

Bablu Kumar Modak and anr. Vs. State of Jharkhand and ors.

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Court : Jharkhand

Decided On : Apr-27-2009

Reported in : 2009(57)BLJR2115

Judge : Ajit Kumar Sinha, J.

Acts : [Constitution of India](#) - Articles 14 and 16

Appeal No. : W.P. (S) No. 6691 of 2002

Appellant : Bablu Kumar Modak and anr.

Respondent : State of Jharkhand and ors.

Advocate for Def. : Krishna Murari, Adv.

Advocate for Pet/Ap. : A.K. Sahani, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Ajit Kumar Sinha, J.

1. The present writ petitions have been preferred for grant of an appropriate writ in the nature of mandamus or an order or direction commanding upon the respondents to regularize the services of the petitioners with consequential

benefits within a specified period. Both the writ petitions involving same issues are being disposed of by this common order.

2. The facts in brief are stated as under.

W.P. (S) No. 6691 of 2002

The petitioner No. 1 joined on the post of peon on 11.9.84 and the petitioner No. 2 joined on 24.5.86. According to the petitioners a seniority list was prepared of Class III and Class IV employees posted in different branches who were appointed between 2.8.1985 and 1991. It is further stated that the petitioners are getting monthly wages which is lesser than the regular pay scale. An agreement was entered into on 18.2.1991 between the Dy. Commissioner Administrator-cum-Dy. Development Commissioner, Managing Director and General Manager, Singhbhum District Central Cooperative Bank Ltd. and members of the Association wherein it was agreed that the services of the petitioners should be regularized and accordingly on 10.5.94 applications were forwarded by the Branch Manager for consideration. By office order issued under Memo No. 975 dated 21.8.2000, the managing Director of respondent No. 3 regularized the service of as many as 17 persons in the pay scale of Rs. 940-1660/-. Again vide Memo No. 887, dated 8.8.2000 four other similarly situated persons were also regularized pursuant to the order passed by this Court in C.W.J.C. No. 3395/1998(R).

W.P.(S) No. 7050 of 2005

As regards the second writ petition being W.P.(S) No. 7050 of 2005, it is relevant to submit that initially a writ petition being C.W.J.C. No. 3395/98(R) was filed by the present petitioners and four other persons and the same was disposed of with a direction to respondent Nos. 4 and 5 to consider the case of the petitioners in the light of the Resolution dated 18.2.1991. It appears that contempt petition MJC No. 281/2000(R) was filed and the Management filed its show-cause stating that they will not dispense with the services of the petitioners and further undertook to regularize them as and when vacancy arose. Four of the petitioners of C.W.J.C. No. 3395/98(R) were regularized vide Memo No. 887 dated 8.8.2000 ignoring the petitioners herein who preferred the present writ petition.

3. According to the counsel for the respondents the services of 22 eligible persons were regularized after considering their efficiency, qualification and the available sanctioned post in the light of the order passed in C.W.J.C. No. 3395/98(R). It has been specifically denied that the case of the petitioners were similar to those persons who have already been regularized. They have also denied about the availability of vacancies at present and further stated that the posts which are now lying vacant are meant for S.T. and S.C. and the petitioners' case do not fall in that category. It has also been stated that the petitioners' appointment was neither through regular procedure nor in accordance with the constitutional mandates as prescribed under Article 14 and 16 of the [Constitution of India](#) and thus, they have no legal right to be regularized in the service.

4. The main contention raised by the counsel for the petitioner is that they have been discriminated while others have been regularized and the vacancies are available and they have been working for so many years and thus entitled to be regularized.

5. A supplementary counter affidavit has been filed on behalf of respondent Nos. 3 to 5 stating that the writ petition itself has become infructuous since petitioners have been disengaged/terminated from the work of daily wages. It has also been stated that the initial appointment of the petitioners was illegal and void ab-initio as their engagement was made by the Branch Manager/members who are not the competent authority even to appoint the petitioners and they have also referred to and relied upon Uma Devi's Case : (2006)IILLJ722SC and other similar matters wherein it has been held that any appointment which is against the constitutional mandate under Article 14 and 16 of the [Constitution of India](#) is on the face of it illegal and no legal right accrues for claiming regularization.

6. I have considered the pleadings and submissions and also the arguments advanced by both the parties. It will be relevant to point out that pursuant to order dated 27.10.99 passed in C.W.J.C. No. 3395/98(R) the case of some of the similarly situated persons were considered and four persons were regularized and further direction was given as and when regular post will be created others will be considered. There is no dispute about the fact that the petitioners were engaged

through back door method on daily wage basis by an incompetent authority and a decision was taken by the Board of Directors in its meeting held on 2.5.1995 that the daily wages employees who joined after 18.2.91 shall be disengaged. Further in the order passed by this Court on 9.1.2002 in a similar case being C.W.J.C. No. 2049/2000(R) the respondent Bank was specifically directed to regularize the services of the petitioners as and when vacancy arises and that they were not to remove them from services and regularization was to be made according to the seniority. Even an agreement was entered into on 18.2.91 which is annexed as Annexure 4 that the daily wages employees were to be appointed against sanctioned posts within a period of three months.

7. Considering the aforesaid facts and circumstances of the case, it will be evident that the entire exercise had taken place much prior to the Judgment passed by the Hon'ble Supreme Court in Uma Devi's Case and in any event the Board of Directors themselves took a decision by giving a cut off date of 1991 and admittedly the petitioners were engaged in the year 1984 and 1986 respectively as Peon and during the pendency of the writ petition by way of supplementary counter affidavit an averment is being made that they have been disengaged and thus, writ petition has become infructuous even though no such order has been annexed with the supplementary counter affidavit. Once the higher authority had taken decision by giving cut off date and also in view of the order passed by the High Court In C.W.J.C. No. 2049/2000(R) to regularize the services of the petitioner as and when vacancies arises it was not only illegal but also arbitrary on the face of it to disregard their own decision and further violate their own agreement and make a statement without any supporting document that now the writ petition has become infructuous since petitioners have been disengaged. It is further strange that the order of termination is passed which is neither served upon the petitioners nor annexed with the supplementary counter affidavit. The fact remains that the petitioners have now almost worked for about 20-23 years and at this stage such type of plea in absence of any supporting document clearly reflects malafide and arbitrariness on the part of the respondents more so when it is contrary to their own agreement and the policy decision taken by the higher authority and also in contravention of direction and order issued by this Court wherein it was specifically directed not to remove the petitioners from service.

In the earlier affidavit by way of show cause filed by the Management in MJC No. 281/2000(R) it was specifically stated on oath by the Management that they will not dispense with the services of the petitioners and will further regularize them as and when vacancy arose and thus applied to all the petitioners therein including those four petitioners who have already been regularized arising out of C.W.J.C. No. 3395/98(R) as well as the present petitioners. Thus, at this stage taking such excuse is not only contemptuous but also illegal and misleading.

8. Considering the aforesaid facts and circumstances of the case, this writ petition is allowed and the respondents are directed to consider the case of the petitioners for regularization in accordance with the available vacancies.

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