
(2003) 09 JH CK 0065

Jharkhand High Court

Case No: Writ Petition (S) No. 4703 of 2003

Ram Prasad Kumar

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Sept. 17, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2003) 4 JCR 389

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

Bench: Single Bench

Advocate: P.K. Prasad, for the Appellant; Niki Sinha, JC to GP-IV, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

Heard the parties.

2. Petitioner seeks direction upon the respondents to grant benefit of the judgment passed by the Supreme Court dated 9.1.1992 in SLP (C) No. 910207 of 1990.

3. The admitted facts of the case is that petitioner was appointed by the District Malaria Officer, Giridih on the post of Field Worker. In 1988 petitioner's appointment was cancelled alongwith other persons. After about two years i.e., in 1990 petitioner challenged the order of termination by filing CWJC No. 2281 of 1990(R). The writ petition was dismissed on 28.11.1990 by passing the following order :--

"In this writ application, the petitioner has prayed for issuance of an appropriate writ for quashing the order dated 16.8.1988 passed by the respondent No. 2 terminating the service of the petitioner. From a perusal of the impugned order as contained in Annexure-5 to the writ application, it appears that the respondent No. 2

came to the conclusion that the appointment of the petitioner was illegal as neither the vacancies were advertised nor any intimation was given to the Employment Exchange nor the reservation policy of the State Government was followed. It has further been found that the constitution of the selection committee was also not in accordance with the policy decision of the State Government.

Mr. P.K. Prasad, the learned counsel appearing on behalf of the petitioner submitted that in a similar situation, the Supreme Court has set-aside the order of termination. Evidently the aforementioned Supreme Court decision has no application in the present case." In that case, the Supreme Court was considering the inconsistent stand taken by the State of Bihar in the writ application and before the Supreme Court of India.

It is now well settled by various decisions of this Court as also of the Supreme Court of India that if any appointment is made without complying the requirement of Article 16 of the Constitution of India the same would be wholly illegal. In this view of the matter, the petitioner did not have any legal right to continue in the said post.

It is further evident from the impugned order that the same was issued in August 1988. The petitioner has filed this writ application only on 26.11.1990. No cogent reason has been assigned explaining the delay in filing the writ application.

Taking thus, all the facts and circumstances of the case, we are of the view that no case has been made out for setting-aside that part of the order as contained in Annexure-5 to the writ application, whereby the services of the petitioner was terminated. However, it appears that by reason of the said order, the petitioner was directed to refund the amounts which have been received by him during the period, he was in service, in my opinion, cannot be sustained.

In this view of the matter, this writ application is allowed to the aforementioned extent.

However Mr. P.K. Prasad states that now the State has taken steps to fill-up the post in a regular manner and the petitioner is also one of the candidates. It goes without saying that this order shall not stand in the way of the petitioner in considering his case for appointment in a regular manner and in accordance with law."

4. It appears that subsequently petitioner was re-appointed on 27.1.1995 but after three months petitioner's appointment was cancelled. Petitioner challenged the said order by filing CWJC No. 1516 of 1995(R). The writ application was disposed of on 14.12.1995, whereby this Court refused to interfere with the order of cancellation but directed the respondents to make payment of the dues during the period he actually worked.

5. It appears that some of the employees challenged the order of termination of service, which ultimately went up to the Supreme Court. The Supreme Court disposed of those appeals on 9.1.2002 with the observations that the cases of those

petitioners shall be considered as and when vacancy arises without regard to the age restriction. The contention of the petitioner is that on the basis of that observation, some of the petitioners have been given appointment. Petitioner therefore claims benefit of the said order of the Supreme Court.

6. As noticed above, petitioner earlier challenged the order of termination in CWJC No. 2281 of 1990(R) and this Court refused to interfere with the order of termination. Subsequently, in another writ petition, petitioner had challenged the subsequent order of cancellation, which was also not interfered with by this Court. Petitioner now seeks benefit of the order passed by the Supreme Court on 9.1.2002 by filing representation and also the instant writ petition in 2003 i.e., after 11 years of the order.

7. Mr. P.K. Prasad, learned counsel for the petitioner submitted that the Supreme Court has given benefit only in 2003 and therefore, the action of the respondents gave a cause of action to the petitioner to move this Court. Even assuming that the Supreme Court has given benefit in 2003, petitioner cannot claim appointment on the basis of observation made by the Supreme Court in cases where admittedly petitioner was not a party.

8. For the aforesaid reasons, no relief can be granted to the petitioner. This writ application is dismissed.