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Court : Jharkhand

Decided On : Jun-28-2004

Reported in : [2004(4)JCR798(Jhr)]

Judge : M.Y. Eqbal, J.

Acts : Service Law; [Constitution of India](#) - Article 226

Appeal No. : WP (S) No. 2485 of 2004

Appellant : Surendra Kumar and anr.

Respondent : Heavy Engineering Corporation Ltd. and ors.

Advocate for Def. : Rajiv Ranjan, Adv.

Advocate for Pet/Ap. : Ritu Kumar and; Ravi Kumar, Adv.

Disposition : Application allowed

Judgement :

M.Y. Eqbal, J.

1. In the instant, writ petition the petitioners seek an appropriate writ for quashing the order dated 30.4.2004 issued by the respondents by which the services of the petitioners have been dispensed with immediate, effect on payment of three months' salary.

2. The facts of the case lie in a narrow compass :

Pursuant to the direction issued by the Patna High Court, in CWJC no. 6173/92 to the State of Bihar and its authorities to perform their statutory duty in the matter of appointment of safety officers in the different factories within the State of Bihar, the respondent - HEC. invited applications in 1993 for appointment of safety officers. After complying all the procedures the petitioners were appointed as safety officers on 29.12.93 for six months which period was extended from time to time. Though the petitioners were appointed on regular basis but were being paid consolidated pay. In 1997 the petitioners were stopped from working as safety officers. Consequently the petitioners filed CWJC No. 3427/98 (R) for a direction to the respondents to reinstate them on their original posts with full back wages and other consequential benefits. The respondents took a stand in the counter affidavit that the appointment of the petitioners was purely temporary on ad hoc basis and, therefore, they had no right to continue in service and the Corporation had full right to terminate the services of the petitioners after expiry of extended period. The aforesaid writ petition was disposed of on 26.10.99 by a Bench, of this Court holding that the appointment of the petitioners was not on ad-hoc basis, rather, they were appointed as regular employees of the Corporation. In that view of the matter this Court held that the action of the respondents in not allowing the petitioners to work as safety officers is absolutely illegal, arbitrary and violative of the principles of natural justice.

3. The respondents-Corporation challenged the said judgment and order by filing LPA No. 508/99. The said appeal was dismissed on 16.7.2002 by a Division Bench affirming the finding of the learned Single Judge that the petitioners were appointed after following all the procedures of regular appointment and their services cannot be terminated on the ground that the appointment was ad-hoc. The respondents-Corporation then moved the Supreme Court by filing, 'SU? No. 21902/2002 which was dismissed on 13.12.2003. The respondents-Corporation also filed a review petition being Civil Review no. 7/2003 before the Division Bench for reviewing the judgment passed in LPA no. 508/99 and the said review petition was dismissed on 4.3.2003.

4. Since the judgment was not complied with, the petitioners filed a contempt case being Contempt [Civil] No. 1032/2002 and it was only thereafter the respondent produced before the Contempt Court an office order dated 1st March, 2003 reinstating the petitioners in service. The said contempt petition was accordingly dropped on 12.3.2003. Even after reinstatement the petitioners were not treated as regular employees which culminated into a second contempt filed by the petitioners being Contempt [Civil] No. 345/2003. In the said contempt case the respondents-Corporation appeared and submitted that the petitioners will be treated as regular employees, and will get regular pay scale, on the basis of that submission the contempt case was dropped on 26.9.2003.

5. The respondents-Corporation then issued another office order No. 5/2003 dated 23.12.2003 appointing the petitioners as safety officers incorporating terms and conditions, inter alia, that their services shall be terminated by giving one month's notice in writing during probationary period and thereafter three months' notice. The petitioners raised objection to the said office order by filing a representation. In the meantime the respondents-Corporation issued the impugned office order dated 30.4.2004 terminating the services of the petitioners on the ground that their services are no more required.

6. The respondents-Corporation has filed counter affidavit taking a new stand that as per the Factories Rules the total number of safety officers required in the Corporation is 4 whereas 8 safety officers were in the employment of the Company. The Corporation, therefore, moved this Court in WPS No. 5094/2003 for a direction upon the State to issue a fresh notification prescribing the number of safety officers as per the current man power strength of the Company. In the said writ petition a direction was issued to the Government to pass reasoned order on the representation that may be filed by the Corporation. Consequently by notification dated 1.3.2004 the number of required safety officers was reduced to four. Respondents' further case is that after issuance of notification the Corporation took necessary steps for dispensing with the services of the petitioners by abolishing the post of safety officers.

7. I have heard Mrs. Ritu Kumar, learned counsel for the petitioners and Mr. Rajiv Ranjan, learned counsel appearing on behalf of the respondents-Corporation. I have also called for the record of WPC 5094/2003 for perusal.

8. The illegal, arbitrary, contemptuous and mala fide action of the respondents is manifest from the following facts :

As noticed above, although the petitioners were appointed on the post of Safety Officers after complying all the procedures, they were not being treated as regular employees. The petitioners filed WPS 3427/98 and by judgment dated 26.10.99 this Court held that the petitioners are regular employees and they are entitled to continue as Safety Officers. The respondents challenged the said order by filing LPA No. 508/99 which was dismissed on 16.7.2002 by a reasoned judgment holding that the petitioners are employees of the Corporation having been appointed on the post of Safety Officers. The Corporation filed Special Leave Petition before the Supreme Court which was also dismissed on 13.12.2002. A review petition was also filed by the Corporation before the Division Bench which too was dismissed on 4.3.2003. Even then the Corporation was adamant not to treat the petitioners as regular Safety Officers. The petitioners then filed contempt case being Contempt (Civil) No. 1032/2002. It was only thereafter, in order to avoid order in the contempt case, the respondents issued an office order dated 11.3.2003 regularizing the services of the petitioners on the post of Safety Officers and produced the said order in Court. The contempt case was, accordingly, dropped on 12.3.2003.

9. It is very important and relevant to mention here that in all the aforementioned proceedings, from this Court upto the Supreme Court, the Corporation never took stand that there are surplus Safety Officers and the number of Safety Officers is to be reduced and some of the post of Safety Officers has to be abolished. It is only after the contempt case was filed and show cause notices were issued, the Corporation filed a writ petition on 13.10-2003 being WPC No. 5094/2003 seeking a direction upon the respondents for amending the notification dated 13.2.89 and revising the number of Safety Officers in the Corporation. The Corporation, thereafter, procured a notification dated 1.3.2004 from the Government reducing

the number of Safety Officers and on the basis of that notification the impugned office order was issued dispensing with the services of the petitioners.

10. In paragraph 36 of the writ petition it has been categorically stated by the petitioners that they have been directly appointed as Safety Officers in 1994 and they are the seniormost Safety Officers. Paragraphs 36 to 38 of the writ petition show that other four persons have joined as Safety Officers much after them and they are junior to the petitioners on the post of Safety Officers but the Corporation with a mala fide intention and in order to give a go-bye to the judgment, dispensed with the services of the petitioners.

11. In the counter affidavit the Corporation has given an evasive reply to the aforementioned statement and has not denied specifically that those four persons who have been retained on the post of Safety Officers, were appointed as Safety Officers much before the petitioners and they are senior to the petitioners.

12. It is worth to mention here that for the first time the respondents-Corporation made a representation on 11.3.2003 for reducing the number of Safety Officers which is evident from Annexure 2 to the writ petition being WPS No. 5094/2003. It is, therefore, clear that when the authorities of the Corporation were facing a contempt proceeding being Contempt [Civil] Case No. 1032/2002 for violation of the judgment and order of this Court affirmed upto the Supreme Court, they issued simultaneously an office order dated 11.3.2003 reinstating the petitioners and also made a representation dated 11.3.2003 to the Government for reducing the number of Safety Officers.

13. Taking into consideration all these facts I have no hesitation in holding that the authorities of the respondents-Corporation are bent upon not to obey the judgment which has been affirmed upto the Supreme Court. This attitude of the authorities of the respondents-Corporation is highly contemptuous and malafide.

14. For the aforesaid reasons, this writ application is allowed and the impugned office order dispensing with the services of the petitioners is quashed. It is held that the petitioners have been continuing in service as Safety Officers and they are entitled to salary for the entire period.

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