

Deo Narayan Das Vs The State of Jharkhand, Deputy Commissioner, Koderma and Block Development Officer

Court: Jharkhand High Court

Date of Decision: July 23, 2013

Citation: (2013) 4 AJR 423

Hon'ble Judges: S. Chandrashekhar, J

Bench: Single Bench

Advocate: A.K. Sahani, for the Appellant; Rakhi Rani J.C. to Sr. S.C. II, for the Respondent

Final Decision: Partly Allowed

Judgement

S. Chandrashekhar, J.

The petitioner has approached this Court challenging the order of termination dated 22.12.2012. The brief facts of

the case are that, the petitioner was appointed on the post of peon, a class-IV employee on 09.11.2004. On 13.04.2012, a show-cause notice

was issued to the petitioner on the allegation that he submitted a forged certificate of qualification and another show-cause notice was issued to the

petitioner on 17.04.2012. The petitioner submitted a detailed reply on 24.04.2012. Again, a second show-cause notice was issued to the

petitioner on 29.06.2012 to which he replied on 12.07.2012. By order dated 22.12.2012 the service of the petitioner was terminated. In these

facts, the petitioner has approached this Court by filing the present writ petition.

2. A counter-affidavit has been filed by the respondent-State stating that the certificate of the petitioner was verified and it was not found genuine.

The petitioner was granted sufficient opportunity to put his defence and he has infact submitted his detailed reply to the show-cause notices and

also the second show-cause notice issued to him. In these facts, the service of the petitioner was terminated by the authorities and therefore, the

present case does not require any interference by this Court.

3. Heard the learned counsel appearing for the parties and perused the documents on record.

4. The learned counsel appearing for the petitioner has raised a plea that since an allegation of submitting a forged document has been levelled

against the petitioner, a regular departmental enquiry should have been initiated against the petitioner, which admittedly has not been done in this

case and therefore, the order of termination dated 22.12.2012 is liable to be quashed. He relies on an order of this Court passed in W.P. (S) No.

1188 of 2012 and submits that since the petitioner was not afforded the protection as provided under Article 311(2) of the Constitution of India,

this writ petition is fit to be allowed.

5. Per contra Mrs. Rakhi Rani, learned counsel appearing for the respondents submits that in the present case the appointment letter of the

petitioner would disclose that the petitioner was appointed on the post of Peon on temporary basis and it was specifically provided in the letter of

appointment that, if any wrong information is given by the petitioner, his service would be liable to be terminated. She has further submitted that in

the present case infact, two enquires were conducted and the petitioner was afforded sufficient opportunity as, he has been given show-cause

notices as well as second show-cause notice to which he replied. Since the certificate produced by the petitioner was not found genuine, the

service of the petitioner was terminated by the impugned order dated 22.12.2012 and it was ordered that the salary paid to the petitioner from the

date of issuance of notice, would be recovered from the petitioner.

6. Before advertng to the facts of the case, it would be useful to notice the order passed by the learned Single Judge of this Court in W.P. (S) No.

1188 of 2012. In ""Jiban Krishna Das Vs. The State of Jharkhand and Others"" , this Court has taken a view that since the requirement as detailed

under Rule 8 of Bihar State Nationalized Primary Teachers Appointment and Disciplinary Proceeding Rules, 1994 was not complied with

therefore, the termination of the service of the petitioner was violative of Article 311(2) of the Constitution of India. In the said case, the issue was

raised by the respondents after a lapse of 23 years on the allegation that the petitioner had represented himself as "Harizan" for obtaining

employment. In view of the facts and circumstances of the case, this Court was of the view that the order of termination of said "Jiban Krishna

Das" was not sustainable in law and therefore, the order of termination was quashed by this Court. In the present case, the petitioner was

appointed in the year, 2004 on temporary basis and immediately, on detection of the fraud committed by the petitioner, a report was called for and

upon verification, it was found that the certificate submitted by the petitioner was not genuine. When the petitioner denied the certificate, another

enquiry was conducted and a report was again called for. The petitioner produced another certificate which also upon verification was found not

genuine. The show-cause notices dated 13.04.2012 and 17.04.2012 were issued to the petitioner to which the petitioner replied. A second show-

cause notice dated 29.06.2012 was also issued to the petitioner however, the petitioner failed to produce any material in support of his educational

qualification. In the writ petition also, no statement has been made by the petitioner to the effect that the certificate submitted by the petitioner was

genuine and erroneously, the authorities have discarded the certificate as not genuine. In view of the aforesaid facts, I am of the opinion that

sufficient opportunity was granted to the petitioner and there was no requirement in law to conduct a regular departmental enquiry as the petitioner

was a temporary employee.

7. In view of the above, this writ petition lacks merit however, since the petitioner had worked for the period between 09.09.2004 and

22.12.2012, the order of recovery of salary by the impugned order dated 22.12.2012 is liable to be quashed. This writ petition is partly allowed in

the aforesaid terms.