

(2002) 10 JH CK 0014

Jharkhand High Court

Case No: Writ Petition (S) No. 75 of 2002

Pramod Kumar and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Oct. 7, 2002

Citation: (2003) 1 JCR 502

Hon'ble Judges: S.J. Mukhopadhyaya, J

Bench: Single Bench

Advocate: A. Allam, Dhananjay Kumar Dubey, for the Appellant; I. Sen Choudhary, S.C. III, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.J. Mukhopadhyaya, J.

The petitioners Pramod Kumar and Ram Kripal Prasad have challenged the order contained in Memo No. 833 dated 8th December, 2001. They have also prayed for direction on respondents to pay salary due since 1st November, 2000.

2. The impugned memo No. 833 dated 8th December, 2001 has been issued in pursuance of a letter No. 234 dated 3rd December, 2001 issued by the Assistant Director, Social Security, Pakur whereby the Block Development Officer, Pakuria has been asked to send back the services of the petitioner's to the office of the Director, Social Security Department, Government of Bihar, Patna.

3. The case of the petitioners is that they were appointed as clerk vide order No. 8/97 dated 19th March, 1997 issued by the Joint Director (Establishment), Labour Employment and Training Department, Directorate of Employment and Training (Employment), Bihar, Patna under the "Unemployment Token Allowance Scheme, 1981". Subsequently they were transferred vide order No. 119 dated 11th July, 2000 at Pakuria and Maheshpur in the District of Pakur, order was issued by Shri S.P. Singh, Director, Social Security, Directorate, Bihar, Patna. Thereafter, the petitioners gave their joining at their respective places in the District of Pakur and working since

July, 2000.

4. According to Counsel for the petitioners as both the petitioners are working within the territory of Jharkhand their services cannot be sent back to the State of Bihar till they are allotted the cadre in the State of Bihar u/s 72 of the Bihar Reorganisation Act, 2000.

5. From the enclosures attached to the affidavits it appears that a number of persons were transferred by Shri S.P. Singh, Director, Directorate of Social Security, Bihar, Patna to Jharkhand or Santhal Pargana region. When it came to the notice, the Secretary, Labour Employment and Training Department, Government of Bihar vide order contained in memo No. 688 dated 13th November, 2000 cancelled all the transfer orders. In view of such cancellation of transfer orders the Assistant Director, Social Security, Pakur directed the Block Development Officer, Pakuria to relieve the petitioners whereinafter the impugned memo No. 833 dated 8th December, 2001 was issued.

6. The counsel for the State of Jharkhand and Bihar submitted that a number of illegalities were committed and illegal appointments were made by Shri S.P. Singh, the then Director, Social Security, Bihar, Patna. The orders of transfer/adjustment etc. having found *prima facie* illegal have been cancelled by the Secretary, Labour Employment and Training Department vide memo No. 688 dated 13th November, 2000.

7. It appears that some similarly situated persons, Krishna Nandan and others, were also appointed under the "Unemployment Token Allowance Scheme, 1981" in the year 1997, their joining having not accepted they moved before the Patna High Court in CWJC No. 7866/2001. A Bench of the Patna High Court vide order dated 7th August, 2001 observed as follows :

"It is thus not understandable, how the petitioners were appointed on or about 19th March, 1997." Taking into consideration that the "Unemployment Token Allowance Scheme, 1981" came to an end in the year 1996, the Court held that the appointment of those petitioners Krishna Nandan Kumar and others under the scheme which did not exist, those petitioners must be treated as "still born". No relief can be granted to them."

8. Similar order was passed by the Patna High Court in CWJC No. 871/2000 in the case of *Rajeev Kumar v. The State of Bihar*, vide order dated 5th February, 2001.

9. The LPA No, 1028 of 2001 preferred by Krishna Nandan Kumar and others was also dismissed by a Division Bench of Patna High Court vide order dated 17th September, 2001.

10. In the facts and circumstances, though the State of Bihar cannot take any action against the petitioners nor the services of the petitioners can be sent back to the State of Bihar after re-organisation of the State, but it is desirable to find out

whether the petitioners are similarly situated to Krishna Nandan Kumar and others or not, who were also appointed on 19th March, 1997 by Shri S.P. Singh i.e. the date on which the petitioners were also appointed. If the scheme had been closed in the year 1996 and the petitioners were appointed thereafter in such case the petitioners are also to be treated similarly i.e. "still born" as observed by the Patna High Court in the case of "Krishna Nandan Kumar and others" (supra).

11. For determination aforesaid issue, the case is remitted to the Secretary, Labour Employment and Training Department Government of Jharkhand, Ranchi. If necessary he may call for the records from the State of Bihar and will also look into the "legality and propriety" of the appointments of the petitioners. If the petitioners are found to be similarly situated like "Krishna Nandan Kumar and others" no relief be granted to the petitioners.

12. The Secretary is directed to pass a reasoned order in respect to appointment of petitioners within a period of two months from the date of receipt/production of a copy of this order. In the meantime, the services of the petitioners be not send back to the State of Bihar nor they will get any salary. If it is found that the petitioners were appointed against a scheme closed in the year, 1966, they will not be entitled of any salary. On the other hand, if it is found that the petitioners were appointed against any existing scheme, the respondents will pay the salary to the petitioner for the period the petitioners have worked.

13. The writ petition stands disposed of with aforesaid observations and directions.