

(2002) 09 JH CK 0038

Jharkhand High Court

Case No: Civil Review No. 28 of 2002

Jharkhand State Electricity Board
and Others

APPELLANT

Vs

Power Engineer Service
Association and Others

RESPONDENT

Date of Decision: Sept. 19, 2002

Acts Referred:

- Contempt of Courts Act, 1971 - Section 2

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: V.P. Singh, Mukesh Kumar and Rajesh Shankar, for the Appellant; Ritu Kumar, G.P. IV for opposite party No. 1 and V. Shivnath, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner, Jharkhand State Electricity Board has sought review of the judgment dated 21.3.2002 passed by this Court in W.P.s No. 3746/2001.

2. The writ petitioner, who is an association of Engineers working in the Jharkhand State Electricity Board, made a grievance in the writ petition that instead of appointing or promoting officers of the Board, the Board has adopted a practice to appoint retired persons and taking the services of Engineers from other organizations on deputation. This Court, by a reasoned judgment, allowed the writ petition and held that the appointment of respondent No. 4 and other retired person was wholly illegal, arbitrary and mala fide. However, this Court allowed the Board to take their services for three months so that the Board may re-start the process for filling up the vacant post of Superintending Engineer and other posts by promotion and/or by appointment in accordance with the rules and regulations of the Board.

3. In the instant review petition the Board has stated, inter alia, that the allocation of cadre of the employees of the Board was not finalized and as supply of electricity is an essential service, the Board decided to engage persons on contractual basis. The Board, therefore, issued advertisement for making appointment of the officers in the Board. It is further stated that the service records of the employees working in the Jharkhand State Electricity Board has not been transferred by Bihar State Electricity Board and, as such, promotion matter of the officers can not be taken up or finalized. On these grounds the Board has sought review of the judgment dated 21.3.2002.

4. In the counter affidavit filed by the writ petitioner it is stated that about 84 Engineers from the Bihar State Electricity Board were sent to the Jharkhand State Electricity Board in the month of April, 2002 and all the 84 persons joined in May, 2002. Instead of allocating duties and posting all these 84 officers the Board has been intentionally and deliberately appointing retired persons to over power the crisis.

5. This review application was taken up on 11.9.2000 for hearing and this Court passed the following order :

"11.9.2002. Mr. V.P. Singh, Sr. Advocate for the Board submitted that in compliance of the judgment dated 21.3.2002 respondent No. 4 and all other retired officers appointed on contractual basis have been removed except a very few officers who are still working. Conveniently, petitioner has not disclosed the name of those few officers who may be 2,3 or 4, In order to show bona fide of the Board I allow Mr. V.P. Singh, as prayed for by him, to file supplementary affidavit disclosing the names of those very few officers who have been continuing and under what circumstances.

This Court, after considering the counter affidavit may initiate suo motu contempt proceedings against those officers who have flouted the judgment by bringing the persons on deputation in utter disregard of the judgment.

Put up this case on 19th September, 2002."

6. Pursuant to the aforesaid order a supplementary affidavit has been filed by the Board which has been sworn by one Ashok Kumar Mishra, Law Officer Jharkhand State Electricity Board. In para 4 of the affidavit it is stated that after the judgment passed in the writ petition respondent No. 4. Sri P.K. Singh and other officers employed in the Board either on deputation or contractual basis, have been removed. However, it is stated that some officers have been engaged or appointed on non-cadre post. For better appreciation para 4 of the affidavit is reproduced hereinbelow :

"That it is specifically stated that after the judgment under review dated 21.3.2002, Sri P.K. Singh (respondent No 4 in the writ application/opposite party No. 2 herein) and other officers employed in the JSEB on deputation/contractual basis, have been

removed/terminated. At present the following officers are working on non-cadre post.

(i) Sri P.K. Sinha, Estate Officer in JSEB, Head quarter.

(ii) Sri R.R Singh, retired General Manager, Mecon (engaged w.e.f. 15.7.2002).

(iii) Sri B.K.R Singh, retired General Manager-cum-Chief Engineer, PTPS, engaged w.e.f. 15.7.2002.

(iv) Sri B.N.J. Prabhakar, retired Director of Personnel, BSEB engaged w.e.f. 1.8.2002."

7. Mr. V.P. Singh, learned senior counsel appearing for the Jharkhand State Electricity Board firstly submitted that appointment on deputation of the officers working on non-cadre post, does not amount to disobedience of the judgment passed by this Court. Learned counsel submitted that the Board has right to engage officers on non-cadre post despite the judgment passed by this Court which relates to the Engineers working in the Board on the cadre post. In the judgment passed in the writ petition this Court in a very unequivocal term held that appointment of retired persons and other officers on deputation by the Board on any post is wholly illegal and the same cannot be sustained in law. This Court further held that the Board, in order to accommodate some of their close persons, has adopted this procedure of giving appointment on deputation. The Board was totally restrained from appointing any person on deputation in the Board.

8. As noticed above in paragraph 4 of the affidavit it is stated that four persons including Mr. P.K. Sinha were engaged/appointed on non-cadre post. This statement is falsified by Annexure-C of the counter-affidavit which is an office order dated 1.7.2002 issued under the signature of one S.S. Prasad, Joint Secretary of the Board extending the services of Mr. P.K. Sinha, Estate Officer, JSEB for a further period of one year. This office order dated 1.7.2002 reads as under :

JHARKHAND STATE ELECTRICITY BOARD

Engineering Building HEC, Dhurwa,
Ranchi-834004

Order No. EB dated 1.7.2002

Officer Order

Services of Sri P.K. Sinha. Estate Officer, JSEB (HQ) who had been deputed from Mineral Area Development Authority (MADA), Dhanbad for the year is extended further for a period of one year w.e.f. 1.7.2002 onwards on the same terms and conditions.

(S.S. Prasad
Joint Secretary.

Dated.....

Memo No. 3941-EB

Copy forwarded to Sri P.K. Sinha, Estate Officer, JSEB(HQ)-for information and necessary action.

(S.S. Prasad
Joint Secretary
Dated 1.7.2002

Memo No. 3941/EB

Copy forwarded to PS to Chair man/PS to Member/(T)/PS to Member (F)/PS to Secretary/-JSEB, Ranchi-for information.

(S.S. Prasad)
Joint Secretary
Dated 1.7.2002

Memo No. 3941/EB

Copy forwarded to DP/DA/JS (S)/DDA (Sectt.J/DDA (HQ) for information and necessary action.

(S.S. Prasad)
Joint Secretary
Dated 1.7.2002

Memo No. 3941/EB

Copy forwarded to Sri P.K. Sinha, Estate Officer, JSEB(HQ)-for information and necessary action.

(S.S. Prasad)
Joint Secretary
Dated 1.7.2002

Memo No. 3941/EB

Copy forwarded to the Managing Director, Mineral Area Development Authority, Rajendra Path, Hirapur, Distt. Dhanbad-826 001-for information.

(S.S. Prasad)
Joint Secretary."

9. It is clear from the office order that Mr. P.K. Sinha was working on deputation from before the judgment passed in the writ petition. This Court very specifically and categorically directed the Board to remove all those officers who were engaged on deputation including Mr. P.K. Sinha. Instead of doing that the Board extended the services of Mr. P.K. Sinha for a further period of one year. Prima facie, therefore,

the Board has not only failed to make out a case for review of the judgment but the officers of the Board have committed gross contempt of this Court. The Law Officer, Mr. Ashok Kr. Mishra, has filed false affidavit stating that Mr. P.K. Sinha was deputed on non-cadre post because this statement is totally contrary to Annexure-C, the office order dated 1.7.2002, quoted hereinabove. I therefore, find no merit in this review petition which is accordingly dismissed.

10. From the affidavits filed by the parties particularly the supplementary affidavit and also from the submission made by Mr. V.P. Singh, it is clear that the Board has adopted a method to circumvent the judgment by boldly saying that engagement/appointment on ex-cadre post will not amount to contempt of this Court. By adopting this method certainly the Board has tried to go behind the order and truncate the effect of the order passed by this Court. Prima facie, therefore, I am satisfied that the officers of the Board deliberately and willfully with an intention to defeat the judgment passed by this Court in the writ petition have been making engagement/appointment on non-cadre post. I have, therefore, no option but to suo motu initiate a proceeding for contempt against the erring officers.

11. Issue notice to Sri S.S. Prasad, Joint Secretary, Jharkhand State Electricity Board and Mr. Ashok Mishra, Law Officer of the Board to file show-cause as to why they should not be punished for committing contempt of this Court. Simultaneously the Chairman of the Board is also directed to file show-cause as to why the judgment passed in the writ petition has not been complied with in its true letter and spirit. Put up this case on 7.10.2002. In the mean time, all those officers who have been appointed/engaged in the capacity of or against non-cadre post, shall not discharge their duties as such till further order is passed by this Court.