

Mrs. Tapaswini Devi Vs. State of Jharkhand and ors.

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Court : Jharkhand

Decided On : Nov-28-2002

Reported in : [2003(1)JCR408(Jhr)]

Judge : Tapen Sen, J.

Acts : Service Law; [Constitution of India](#) - Article 21

Appeal No. : WP (S) No. 4161 of 2001

Appellant : Mrs. Tapaswini Devi

Respondent : State of Jharkhand and ors.

Advocate for Def. : G.N. Chandra, Adv. for Respondents No. 2 to 5 and; A. Banerjee, JC to GA

Advocate for Pet/Ap. : Arshad Hussain, Adv.

Judgement :

ORDER

Tapen Sen, J.

1. Heard Mr. Arshad Hussain, learned counsel for the Petitioner and Mr. G.N. Chandra, learned counsel for the Respondent Nos, 2 to 5 Mr. Atanu Banerjee, learned Junior Counsel to the Government Advocate is also present in Court

representing respondent No. 1.

2. At the very outset, Mr. Arshad Hussain, learned counsel for the Petitioner craves leave of this Court to be allowed to implead the Registrar, Co-operative Societies, Government of Jharkhand, Ranchi as respondent No. 6. He is permitted to do so.

3. The petitioner has been working since 29.6.1994 on daily wages after she had been given compassionate appointment on account of the death of her husband, Subodh Chandra Mishra who was working as an Assistant in the Bank and who died on 26.34.1993. The aforementioned fact relating to the working of the Petitioner in the status of a daily wager has not been denied by the respondents. On the contrary, at paragraph 7 there is an admission that it is true that the petitioner had been appointed on the post of peon on compassionate grounds on daily wages.

4. Mr. G.N. Chandra, learned counsel for the respondents Nos. 2 to 5 has drawn the attention of this Court to paragraph 10 of the counter affidavit and has submitted that this particular bank is facing financial crisis and that there is already an order in CWJC No. 5466 of 1992 holding that in no case appointments shall be made in any Co-operative Institution which is facing financial crisis.

5. However, what is important to note is that in the entire counter affidavit, nothing in detail has been stated in support of the submissions of Mr. G.N. Chandra to the effect that the Bank is facing financial crises. Therefore, no reliance can be made to the aforementioned submissions which remains only a submission made before this Court without any positive statement recorded in the counter affidavit.

6. Mr. Chandra, learned counsel however drew attention of this Court to paragraph 11 of the counter affidavit wherein it has been stated that the financial position of the bank is not good but inspite thereof and on the basis of the representation of the petitioner, a committee was formed and it was decided that the Petitioner was over-age and at present she was 40 years of age and so her case was not considered by the committee as being time barred. No supportive document has been supplied nor any statement has been given as to when was the decision

taken. Such a decision was necessary to find out as to when did the petitioner cross the age of 40 years.

7. It is the admitted case of the parties that the petitioner had been appointed on 29.6.1994. The counter affidavit has been filed in the year 2002 and it has not been stated as to when did the petitioner has cross the age of 40 years. Additionally, the age bar does not appear to be a reasonable ground taking into consideration the circular of the Government of Bihar which has been brought on record by the writ petitioner as Annexure 4.

8. This Court also does take note of the fact that the petitioner has been working uninterruptedly as a daily wager since 29.6.1994 and she certainly therefore does have a legitimate expectation of having a fair deal at the hands of the respondents. The right to life as enshrined in Article 21 of the [Constitution of India](#) includes the right to live decently and a legitimate expectation of the petitioner to the effect that after a certain period of time her services would be regularized and she would be given a regular pay scale cannot be said to be an unreasonable expectation. However, this Court is not the appointing authority of the petitioner and therefore this Court cannot issue a letter regularizing the services as this has to be done at the hands of the respondents themselves. It is stated by Mr. G.N. Chandra that the respondents after considering her case inspite of financial difficulties appointed her on the post of peon on daily wages and that is not arbitrary. This Court does not understand the import of the aforementioned statement inasmuch it is a mere bald submission saying that inspite of financial difficulties they considered it appropriate to appoint the petitioner and by having appointed the petitioner as peon, such an appointment as daily wager is not arbitrary. Such a stand runs counter to the job security.

9. Considering the facts and circumstances of this case and also taking into consideration the limitations of this Court under Article 226 of the [Constitution of India](#), this Court considers it desirable that an opportunity should be given to the respondents to look into the matter and pass an order in accordance with law after taking into consideration the observations made herein. The Petitioner is given liberty to file a fresh representation annexing all documents which she wants to

rely upon within three weeks from the date of receipt of the certified copy of this order before the Respondent No. 6. Since this matter has been pending for such a long time, it is expected that the Registrar (respondent No. 6) will dispose off the representation with all expedition at its disposal but not beyond the period of six months from the date of receipt of the representation.

10. With the aforementioned observations and directions, this Writ Application is disposed off. However, there shall be no order as to costs.

11. Let a copy of this order be handed over to Mr. G.N. Chandra, learned counsel for the respondent Nos. 2 to 5.

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