
Mishri Mistri Vs State of Bihar and Others

C.W.J.C. No. 683 of 1995

Court: Jharkhand High Court

Date of Decision: Sept. 12, 2003

Acts Referred:

Constitution of India, 1950 – Article 226

Citation: (2004) 1 JCR 679

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Advocate: R. Krishna and Saurav Arun, for the Appellant; R.S. Majumdar, for the Respondent

Final Decision: Dismissed

Judgement

Amareshwar Sahay, J.

In this application the petitioner has prayed for quashing of the order dated 28.2.1995 as contained in Annexure-3

to the writ application whereby promotion of the petitioner to the post of Foreman (Mechanical) has been cancelled with retrospective effect by

order dated 18.2.1985 as contained in Annexure-2 i.e. after ten years.

2. The petitioner was initially appointed as Machanic on 15.10.1996. By office order dated 18.2.1985 as contained in Annexure-2 to the writ

application, the petitioner was promoted to the post of Foreman (Mechanical) on ad hoc basis considering his seniority and thereafter by issuance

of Annexure-3 i.e. the order dated 28.2.1995 his promotion to the post of Mechanical Foreman was cancelled.

3. The learned counsel for the petitioner has challenged the said order and has raised very short point that before issuance of the impugned order

of cancellation of promotion of the petitioner, no notice of any kind or a chance of being heard was given to him and therefore, it was clearly in

violation of principles of natural justice.

4. In support of his submission the learned counsel for the petitioner has relied on the decision in the case of Ram Ujarey Vs. Union of India, and

also the in the case of Lagadeo Prasad v. Bihar State Electricity Board and Ors., reported in 2001 (2) JCR 76 (Jhr).

5. Mr. R.S. Majumdar, learned Government Advocate appearing for the State has submitted that since, the promotion given to the petitioner was

irregular, therefore it was rightly cancelled by the impugned order dated 28.2.1995. He has further submitted that from Annexure-2 i.e. the office

order dated 18.2.1985 it appears that while giving promotion to the petitioner it was specifically mentioned in the said order that the promotion

was only ad hoc in nature and it was specifically mentioned that no claim of the petitioner would be entertained for being promoted on regular basis

and therefore, since the petitioner has accepted the said conditional promotion, he has no right to challenge the said order of cancellation of

promotion given to him which is found to be irregular. He has further submitted that since the petitioner was promoted only on ad hoc basis and

therefore, no notice to show cause prior to the issuance of Annexure-3 was required to be given. In support of his contention he has relied on the

decision in the case of Punjab State Electricity Board and Another Vs. Baldev Singh,

6. It is not in dispute that by Annexure-2 the petitioner was promoted to the post of Foreman (Mechanical) on the ad hoc basis. There is nothing

on record to show that the said promotion on ad hoc basis given to the petitioner was ever confirmed by the respondents. Therefore, in my view

no right has accrued to the petitioner on the basis of the said ad hoc promotion. By cancelling the ad hoc promotion the petitioner has been

reverted back to his substantive post as Mechanic. The Supreme Court in the case of Punjab State Electricity Board and Anr. v. Baldev Singh

(supra) has held that no notice or opportunity of hearing is required to be given to a person who has been appointed/promoted to a post on ad hoc

basis. The decision i.e. AIR 1999 SC 309 and AIR 2001 JCR 76 and 2000 (1) JLR 152 cited by the learned counsel for the petitioner are not

applicable in the facts and circumstances of the case because it appears from those decisions that those were not the case in which any of the

petitioner was promoted on ad hoc basis rather it appears that those were the case in which the concerned persons were given regular promotion.

Therefore, relying on the decision of the Supreme Court in the case of Punjab State Electricity Board and Another Vs. Baldev Singh, I hold that no

prior notice to show cause/opportunity of hearing was required to be given before issuance of Annexure-3. Therefore the impugned order cannot

be said to be illegal on that ground.

7. In the result this application has got no merit and accordingly it is dismissed. However, it is made clear that there shall be no recovery of any

pay/allowance paid to the petitioner during the period the petitioner was holding promotional post of Mechanical Foreman.

8. In the facts and circumstances of the case, there shall be no order as to costs.