

Amit Kumar Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Aug-02-2017

Appellant : Amit Kumar

Respondent : State of Jharkhand and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 460 of 2010

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Amit Kumar, son of late Umesh Prasad Srivastava, resident of near Ashok Timber, Main Road, Jodhadih More, Chas, Bokaro, Distt. Bokaro. Petitioner VERSUS1 State of Jharkhand.

2. The Deputy Secretary, Rural Construction Department, Govt. of Jharkhand, Ranchi.

3. The Chief Engineer (Traffic), Road Construction Department, Govt. of Jharkhand, Ranchi.

4. The Superintending Engineer, Road Construction Department, Road Circle, Hazaribagh.

5. The Executive Engineer, Road Construction Department, Road Circle, Bokaro.

... Respondents.

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For Petitioner : Mr. Afaque Ahmed, Advocate For Respondents : Mr. Sunil Singh,

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CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK11 02.08.2017 Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner has approached this Court with a prayer for quashing of the office order No. 2348 dated 31.12.2009, issued under the signature of respondent No. 4, whereby the petitioner has been reverted from the post of Accounts Clerk to the post of Correspondence Clerk. FACTUAL MATRIX3 The factual matrix as has been delineated in the writ petition is that after death of the petitioners father, who was working as Treasurer in Road Construction Department, the petitioner applied for his appointment on compassionate ground. On receipt of his application, the Executive Engineer, Road Division, Dhanbad vide his letter No. 1024 dated 31.07.2002, forwarded the same and recommended for his appointment on compassionate ground on the post of Junior Accounts Clerk. In light of the recommendation of the District Compassionate Committee, the petitioner was appointed on Class-III post of Correspondence Clerk, Road Construction Division, Dhanbad. It is the specific case of the petitioner that he was fully eligible to be appointed on the post of Accounts Clerk and in this regard, recommendation was also made vide 2 letter dated 31.07.2002 to appoint the petitioner on the post of Accounts Clerk but inspite of being appointed as Accounts Clerk, the petitioner was appointed on the post of Correspondence Clerk. Though the petitioner was appointed on the post of Correspondence Clerk, he was continuously discharging his duties as Accounts Clerk and work was taken from him but he was given the pay- scale of Correspondence Clerk as the pay-scale of Accounts Clerk as well as Correspondence Clerk are same and similar.

4. The petitioner appeared in the departmental examination of Accounts Clerk and successfully cleared two papers of accounts examination in the year 2005. Thereafter, the petitioner made representation on 30.05.2007 before the respondent No. 4, for considering conversion of his post from Correspondence Clerk to Accounts Clerk. The said representation of the petitioner was duly recommended with an observation that the works of Accounts Clerk was being taken from the petitioner and as such, his request for conversion to the post of

Accounts Clerk, which was carrying the same Scale of Pay, could be considered in the interest of work of the Office.

5. As the petitioner fulfilled the requisite qualification for appointment on the post of Accounts Clerk and pay-scale of Accounts Clerk and Correspondence Clerk was same and similar, the petitioner was formally assigned the additional work of Accounts Clerk vide Office Order No. 1012 dated 25.10.2007. The petitioner continued to work as Accounts Clerk from 25.10.2007, however, no final decision was taken in the matter of representation of the petitioner on his request for conversion from the post of Correspondence Clerk to Accounts Clerk. The petitioner also made several representations in the light of the Office Order No. 1012 dated 25.10.2007 and again requested for his absorption on the post of Accounts Clerk. Subsequently, the Executive Engineer, Road Construction Department, Bokaro recommended the case of the petitioner on 13.11.2007 for conversion/ absorption on the post of Accounts Clerk. It was specifically mentioned that the petitioner was performing job of Accounts Clerk since October, 2007 in the light of the Office Order dated 25.10.2007 and his work was found satisfactory.

6. Several recommendations were also made for conversion of the petitioner to the post of Accounts Clerk from the post of Correspondence Clerk. The Establishment Committee also recommended the case of the petitioner after due deliberation and consideration for the post of Accounts Clerk in the interest of Office. Finally vide Office Order No. 406 dated 24.02.2009, the conversion of the petitioner from the post of Correspondence Clerk to the post of Accounts Clerk was done and the petitioner was directed to be posted as Accounts Clerk in the Road Sub-division, Bokaro. In compliance of the said order, the petitioner submitted his joining on the post of Accounts Clerk, which was duly accepted. It is the specific case of the petitioner that he was confirmed to the post of Accounts Clerk by the order of the Superintending Engineer, who is also the appointing authority. The said decision was taken by the respondent No. 4, after receiving due recommendation by the Establishment Committee of the Circle. It has also been stated that the petitioner had cleared the departmental examination of account in the year 2007.

7. Thereafter, on a complain received from the Department before the Secretary, the Deputy Secretary, Road Construction Department, Ranchi, issued show-cause to the respondent No. 4 upon the matter of conversion/ absorption of the petitioner and others, alleging therein that the conversion of the petitioner was illegal. It is further stated that another show-cause was issued to the petitioner vide order dated 27.11.2009 asking him as to why order of conversion on the post of Accounts Clerk be not cancelled. However, petitioner replied the same and it was also replied by the respondent No. 4 stating therein that the order of conversion was done in accordance with law and there is no illegality in the said order. The respondent-authorities without considering the show-cause of the petitioner and also recommendation of the Superintending Engineer, who had appointed the petitioner, passed order dated 31.12.2009, reverting the petitioner from the post of Accounts Clerk to the post of Correspondence Clerk. Hence, this writ application has been preferred challenging the said order.

8. Mr. Afaq Ahmed, learned counsel appearing for the petitioner argues that the respondents have illegally and arbitrarily reverted the petitioner from the post of Accounts Clerk to the post of Correspondence Clerk though he was appointed on the said post in accordance with law by a competent authority. Learned counsel submits that the order of reversion could not have been passed by the same authority, who was also the appointing authority. In the instant case one Superintending Engineer has issued order of appointment and other Superintending Engineering has issued order of conversion, which is not permissible and as such, order dated 31.12.2009 is not sustainable in the eyes of law and fit to be quashed and set aside. 4 9. Per contra, counter-affidavit has been filed. Mr. Sunil Singh, learned JC to SC (Mines) appearing for the respondents, draws the attention of the Court towards paras 8 to 10 and submits that the post of Correspondent Clerk and Accounts Clerk are of two different cadres and no appointment can be done dehors the rules. The Superintending Engineer was not a competent authority to appoint a person, who was of a different cadre holding the post of Correspondence Clerk, to the post of different cadre of Accounts Clerk. No change of cadre is permitted in the eyes of law. However, learned counsel has no reply to the query of the Court regarding whether the same authority can revert the order of appointment of his predecessor-in-office.

10. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that the order dated 31.12.2009, has been passed illegally and arbitrarily de hors the rules. The rules does not permit for review of the order by the same authority. In the instant case, the order has been reviewed, which is not permissible in the eyes of law. The Honble Apex Court in the case of R.T. Rangachari vrs. Secretary of State, reported in AIR1934 Mad 27, has held that, In a case in which after Government Officials, duly competent and duly authorized in that behalf, have arrived honestly at one decision, their successors in office, after the decision has been acted upon and is in effective operation, cannot purport to enter upon a reconsideration of the matter and to arrive at another and totally different decision. From perusal of the aforesaid judgment it is crystal clear that review is not permitted by the same authority.

11. As a cumulative effect of the aforesaid rules, guidelines, judicial pronouncements, the impugned order dated 31.12.2009 is not sustainable in the eyes of law and as such, is hereby quashed and set aside.

12. Resultantly, the writ petition stands allowed. The petitioner will continue on the said post from which he was removed earlier by order dated 31.12.2009. (Dr. S.N. Pathak, J.) kunal/-

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