

Raju Kumar Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Sep-04-2015

Appellant : Raju Kumar

Respondent : State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 3621 of 2010
----- Raju Kumar, S/o Late Jamuna Ram, resident of Mohalla-Abbal Mohalla, P.O, P.S and District-Chatra (Jharkhand) ... Petitioner Versus 1.The State of Jharkhand through the Chief Secretary, Govt. of Jharkhand, Ranchi, Project Building, Dhurwa, P.O & P.S-Dhurwa, District-Ranchi (Jharkhand) 2.The Principal Secretary, Road Construction Department, Jharkhand, Project Building, Dhurwa, P.O & P.S-Dhurwa, District-Ranchi. 3.The Under Secretary to the Govt., Road Construction Department, Jharkhand, Project Building, Dhurwa, P.O & P.S-Dhurwa, District-Ranchi (Jharkhand) 4.The Chief Engineer, Road Construction Department, Jharkhand, Project Building, Dhurwa, P.O & P.S-Dhurwa, District-Ranchi (Jharkhand). 5.The Superintending Engineer, Road Construction Department, Road Circle, Hazaribag, P.O & P.S -Hazaribag, District- Hazaribag (Jharkhand). 6.The Deputy Commissioner, Chatra, P.O, P.S and District - Chatra (Jharkhand). 7.The Executive Engineer, Road Construction Department, Road Division, Deoghar, P.O, P.S. and District -Deoghar (Jharkhand). 8.The Executive Engineer, Road Construction Department, Road Division, Chatra, P.O., P.S and District - Chatra (Jharkhand) ... Respondents With W.P. (S) No. 3662 of 2010 Girja

Shankar Dubey, S/o Sri Jagdish Dubey, resident of Mohalla-New Bishunpur Near Durga Mandir, P.O -B. Polytechnic, P.S and District - Dhanbad (Jharkhand).
Petitioner Versus 1.The State of Jharkhand through the Chief Secretary, Govt. of Jharkhand, Ranchi, Project Building, Dhurwa, P.O & P.S-Dhurwa, District-Ranchi (Jharkhand) 2.The Principal Secretary, Road Construction Department, Jharkhand, Project Building, Dhurwa, P.O & P.S-Dhurwa, District-Ranchi. 3.The Under Secretary to the Govt., Road Construction Department, Jharkhand, Project Building, Dhurwa, P.O & P.S-Dhurwa, District-Ranchi (Jharkhand) 4.The Chief Engineer, Road Construction Department, Jharkhand, Project Building, Dhurwa, P.O & P.S-Dhurwa, District-Ranchi (Jharkhand). 5.The Superintending Engineer, Road Construction Department, Road Circle, Hazaribag, P.O & P.S -Hazaribag, District- Hazaribag (Jharkhand). 6.The Deputy Commissioner, Dhanbad, P.O, P.S and District - Dhanbad (Jharkhand). 7.The Executive Engineer, Road Construction Department, Road Division, Deoghar, P.O, P.S. and District -Deoghar (Jharkhand). 8.The Executive Engineer, Road Construction Department, Road Division, Dhanbad, P.O., P.S and District - Dhanbad (Jharkhand) ... Respondents 2 ----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : Mr. Anjani Kumar Verma, Advocate. For the Respondents : J.C to S.C (Mines) (in W.P.(S) No. 3621/10) For the Respondents : J.C to S.C. I (in W.P. (S) No. 3662/10). ----- 08/ Dated:

04. h September, 2015 Per Pramath Patnaik, J.: Both the writ petitions have been taken together with the consent of both the parties as common issues are involved in both the writ petitions and are being disposed of by this common order.

2. In these writ applications, the petitioners have inter alia, prayed for direction upon the respondents to give same and similar benefit of regularization of services on the post of driver to the petitioners, which has been given to the other similar situated Roller Drivers of Deoghar District in terms of order dated 12.07.2006 passed in W.P. (S) No. 171 of 2004 by this Hon'ble Court and also for quashing Memo no. 116 dated 27.06.2002 and Memo No. 934 dated 16.07.2002, by which, services of the petitioners in W.P. (S) No. 3621 of 2010 and W.P. (S) No. 3662 of 2010 respectively have been terminated from the post of Jeep Driver in Road Construction Department after performing 16 years and 14 years of service

respectively on daily wages and further prayed for disposal of the case of the petitioners in terms of order dated 12.07.2006 passed in W.P. (S) No. 171 of 2004.

3. Heard learned counsel appearing for the petitioner and learned J.C to S.C (Mines) and S.C. I for the respondents.

4. The facts, as delineated in the writ petitions, in a nutshell, is that the petitioner in W.P. (S) No. 3621 of 2010 was appointed as Jeep Driver on daily wages basis on 05.04.1986 in the office of Road Construction Department, Road Division, Chatra by respondent no.

8. Whereas initially the petitioner in W.P. (S) No. 3662 of 2010 was 3 appointed as Roller Driver on daily wages basis on 13.05.1988 in the office of Coal Mining Area Development Authority, Dhanbad and in pursuant to the Govt. Letter No. 671 (S) dated 04.02.1989 issued by Road Construction Department, Bihar a decision was taken to takeover the maintenance of roads etc. from Coal Mining Area Development Authority, Dhanbad. Pursuant thereto, the services of the petitioner, who was appointed as Roller Driver on daily wages basis on 13.05.1988 in the office of Coal Mining Area Development Authority, Dhanbad, along with other Roller Drivers with road-rollers, were handed over by the Coal Mining Development Authority, Dhanbad vide letter no. 773 dated 10.04.1989 to the Road Construction Department, Road Division, Dhanbad, as evident from letter no. 1 dated 1.1.2005, issued by the Executive Engineer, Road Construction Department, Road Division, Dhanbad.

5. Learned counsel for the petitioner submitted that the State of Jharkhand vide letter no. 769 (S) dated 14.02.2002 issued by Deputy Secretary to the Govt., Road Construction Department, Jharkhand an intimation was sent to the Executive Engineer to send the details of Jeep Drivers/Roller Drivers working in the department as well as their sanctioned strength. In compliance thereof, the Executive Engineer sent the details, in which, the name of the petitioners were also shown.

6. It has been contended in the writ application that on the one hand, the details of Jeep Driver, Roller Driver etc. working on daily wages was called for along with

sanctioned strength, but, on the other hand, in the meantime, vide letter no. 2581 dated 04.06.2002 a direction was issued by the same authority i.e. Deputy Secretary to the Government directing all the Chief Engineer, Road Construction Department, Jharkhand to stop taking work from the daily wagers, who 4 have been appointed after 01.08.1985 in the Road Construction Department. In pursuant to the aforesaid direction, the services of the petitioner in W.P. (S) No. 3621 of 2010 was terminated vide Memo No. 116 dated 27.06.2002 and the petitioner in W.P. (S) No. 3662 of 2010 was terminated vide Memo No. 934 dated 16.07.2002.

7. It has further been contended in the writ application that in pursuant to the direction for termination of services of the persons appointed on daily wages after 01.08.1985 issued vide Memo No. 543 dated 30.05.2002, one of the aggrieved persons, namely Ram Lal Rawani, who was also appointed after 01.08.1985, challenged his termination in W.P. (S) No. 3667 of 2002, which was disposed of vide order dated 25.02.2003 quashing the impugned order of termination dated 30.05.2002 and direction was given to regularize the services of the petitioner as expeditiously as possible and preferably within a period of three months from the date of receipt/production of copy of copy of the order. The State, being aggrieved by the order passed in W.P. (S) No. 3667 of 2002, preferred L.P.A. No. 345 of 2003, which was dismissed vide order dated 22.11.2005.

8. It has further been contended that other similarly situated persons also moved this Court by filing W.P. (S) No. 171 of 2004, which too was disposed of vide order dated 12.07.2006 in terms of the order passed in W.P. (S) No. 3667 of 2002. Against which, the State of Jharkhand preferred S.L.P. (Civil) No. 14110 of 2007, which was dismissed vide order dated 06.08.2007 by Hon'ble Apex Court and the review, being Civil Review Petition (Civil) No. 404 of 2009, filed against the said order was also dismissed by the Hon'ble Apex Court vide order dated 16.07.2009.

9. It has been contended that in the meantime, the services of the 5 petitioner in W.P. (S) No. 3667 of 2002 was regularized and services of the petitioners in W.P. (S) No. 171 of 2004, who further preferred Contempt Case (C) No. 868 of 2007, have also been regularized.

10. It has further been submitted that in deference to the order dated 10.4.2006 passed in Civil Appeal No. 3595-3612/99 in the case of Secretary, State of Karnataka Vs. Uma Devi and others and analogous cases, the Under Secretary, Government of Jharkhand, Road Construction Department, Jharkhand issued direction to all the Chief Engineers/Superintending Engineers of Road Construction Department to send the details of the persons who have worked for more than 10 years for taking steps for regularization of their services. In compliance thereof, vide Memo No. 574 dated 14.06.2008, details of daily wagers including the name of petitioners, who have worked for more than 10 years were sent for regularization of their services, but till date no decision has been taken by the Government for their regularization.

11. Being aggrieved, petitioners have approached this Court invoking extraordinary jurisdiction under Article 226 of the Constitution of India for mitigating their grievances.

12. Learned counsel for the petitioner submitted that the State, being the model employer, cannot discriminate the similarly situated persons either in the matter of employment nor in the matter of regularization of services. Learned counsel for the petitioner further submitted that the grant of any benefits to the employees, who have earlier approached the High Court and denying the same benefits to the similarly placed employees by the Government is unjustified as per the law laid down by Hon'ble Apex Court in the case of K.T. Veerappa and others Vs. The State of Karnataka and others as reported in (2006) 9 SCC406 6 13. Counter affidavit has been filed controverting the averments made in the writ applications. It has been contended that for regularization of the staffs working on daily wages, one had to fulfill the service for atleast 240 days as on scheduled cut off date i.e. 01.08.1985, so that the process of regularization may be started, but the petitioners were engaged after the cut off date, hence, they did not come under the provisions of regularization. Learned counsel for the respondents-State submitted that the order of termination of the petitioner has been given in the year 2002, whereas they approached this Court in the year 2010, hence, the prayer of the petitioners may be rejected in limine. Learned counsel further submitted that so far as letter no. 769 (S) dated 14.02.2002 is concerned, it was a process of

taking information of those staffs, who were working in the office as on daily wages, and it was only meant for those staffs who has been working prior to cut off date i.e. 01.08.1985.

14. Learned counsel for the respondents-State appearing in W.P. (S) No. 3662 of 2010 vehemently submitted that petitioner in this case along with 12 others were appointed by Mineral Area Development Authority, Dhanbad and were sent to Road Construction Department, Road Division, Dhanbad along with rollers in the year 1989 when decision was taken to takeover the maintenance of road etc. from Mineral Area Development Authority, Dhanbad, and since then they were working in Road Division, Dhanbad as a muster roll, which is in excess of sanctioned posts of Muster roll workers. It has further been contended that an instruction was received from the Government vide letter No. 728 (S) dated 14.02.2002 (Annexure B), in which, it was clearly ordered that to regularize the workers appointed by MADA is not the responsibility of this Department, hence, the case of the 7 petitioner in W.P. (S) No. 3662 of 2010 is not at all said to be at par with other petitioners.

15. Having heard learned counsel for the respective parties and on perusal of the record, it appears that the petitioners have rendered more than 10 years of service prior to their disengagement and the similarly situated persons have been given the benefit of regularization of their services in compliance of the order passed by this Court. From perusal of Annexure-12 (in W.P. (S) No. 3662 of 2010), it appears that the case of the petitioner was recommended for regularization, but till date no decision has been taken.

16. Therefore, in the fitness of things, the writ petitions are disposed of with a direction to the respondents-authorities to consider the case of the petitioners for regularization of their services and take a decision thereof in accordance with law, taking into account that the similarly situated persons have been given the same benefit and keeping view the circular dated 04.06.2008 issued by Deputy Secretary to the Government, Road Construction Department, Jharkhand vide Annexure 11 to W.P. (S) No. 3662 of 2011 and considering the recommendation of the Deputy Commissioner vide letter dated 4068 under Annexure 12 to W.P. (S)

No. 3662 of 2011, within a period of two months from the date of receipt/production of copy of this order.

17. With the aforesaid observations and directions, the writ petitions are disposed of. (Pramath Patnaik, J.) Alankar/-

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