
(2009) 05 JH CK 0046
Jharkhand High Court
Case No: None

Yogendra Kumar

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: May 20, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Dhirubhai Naranbhai Patel, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

D.N. Patel, J.

The present petition has been preferred mainly for the reasons that the services of the present petitioner have been terminated with effect from April 1, 2004, for the reasons that the appointment letter, upon which the petitioner is relying upon, was never issued by the respondents, the signature of the appointing authority is in dispute, the letter number is also in dispute and upon an enquiry, it has been found out that never such appointment letter has been issued to the petitioner for the post of Amin and, therefore, the services of the present petitioner have been brought to an end, vide order dated April 1, 2004, passed by respondent No. 3, at Annexure 11 to the memo of present petition.

2. Learned Counsel for the petitioner submitted that there is no illegality in the appointment of the present petitioner. The petitioner was working since long. Initially also the petitioner was retrenched on March 27, 1979 and thereafter, again the petitioner was re-appointed to the post of Amin on April 1, 1989 and since 1989 the petitioner was working very smoothly with the respondents and never any objection has been raised by the respondents. The conclusion, arrived at by respondent No. 3, vide order dated April 1, 2004, at Annexure 11 to the memo of present petition, are de hors the facts and, therefore, the impugned order deserves to be quashed and set aside. It is also submitted by the learned Counsel for the

petitioner that the inquiry, which has been conducted by the respondents, has never been made known to the present petitioner and, therefore, also the impugned order deserves to be quashed and set aside.

3. I have heard learned Counsel for the respondents, who has submitted that there is a fraud, played by the present petitioner, and the appointment letter, upon which the petitioner is relying upon, which is at Annexure 4 to the memo of present writ petition, dated April 1, 1989 has never been issued by the respondent authorities. Neither the signature on the appointment letter is not tallying nor the number of that appointment letter is tallying and upon proper verification, it has been found out that never such appointment letter has been issued in favour of the present petitioner by the State authorities and, therefore, the services of the present petitioner have rightly been brought to an end, vide order passed by respondent No. 3, dated April 1, 2004, at Annexure 11 to the memo of present petition. It has been mentioned in paragraph No. 4 of the impugned order that a secret inquiry was conducted, wherein, it has been found out that the petitioner was never appointed by the State authorities. Thus, the whole appointment itself is in dispute, so far as the present petitioner is concerned and therefore, this petition deserves to be dismissed.

4. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, I see no reason to entertain this writ petition, mainly for the following facts and reasons:

(i) It appears from the facts of the case that the present petitioner is alleging his appointment being done by the respondents vide order at Annexure 4 to the memo of present petition dated April 1, 1989. So far as this appointment letter is concerned, the same is in dispute. Looking to the order, passed at Annexure 11 to the memo of present petitioner, especially looking to paragraph No. 4 thereof, no such appointment letter has ever been issued by the respondent authorities. Signature of the appointing authority is also denied by the State authorities. Appointment letter number is also not tallying. It has also been mentioned by respondent No. 3, in the impugned order, that from the confidential cell inquiry, it has been found out that never such appointment letter dated April 1, 1989, at Annexure 4 to the memo of present petition, has been issued by the respondents and, therefore, the services of the present petitioner was continuing, because of the fraud, played by the present petitioner. Fraud vitiates the whole appointment and, in fact, in the eyes of law, there is no appointment at all and, therefore, it cannot be said that vide order dated April 1, 2004, there is termination of the services of the present petitioner, but, in fact, vide the impugned order, there is a declaration of the fraud. Any appointment, done by fraud, is no appointment in the, eyes of law.

(ii) It also appears that the present petitioner is relying upon a highly disputed document, at Annexure 4 to the memo of present petitioner, dated April 1, 1989. The State authorities have categorically denied the issuance of this letter. Even the

signature of the appointing authority is also in dispute, looking to paragraph No. 2 of the impugned, order, at Annexure 11 to the memo of present petition.

5. Thus, looking to the highly disputed question of fact, I am not inclined to exercise powers, vested in this Court, under Article 226 of the Constitution of India. To dispel the clouds of fraud, some cogent and convincing evidence are required to be led by the present petitioner before this Court. Without evidence, the impugned order, at Annexure 4 to the memo of present petition, cannot be presumed; to be a true, correct and genuine document and, therefore, in a writ jurisdiction. I am not inclined to grant any relief to the present petitioner.

6. There is no substance in this writ petition and hence the same is hereby dismissed.