

Mukesh Kumar and ors., Vs. State of Jharkhand and ors.

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Court : Jharkhand

Decided On : Oct-28-2005

Reported in : [2006(1)JCR225(Jhr)]

Judge : S.J. Mukhopadhaya, A.C.J.

Acts : Reservation Rules

Appeal No. : W.P. (S) Nos. 4562 and 5175 of 2003 and 3541 of 2005

Appellant : Mukesh Kumar and ors., ;ram Prawesh Paswan and anr. and Sachidanand Singh

Respondent : State of Jharkhand and ors.

Advocate for Def. : R.N. Sahay, Adv. in W.P. (S) No. 4562/03,; Government Pleader No. IV in W.P. (S) No. 5175/03 and;

Advocate for Pet/Ap. : Vishnu Kr. Sharma,; Priyadarshi and; Jay Shankar Tiwari

Disposition : Petition dismissed

Judgement :

S.J. Mukhopadhaya, A.C.J.

1. In all these cases, as the petitioners have challenged the common orders, they have been heard together and are being disposed of by this common order.

2. Petitioners have challenged the orders, contained in Memo No. 2, dated 20th May, 2003 and Memo No. 251, dated 28th June, 2003. The first Memo was published in the daily newspaper 'Prabhat Khabar' on 2nd June, 2003, whereby, giving reference to Letter No. 5530, dated 23rd October, 1988, and other letters, services of the petitioners and others have been terminated, on the ground of illegal appointments. Formal order has been issued by the Regional Director, Santhal Parganas Division, Dumka, vide Memo No. 251, dated 28th June, 2003.

3. As the issue can be decided on short points, similar cases having already been disposed of by this Court and Supreme Court, it is not necessary to discuss all the facts, except the relevant one, as mentioned hereinafter :

All the petitioners claim to have been appointed as Technical Assistants after notice, published on the Notice Board, interview and selection through Selection Committee. According to them, they having been appointed after following the procedures by the Regional Director, Animal Husbandry Department, Santhal Pargana Range, Dumka, who was the competent authority, their services cannot be terminated on the ground of illegal appointments.

Petitioner Mukesh Kumar and Others of W.P. (S) No. 4562 of 2003 claim to have been appointed as Technical Assistants in December, 1990. From their letters of appointment, enclosed as Annexure 2 series to the writ application, it appears that they were appointed by the Regional Director, Animal Husbandry, Santhal Pargana Range, Dumka, by different orders, issued on 29th December, 1990, 19th December, 1990 etc. Such appointments were made purely on temporary basis with clear stipulation that their services can be terminated at any time.

Similarly petitioner Ram Prawesh Pas-wan and Another of W.P. (S) No. 5175 of 2003 claim to have been appointed by the same authority vide similar orders dated 20th December, 1990, as Technical Assistants on temporary basis with similar terms and conditions.

Likewise petitioner Sachidanand Singh of W.P. (S) No. 3541 of 2005 claims to have been appointed by the same authority vide another order dated 9th December, 1990, on temporary basis as Technical Assistant, with clear stipulation

that it can be terminated at any time.

4. Though the petitioners have pleaded that they were appointed after following the procedures of appointment, there is nothing on the record to suggest that they were appointed on regular basis.

5. From the letters of appointment, as enclosed and discussed, it will be evident that the petitioners were not appointed on regular basis. Their appointments were adhoc in nature till the regular appointment was to be made or until final decision, as was to be taken by the Headquarters, In the impugned Letter No. 5530, dated 23rd October, 1998 the respondents have shown the following grounds, while ordered to cancel the illegal appointments :

(i) The Regional Officers had no power to appoint but the power was vested with the Director, Animal Husbandry;

(ii) The appointments were made without any recommendation of the Sub-ordinate Service Selection Board:

(iii) In terms with the order dated 31st December, 1987 the promotion and appointment could have been made by the Director, Animal Husbandry, and not by the Regional Officers;

(iv) There was a ban on appointments since 1st August, 1985;

(v) No advertisement was issued, giving opportunity to other eligible candidates;

(vi) Reservation Rules were not followed;

(vii) Appointments were excess to the sanctioned strength;.

(viii) Appointments were made without following the procedures and guidelines; etc.

6. In none of the present cases, the petitioners have given the date of any advertisement. Neither any advertisement was issued in any Newspaper nor there is anything on the record to suggest that the petitioners were called for interview,

as no letter of interview has been enclosed. The petitioners have neither disclosed the date of interview nor have disclosed the date on which the Selection Committee held its meeting. No recommendation of Selection Committee had been enclosed with the writ petition nor anything is on the record to show that rules for reservation were followed. Therefore, the appointments of the petitioners cannot be held to be legal.

7. Letter No. 530, dated 23rd October, 1998, of which reference has been given in the impugned Memo No. 2, dated 20th may, 2003, fell for consideration before this Court in the case of Uma Kant Singh and Ors. v. State of Bihar and Ors. 2001 (3) JCR 134 (Jhr) [C.W.J.C. No. 3503 of 1998 (R)] and analogous cases. A Bench of this. Court vide its judgment dated 18th July, 2001 while upheld Letter No. 5530, dated 23rd October, 1998, having noticed the facts that the petitioners of those cases were appointed illegally, without following the procedures of appointment, dismissed all the writ petitions. The aforesaid judgment was challenged upto the Supreme Court in the case of Uma Kant Singh and Ors. v. State of Jharkhand and Ors. 2003 (4) JCR 72 (SC) (Civil Appeal Nos. 5342 43 of 2003), The Supreme Court, by its judgment dated 23rd July, 2003 while did not choose to grant any relief to the appellants, made certain concession in the matter of future appointment, but it was confined to the appellants of those cases. Petitioners in these cases are also covered by the aforesaid judgment in the case of Uma Kant Singh (supra). Even if it is presumed that the petitioners were appointed by the competent authority, their appointments, being temporary in nature, having been made without advertisement, without interview and without any recommendation of the Selection Committee, they cannot claim any right to continue in service.

8. There being no merit, all the writ petitions are hereby dismissed. However, there shall be no order as to costs.