

Shankar Kumar Vs. State of Jharkhand,

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Court : Jharkhand

Decided On : Aug-21-2007

Reported in : [2008(1)JCR107(Jhr)]

Judge : Ramesh Kumar Merathia, J.

Appellant : Shankar Kumar

Respondent : State of Jharkhand, ;commissioner-cum-secretary, Department of Commercial Taxes, Government of Jhark

Advocate for Def. : Mr. K.K. Jhunjhunwala

Judgement :

Ramesh Kumar Merathia, J.

1. Heard the parties finally.

2. Mr. A. Allam, learned Counsel appearing for the petitioner submitted as follows. The petitioner is entitled to compassionate appointment in place of his father late Basant Prasad who died on 15.9.2004. No decision has been taken by the respondents pursuant to the order passed by this Court in W.P. (S) No. 1890 of 2006 on 22.6.2006 filed by the petitioner for the selfsame relief. It is true that when the petitioner's father died, he was not confirmed, but similarly situated persons moved this Court and order was passed for their confirmation and the same was

confirmed up to the Supreme Court which will appear from the order of the Supreme Court dated 6.3.2006 (Annexure 12). One Sarita Devi, who was also similarly situated, has been given compassionate appointment. The appointments made by the Joint Commissioner, Commercial Taxes were found to be valid by a committee in its report.

3. Mr. K.K. Jhunjhunwala learned G.P.III appearing for the respondents submitted as follows. The said writ petition (W.P, (S) No. 1890 of 2006) was disposed of on the first date when it was taken up noting the submission of the petitioner and without counter affidavit. A counter affidavit has been filed in this case to show that the petitioner's father was appointed temporarily and he was not confirmed up to the date of his death and therefore, the petitioner cannot claim compassionate appointment. The said report is with regard to the appointments made by one Mr. Sheoguni Verma, Joint Commissioner, Commercial Taxes (Admn.) Jamshedpur as per the list contained in Letter No. 48-C dated 13.5.1999, whereas the petitioner was appointed by one Mr. Durga Prasad, the then Joint Commissioner, Commercial Taxes, Jamshedpur and, therefore, such report is not applicable to the petitioner. Smt. Sarita Devi was appointed on compassionate ground before bifurcation of the State by the authorities of the Bihar and in that circumstance, the authorities of Jharkhand had to confirm the same, but on that ground, the respondents cannot be directed to perpetuate the illegality. In view of the Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka v. Uma Devi : (2006)IILLJ722SC and other judgments, no order can be passed by writ Court for regularisation/confirmation of the persons who were appointed without following, the procedure even if they worked for a long period and, therefore, petitioner cannot take advantage of the said order of the Supreme Court dated 6.3.2006 (Annexure 12). He further submitted that as per the Full Bench judgment of this Court in Ram Prasad Singh v. State of Jharkhand 2005 (3) JLJR 38, the dependent of even the work-charged employees are not entitled for compassionate appointment. The petitioner's claim for passing the order for regularising his father's service after his death is wholly untenable.

4. It appears from Annexure 2 that the petitioner's father Late Basant Prasad was appointed on 27.6.1980 temporarily by one Mr. Durga Prasad, the then Joint

Commissioner, Commercial Taxes, Jamshedpur Circle, Jamshedpur, and died on 15.9.2004 working as such. The petitioner applied for compassionate appointment on 30.11.2004. As no decision was taken on his application, he filed the said writ petition-W.P. (S) No. 1890 of 2006 which was disposed of on 22.6.2006 on the first date, noting the submission of the petitioner, without counter affidavit with a direction to respondents No. 3 and 4 therein -- Deputy Commissioner, Department of Commercial Taxes, Adityapur Anchal, Jamshedpur and Deputy Commissioner, Jamshedpur to consider the petitioner's representation within two months from the date of receipt/production of a copy of the order. The petitioner thereafter filed a representation.

5. It appears from the letter contained in Memo No. 268 dated 7.7.2006 (Annexure 11) issued by the Deputy Commissioner, Commercial Taxes, Adityapur Circle, Jamshedpur to the Commissioner-cum-Secretary, Commercial Taxes, Ranchi and the letter contained in Memo No. 2043 dated 18.8.2006 (Annexure 11/1) issued by the Joint Commissioner, Commercial Taxes, Ranchi that the decision was to be taken at high level.

In view of the order passed in the said writ petition -- W.P. (S) No. 1890 of 2006, I am not inclined to go into the merits of the said contentions of the parties at this stage as admittedly no final decision has been taken pursuant to the said order till now.

6. In the circumstances, Commissioner, Commercial Taxes, Ranchi (respondent No. 2) will see that a decision is taken on the petitioner's representation pursuant to the order dated 22.6.2006 passed in W.P. (S) No. 1890 of 2006 as early as possible and preferably within a period of two months from the date of receipt/production of a copy of this order. It is made clear that this Court has not gone into the merits of the respective cases of the parties.

7. With these observations and directions, this writ petition is disposed of. However, no costs.