

Sonia Devi Vs. State of Jharkhand and ors.

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Court : Jharkhand

Decided On : Dec-10-2002

Reported in : [2003(96)FLR961]; [2003(1)JCR528(Jhr)]

Judge : Vikramaditya Prasad, J.

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

Appeal No. : W.P.(S) No. 2898 of 2001

Appellant : Sonia Devi

Respondent : State of Jharkhand and ors.

Advocate for Def. : SC-II

Advocate for Pet/Ap. : S.P. Sinha, Adv.

Judgement :

ORDER

Vikramaditya Prasad, J.

1. Heard both the sides.

2. The petitioner's husband had died in harness then she applied for her appointment to Class IV post on compassionate ground. By Annexure 2 she was appointed on the recommendation of the District Establishment Committee by the

District Animal Husbandry Officer, Dhanbad. This letter was issued on 31.3.1994.

3. A letter of department regarding compassionate appointment, as contained in Annexure 3 was issued on 12.4.1994, which reads as follows :--

'Sankhya 13 Stha-176/93, P.Ma. 2693 Pashupalan Vibhag, Bihar, Patna

Preshak. Dr. Ram Raj Ram, Nideshak, Pashupalan Vibhag, Bihar, Patna

Sewa Me, Sabhi Kshetriya Nideshak, Pashupalan

Sabhi Zila Pashupalan Padadhikari

Bishaya : Anukampa ke aadhar per keshtriya pa'dadhikari dwara ke ja rahi niyukti ke sabandhya me.

Mahashya,

Upyukta bishaya ke ore aapka dhyan akrishta kartey huya kahana hai ki kshetriya padhadhikari dwara anukam-pa per verge 3 awang verg 4 ke path per zila striya anukampa samiti se anushansha pratra kar niyukti ke kar-wari ke jati hai jo aniyamit pratit hota hais. Gatbya ho ki vibhag me rajya stariya anukampa samiti gatidh hai es-liyae vabishya me koi bhi anukampa ke aadhar per niyukti ke karwai ke liye vihit praptra awing anya vanchit praman patron ke sath nidhasalaya vejen.'

4. On perusal of this letter it appears that there was practice that the regional authority used to pass the order of appointment on compassionate ground against the Class III and IV post on the basis of recommendation of District Level Compassionate Appointment Committee, which appears to be irregular. Consequently it was directed that any State Level Compassionate Appointment Committee was existing so in future for the purposes of appointment on compassionate ground, the papers be sent to the Directorate for being processed. On perusal of this letter it appears that this letter does not approve the existing procedure of appointment on the basis of District Level Compassionate Appointment Committee and therefore, it was directed that in future the appointment be made on the recommendation of the State Level Committee.

5. From perusal of this letter it also appears that the appointment which had already been made had not to be interfered with or disturbed. Thus the operation of this annexure is perspective from 12.4.1994 and no retrospective effect was given to this letter. As stated the petitioner was appointed on 31.3.1994 therefore by operation of this letter this appointment should not have been affected but by Annexure 4 the appointment was cancelled on the ground of illegality in view of Annexure 3, she had again applied for reconsideration of her case and consequent thereto it appears that she was directed to furnish certain information and submit all the papers to the Deputy Director, Head Quarter. Then, the petitioner sent her another representation vide Annexure 6 dated 9th December, 1994 to the Dy. Commissioner, Dhanbad. Thereafter the District Animal Husbandry Officer, Dhanbad issued a letter to the petitioner on 1.6.2000 directing her to submit papers like death certificate, Income Certificate, caste certificate etc. and in support thereof an affidavit was also filed vide Annexure 8 on 19.6.2000. The petitioner again reminded the In-Charge, Animal Husbandry Department, Dhanbad that she has already submitted the papers required.

6. The respondents have contested the writ petition merely on two grounds :--

(1) That the District Animal Husbandry Officer was not at all competent to make such appointment, rather, it was the Regional Director of Animal Husbandry, who was competent to make such appointment and consequently the appointment was cancelled in the year 1994 and;

The petitioner has come to this Court after a lapse of seven years. The learned counsel for the petitioner relying on Annexures 6, 7 and 8 has submitted that right from the year 1995 till 2001 the petitioner has been pursuing the matter with the concerned authorities and therefore, it cannot be said that the petitioner was negligent in her approach and was sleeping over the matter and therefore, when such grievance was not redressed she came to this Court, enclosing the aforesaid annexures in support of her contentions.

7. I agree with the learned counsel for the petitioner on this point and held that there was no delay and the contention of the learned counsel for the respondent is accordingly rejected. So far as the appointment is concerned as stated above it

was rejected on the ground that it was made by incompetent authority. It has been stated earlier that Annexure 3 had no perspective effect but it had the retrospective operations and therefore, they cannot ignore the annexures by which the petitioner was already appointed. The only point is that whether the District Animal Husbandry Officer was competent to make appointment or not. It is rightly look the provisions on compassionate appointment as contained in Annexure A appended to the counter affidavit which gives a complete scheme for such appointment Rule 5 reads as follows- :

'Vihit prapatra me awaden patra prapta hone awan upyukta kandikayon me anya nirdharit praman patra aadi prapta hone ke ek man me ous karyalaya/vibhag ke niyukti padad-hikari niyukti patra nirgit karegi.'

8. In paragraph 8 has been stated that the District Establishment Committee after taking a decision in the matter had to refer the matter to the State Level Establishment Committee and the State Level Establishment Committee was the only competent authority to finalise the appointment and after the decision of the State Level Establishment Committee having been made, necessary recommendation by the State Level Establishment Committee had to be sent to the Regional Director, Animal Husbandry wherefrom an appointment- letter was to be issued. Thus according to the respondents it was the Regional Director, Animal Husbandry who could have issued the appointment letter and therefore, such appointment issued by the District Animal Husbandry Officer who was in competent to issue such letter as such appointment is invalid.

9. The Government of Bihar vide its Notification No. 3/C 2-10-18 ka dated 26th April, 1995 in the light of various decisions of the High Court modified the earlier notification of the year 1991 with regard to compassionate appointment and this notification provided with two type of committees for consideration of the compassionate appointment. The first committee related to Secretariat and its officials. The second committee related to District Level Appointments which clearly provides that at the District Level there will be a committee which has already been constituted earlier under the Chairmanship of the D.C. and thereafter on the recommendation of such committee the appointments shall be made by the

appointing authority in the respective departments. This appointment in this case was made on the recommendation of the District Committee by Annexure 1 by the District Fishery Officer. So far as the recommendation of the District Committee is concerned there is no illegality because the District Committee was authorized to do it. The learned counsel for the petitioner has argued that even if the District Animal Husbandry Officer was not the appointing authority then in that circumstances as the appointment was made on the basis of recommendation of the District Committee as per rules the only recourse available was to recommend the appointment and not to cancel the appointment, moreover, the petitioner was not given an opportunity to be heard and this clearly violates the principle of natural justice and as the petitioner was born in the year 1965, on the date of application she was well within the age for being considered for the post. Therefore, the cancellation of appointment was wrong by giving wrong interpretation of Annexure 3.

10. I find great force in the argument of the learned counsel for the petitioner. Annexure 4 is quashed but there will be no automatic reinstatement. The respondents are directed to reconsider the matter within a period of one month from the date of production of this order in the light of the directions/observations made above.

11. The writ petition is disposed of.