

Kishore Kumar Vs. State of Bihar and ors.

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Court : Jharkhand

Decided On : Mar-21-2003

Reported in : [2003(97)FLR936]; [2003(2)JCR448(Jhr)]

Judge : Tapen Sen, J.

Acts : Service Law

Appeal No. : CWJC No. 1816 of 1998 (R)

Appellant : Kishore Kumar

Respondent : State of Bihar and ors.

Advocate for Def. : A.K. Mehta, SC-I and; Aniket Kumar, Adv.

Advocate for Pet/Ap. : Saurav Arun, Adv.

Disposition : Petition allowed

Judgement :

Tapen Sen, J.

1. Heard Mr. Saurav Arun, learned counsel for the petitioner and Mr. Aniket Kumar, JC to SC-I.

2. The petitioner, a Class-IV employee serving since 1989 as a 'Janjir Bahak (one who pulls the measuring chain along with the surveyor)' was ordered to go out of service by Annexure-6 issued by the respondent No. 2. The said officer order is dated 3.4.1998.

3. Upon perusal of Annexure-6 (the impugned order), it appears that the reason for terminating the service of the petitioner was because he had not been able to produce the certificate of displacement on the basis whereof he is said to have been given compassionate appointment on 18.5.1989.

4. The petitioner has asserted that his name had been sent by the Employment Exchange upon requisition made in that regard by the respondents themselves for purposes of appointment of displaced person. The petitioner claims that his land has been acquired for construction of the Latratu Dam and accordingly, his name had been sent. Thereafter, he was interviewed and finally recommended by a duly constituted Committee which had been so constituted vide Memo No. 893, dated 21.2.1989. The Committee met on 1.8.1989 and recommended the name of the petitioner along with several other persons for purposes of appointment on Class-IV posts. Accordingly, by Annexure-1, an office order was issued on 18.5.1989 whereby and whereunder the petitioner, vide serial number 15 therein, was appointed although, on a temporary basis but on a vacant post.

5. The petitioner has further stated that subsequently, with regard to the appointment made vide Annexure-1, an enquiry was conducted by the respondent No. 3 whereafter and upon conclusion thereof, he submitted a letter dated 28.7.1989 to the respondent No. 3 (The Special Land Acquisition Officer, Medium Irrigation Project, Ranchi), informing him that there were no irregularities committed in the matter relating to the aforementioned appointments.

6. It appears that after the appointments had been made and after Annexure-2 had been submitted, 6/7 years thereafter a memo was issued on 17.6.1997 by the Director, Land Acquisition and Rehabilitation, Water Resources Department, Government of Bihar asking the petitioner to show cause as to why his appointment be not held to be irregular. It appears from Annexure-3, that apart from the aforesaid, the petitioner, was also asked to furnish Displacement

Certificate.

7. In reply to the aforementioned memo, the petitioner appears to have sent a reply vide Annexure-3 informing inter alia that he had already deposited the certificate with the erstwhile Director. Notwithstanding thereof, a notice dated 30.6.1997 was again sent to the petitioner asking him to submit the Displacement Certificate. Subsequently, yet another notice was given on 29.11.1996 asking the petitioner to show cause as to why his services be not terminated on account of the fact that his appointment itself was irregular in as much as the rehabilitation officers had not power to make any appointment. In answer to the aforementioned letter, the petitioner replied vide Annexure-5 wherein he stated that his appointment had been made by the Special Land Acquisition Officer. Khunti and that the appointments had been approved by the Department itself. Mr. Saurav Arun states that reference of the departmental approval in Annexure-5 means Annexure-2 i.e. the letter dated 28.7.1989 referred to above. According to the petitioner, without considering the replies filed by the petitioner, the impugned order was passed on 3.4.1998 by Annexure-6 terminating the services of the petitioner.

8. In the Counter Affidavit filed by the Respondent Nos. 2 and 3, it has been stated inter alia that the appointments were made irregularly and that the Government having come to learn about the same, obtained legal opinion and on the basis of legal opinion, they terminated the services of persons who had been appointed by the authorities who did not have the competence to do so. According to these respondents, the petitioner having been appointed by the Rehabilitation Officers, could not be retained in service in as much as these Rehabilitation Officers did not have the jurisdiction nor the competence to make such appointments. They have further stated that in spite of repeated reminders, the petitioner did not submit the required certificate regarding his displacement.

9. At paragraph 17 of the Writ Petition, the Petitioner has stated that he had already submitted his certificate in original and that he should not be forced to submit the same all over again and that too. after a lapse of so many years. This statement at paragraph 17 finds support in the reply sent by the petitioner to the

Memo dated 17.6.1997 vide Annexure-3.

10. The respondents have not denied this paragraph in their reply made at paragraph 30 of the Counter Affidavit. They have stated merely repeated ad nauseam that the petitioner did not submit the certificate inspite of repeated reminders. Be it noted that the petitioner is repeatedly stating and he had already submitted that filed the requisite Certificate with the erstwhile Director but this part of his assertion has been left virtually unattended.

11. Be that as it may, and considering the fact the petitioner had been appointed on a vacant post as early as on 18.5.1989 and that appointment having found support/ approval by the Department itself on 28.7.1989 by Annexure-2, the same should not be allowed to be upset after such a long period i.e. after almost nine years.

12. In that view of the matter, the impugned order terminating the services of the petitioner is set aside. All consequential benefits that would have endured to the benefit of the petitioner had he not been terminated from his service shall now apply with full force in his favour.

The Writ Petition is allowed. Parties to act accordingly.

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