

(2013) 04 JH CK 0051

Jharkhand High Court

Case No: Writ Petition (S) No. 4396 of 2004

Kalpana Kumari

APPELLANT

Vs

The State of Jharkhand, Regional
Director, Animal Husbandry
Department, District Animal
Husbandry Officer and Director,
Animal Husbandry

RESPONDENT

Date of Decision: April 18, 2013

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 226

Citation: (2013) 4 AJR 5 : (2013) 3 JLR 98

Hon'ble Judges: S. Chandrashekhar, J

Bench: Single Bench

Advocate: Birendra Kumar, for the Appellant;

Final Decision: Dismissed

Judgement

S. Chandrashekhar, J.

Seeking quashing of order dated 20.06.1997 whereby the service of the petitioner was terminated, the petitioner has filed the present writ petition. The facts disclosed in the writ petition are that the petitioner was appointed as a "Ganak" by office order dated 13.10.1990 by the Regional Director Animal Husbandry Department. The petitioner joined the post of Ganak with effect from 15.10.1990. The service of the petitioner was terminated by order dated 20.06.1997 on the ground that her appointment was irregular and illegal. The petitioner has raised a contention that power to appoint on Class-III and Class-IV post was vested with the Regional Director prior to 28.10.1991 and since she was appointed on 13.10.1990, her appointment was valid. Reliance on the judgment in case of "Parijat Kumar Bhui" passed in W.P. (S) No. 2558 of 2001, has been placed by the petitioner.

2. A counter-affidavit has been filed in which it has been stated that the post of Ganak is a State level post and the Director, Animal Husbandry was the only competent authority to make appointment on the said post. The Regional Director had no power to make appointment on the said post. When it was found that illegal appointments were made by the Regional Director, a direction was issued for terminating the service of all such illegally appointed Ganaks. It has been further stated that by resolution dated 20.04.1981 it has been provided that appointment on Class-III post would be made on the recommendation of the then Bihar State Subordinate Service Selection Board. In case of the petitioner, neither any advertisement was issued nor the Bihar State Subordinate Service Selection Board have recommended her case. She was appointed on ad-hoc basis ignoring the circular dated 11.06.1986, therefore her appointment was illegal.

3. Heard the learned counsel appearing for the parties and perused the documents on record.

4. The learned counsel appearing for the petitioner has submitted that the appointment of the petitioner was valid as would appear from letter dated 08.08.1996 of the Deputy Commissioner, Deoghar. He has further contended that it has been held by the High Court in the case of "Parijat Kumari Bhui" that the power of appointment on Class-III and Class-IV post was vested in the Regional Director till 28.10.1991 and since the petitioner was appointed on 13.10.1990, her appointment could not have been termed as illegal. As against this, the learned counsel for the respondents has contended that wide-scale illegal appointments were made by the Regional Director, Animal Husbandry Department. Criminal cases were also registered and the matter had gone up to the Hon"ble Supreme Court and the Hon"ble Supreme Court was also pleased to affirm the order of termination of service of such illegally appointed persons in the Animal Husbandry Department.

5. From the record of the case it appears that the Director, Animal Husbandry Department has written letter to all the Regional Directors enclosing a list of persons appointed unauthorizedly and illegally. The name of the present petitioner finds place at serial no. 28. Faced with this situation, the learned counsel appearing for the petitioner has placed reliance on order passed by the learned Single Judge of this Court in W.P. (S) No. 4837 of 2003 seeking a similar liberty to the petitioner to submit a representation and a direction upon the Secretary, Animal Husbandry Department, Government of Jharkhand for considering her case.

6. In "[State of Bihar Vs. Upendra Narayan Singh and Others](#)", the Hon"ble Supreme Court has held that the ad-hoc appointees would have no right to claim regularization in the service.

7. It appears that the petitioner in W.P. (S) No. 4837 of 2003 had worked continuously for more than 14 years. The learned Single Judge permitted the petitioner to prefer a representation and a direction was issued to the Secretary,

Animal Husbandry Department to take a decision on the representation so made by the employee. In the present case, I find that the petitioner has worked only for about seven years and her name was specifically mentioned in the list containing the name of persons appointed illegally. After about seventeen years, since the petitioner was terminated from service, I am not inclined to grant any liberty to the petitioner for making any representation for consideration of her claim for regularization in service. Admittedly, appointment of the petitioner was in contravention of the constitutional mandate as contained in Articles 14 and 16 of the Constitution of India. Immediately, on detection of illegal appointments made by the Regional Directors, all such appointments were terminated and therefore, no prejudice has been caused to the petitioner. It is also a settled principle that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or Court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals, others can not invoke the jurisdiction of the Court for repeating or multiplying the same irregularity or illegality. [Reference can be made to the case in "[State of Bihar Vs. Upendra Narayan Singh and Others](#), .

8. A Constitution Bench of the Hon'ble Supreme Court in "[Secretary, State of Karnataka and Others Vs. Umadevi and Others](#), has observed as under,

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made

regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

In view of the aforesaid discussion, I do not find any merit in the writ petition and accordingly, the writ petition is dismissed.