.1.1988. The respondents have brought on record the letter by which the aforesaid cut off date was made a yardstick for purposes of terminating the services of persons appointed thereafter i.e. after 1.1.1988. .

3. Mr. A.K. Sahani, learned counsel for the petitioner has filed a reply to the counter affidavit wherein he has stated at Paragraph 7 that in fact the petitioner had entered into the service initially in the month of April, 1986 and he was regularized in the Work Charged Establishment on 28.11.1990 by Annexure 1. In support of the aforementioned contention to the effect that he was regularized with effect from 28.11.1990, the petitioner has relied on Annexure 1 and in support of the contention that he was already working continuously and had entered in service initially in April, 1986, the learned counsel relies upon Annexure 6 appended to the reply to the

counter affidavit. From Annexure 6, the name of the petitioner is placed at serial No. 3 and it is a list of work charged/muster roll employees working in the department. The petitioner has clearly been shown to be working since April, 1986. There is no reply forthcoming from the respondents in relation to the aforementioned fact to the effect that the petitioner has been continuously working since April, 1986 i.e. prior to the cut off date of 1.1.1988. On the contrary, from the counter affidavit of the respondents, it appears that they have taken into consideration the status of the petitioner only after his regularization in the work charged establishment in the department from 28.11.1990 but they have not taken into consideration his status as a muster, roll employee from 1986. To that extent, therefore, it cannot be said that the reasoning given by the respondents in Annexure 4 is proper.

4. Additionally, in a similar matter, in the case of Abhay Kumar Pandey, who was also removed on the basis of the aforementioned circular/policy of the Government relating to the cut off date, the matter fell for judicial scrutiny vide CWJC No. 699 of 1998 and the Hon'ble Single Judge of the Patna High Court relying on two judgments of the Hon'ble Supreme Court of India held that an employee who has continued on a post for several years should not be terminated. Those judgments were the cases of Roshni Devi and Others Vs. State of Haryana and Others, and Union of India and Others Vs. Kishorilal Bablani, respectively.

5. Mr. A.K. Sahani, learned counsel for the petitioner submitted that being aggrieved by the aforementioned judgment of the Patna High Court, the State of Bihar had filed Letters Patent Appeal and the Division Bench allowed the appeal and set aside the order of the learned Single Judge. Thereafter Abhay Kumar Pandey filed Civil Appeal. No. 6297 of 2003 before the Supreme Court of India and by order dated 8.8.2003; the Apex Court observed that the order of the Single Judge should have been upheld by the Division Bench particularly when the appellant had continued in service for over nine years. The photo copy of the aforementioned judgment has been brought on record by Annexure 7 appended to this writ petition.

6. In that view of the matter and for the foregoing reasons, this Court holds that Annexure 4, terminating the services of the petitioner cannot be sustained and it is, accordingly, set aside. The matter stands remanded to respondent No. 2 who shall pass a fresh order in accordance with law after taking into consideration the observations made above.

7. The writ petition is allowed. No order as to costs.