

Raziya Begum Vs. Forest and Environment

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Court : Jharkhand

Decided On : Sep-09-2015

Appellant : Raziya Begum

Respondent : Forest and Environment

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 7047 of 2013
Raziya Begum Petitioner Vrs.

1. The State of Jharkhand
2. The Secretary, Department of Forest & Environment, Government of Jharkhand, Ranchi
3. Principal Chief Conservator of Forest, Ranchi
4. Chief Conservator of Forest, Plantation, Research and Evaluation Department, Govt. of Jharkhand, Ranchi
5. Divisional Forest Officer, West Forest Division, Lohardaga
6. Accountant General, Jharkhand, Ranchi
7. Conservator of Forest, Plantation, Research and Evaluation Department, Govt. of Jharkhand, Ranchi Respondents CORAM: HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioners : M/s Manoj Tandon, Lalan Kr.

Singh For the Respondents : J.C to G.P.I, Sudarshan Shrivastava 07/09.09.2015

Learned counsel for the petitioner is permitted to implead the Conservator of Forest, Plantation, Research and Evaluation, Govt. of Jharkhand, Ranchi as respondent in the instant case for which necessary correction shall be carried out in the array of the parties in red ink during the course of the day. Heard learned counsel for the parties. Petitioner is a widow of one late Md. Mumtaz, who is seeking death cum retirement benefits in lieu of her husband. Petitioner has been given the benefit of G.P.F, Group Insurance admittedly by the respondents, but it is also evident that during the pendency of this writ petition, a decision has been taken by the respondent no.7, C]onservator of Forest, Plantation, Research and Evaluation Department, Govt. of Jharkhand, Ranchi dated 20.5.2014 (Annexure-8) rejecting the claim for death cum retirement benefits to the dependent as the appointment of the employee was never regularized and made only on temporary basis. The said order has also been challenged through I.A. No. 3326 of 2014 . Facts as taken out from the rejection order itself show that the employee was appointed as Jeep Driver by the Divisional -2- Forest Officer, West Division, Ranchi in 1985 on temporary basis for 3 months vide Office order no. 252 dated 16.1.1985(Annexure-1), which was extended on few occasions, one of them being 10.9.1985 bearing memo no.

391. It is also manifest that employee served as Jeep Driver even thereafter for 12 years till 28.2.1997 at Ranchi West Forest Division, Lohardaga and was transferred to Forest Resource Survey Division, Ranchi vide Office order no. 41 dated 17.2.1997 passed by Principal Chief Conservator of Forest, Bihar, Ranchi. He was again transferred to Research and Evaluation Division, Ranchi presently known as Plantation Research and Evaluation, Jharkhand by the Office order no. 35 dated 19.6.1997 and worked there till his death on 20.3.2013. In between the issue of regularization had cropped up and audit objections were also made. The service of the employee was confirmed also by Office order no. 5 dated 31.1.2007 by the author of the rejection order, respondent no. 7, which is at Annexure-2 to the writ petition. However, it is also evident that the same Officer perhaps on the basis of the objections raised by the audit team stayed his previous order by order no. 21 dated 15.6.2007. The respondent no. 7 took note of all these facts, however came to the conclusion that till the death of the employee he remained in

engagement on temporary basis and his services were never regularized, therefore, death cum retirement benefits could not accrue to the dependents. Various grounds have been urged by learned counsel for the petitioner to assail the impugned order and the stand of the respondents, also stating that such approach is quite inhuman as it takes away all the benefits from the dependents of an employee who served for around 28 years under the -3- respondents only on account of the fact that respondents did not take a firm decision on his regularization. It is also contended that employee was enjoying the regular sale of pay and was working on sanctioned post and was entitled for regularization also as he was appointed by the Divisional Forest Officer concerned in the year 1985, who was the competent authority. Therefore, such rejection is neither proper in the eye of law nor humane. Respondents have justified the impugned order on the same ground and are singing the same tune in the counter affidavit also. Facts noticed in the instant case raises issue which do trouble the conscience of the Court as well. As is undisputed, whether the order of extension was there or not, the employee was made to serve since his original appointment in the year 1985 till his death by one or the other respondent authorities under the Department of Forest. The cases of such nature are to be considered in the light of the observation made by the Constitution Bench of the Hon'ble Supreme Court in the case of State of Karnataka Vrs. Uma Devi & others reported in 2006(4) SCC1 para 53 thereof which is quoted here under:-

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of -4- tribunals

and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme. The State of Jharkhand has taken a pretty long time to frame Regularization Rules, 2015 as a one time measure for the purpose of consideration of such cases of temporary employees / daily wagers. Though the rules deals with consideration of cases of working daily wagers / temporary employees but the observation made in the case of Uma Devi(Supra) has a brooding omnipresence over such matters remained pending due to inaction on the part of the respondent authorities. The employee may have died in 2013 but the respondents were required to consider the case of such persons as one time measure in view of the observation made by the Hon'ble Supreme Court in the case of Uma Devi(Supra). This Court, therefore, considers it expedient and in the interest of justice that the case of the husband of the petitioner be considered by the competent authority / respondent no.7, Conservator of Forest, Plantation, Research and Evaluation Department, Govt. of Jharkhand, Ranchi again in terms of the observation made by the Hon'ble Supreme Court in the case of Uma Devi (Supra) and keeping into account the principles incorporated in the Regularization Rules, 2015 framed by the Department of Personnel, Administrative Reforms and Rajbhasha, Jharkhand. If such consideration is not accorded, it would end up in extremely harsh result on the dependent of an employee who has worked, may be on temporary basis for -5- around 28 years since his engagement in 1985 till 2013. In that view of the matter, the impugned order dated 20.5.2014 at (Annexure-8) is set aside for the purpose of reconsideration of the case of the husband of the petitioner, as aforesaid to be undertaken within a period of 10 weeks from the date of receipt of the copy of this order. Needless to say that the competent authority / respondent no.7 would take into account all attendant material facts including the observation of the Hon'ble Supreme Court and the principles and conditions stipulated in Regularization Rules, 2015 and if required place the matter before the

Statutory Committee framed by the Department under the said Rules for the purpose of taking such decision. Dependent upon such decision, if the services of the husband of the petitioner are regularized, necessary sanction order be issued for release for consequential death cum retirement benefits, thereafter without any delay to the respondent no.6, Office of Accountant General, Jharkhand. The respondent no.6, Office of Accountant General, Jharkhand would thereafter do the needful without any delay. The writ petition is allowed in the aforesaid manner and to the extent indicated herein above. (Aparesh Kumar Singh, J.) A. Mohanty

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