

State of Jharkhand Vs. Arun Kumar

State of Jharkhand Vs. Arun Kumar

SooperKanoon Citation : sooperkanoon.com/69144

Court : Jharkhand

Decided On : Feb-29-2016

Appellant : State of Jharkhand

Respondent : Arun Kumar

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI L.P. A. No. 536 of 2009 With I.A. Nos. 5512 of 2015 & 710 of 2016 The State of Jharkhand through the Executive Engineer, Building Construction Department, Chhotanagpur, Circle, Ranchi ... Appellant Versus Arun Kumar, son of Sri Basudeo Prasad, resident of Building Construction and Housing Department, Building Division, Jamshedpur, District-East Singhbhum ... Respondent ----- For the Appellant : Mr. Rajesh Kumar, G.P. V For the Respondent : Mr. A.K. Sahani, Advocate ----- CORAM: HONBLE MR. JUSTICE VIRENDER SINGH, CHIEF JUSTICE HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR ----- 11/Dated:

29. h February, 2016 1. The appellant-State of Jharkhand is aggrieved of the order dated 18.08.2009 in W.P.(S) No. 3997 of 2003 whereby, the learned Single Judge quashed the order of termination of the petitioner's service.

2. The facts of the case narrated in the writ petition are summarised thus; The respondent was appointed on 27.11.1984 on a vacant post of Accounts Clerk for a period of six months. He was transferred on 22.09.1985 on a vacant post of Accounts Clerk in the office of Superintending Engineer, Ranchi. After about 14

years of continuous service, on a complaint made by 2 the local M.L.A., the respondent was put under suspension vide, order dated 28.11.1998. The respondent approached this Court in C.W.J.C. No. 3589 of 2000 (R) which was disposed on 18.10.2000. The respondent again approached this Court in W.P.(S) No. 5122 of 2001 which was disposed of vide order dated 09.10.2001, holding that if final order is not passed within two months, order of suspension shall stand revoked. The appellant-State of Jharkhand revoked the order of suspension on 28.02.2002 and the respondent was posted in the office of Building Division-I, Ranchi, where he joined on 07.03.2002. The respondent- workman was issued show-cause notice dated 10.04.2002 to which he responded by filing his reply dated 15.04.2002 and the report was submitted on 24.02.2002, recommending that the service of the writ petitioner may be regularised. A second show-cause notice was issued to the respondent on 22.02.2003 and, vide order dated 03.05.2003, the writ petitioner was dismissed from service. In the aforesaid facts, the respondent-employee approached the Writ Court.

3. Heard learned counsel for the parties and perused the documents on record. 3

4. Mr. Rajesh Kumar, the learned G.P.-V assailing the order passed by the Writ Court submits that the Writ Court, ignoring the law laid down in State of Karnataka Vs. Umadevi (3) (2006) 4 SCC1 erroneously interfered with the order of termination of the writ petitioner. It is contended that an employee whose appointment was in violation of Article 14 & 16 of the Constitution of India cannot be permitted to continue in service.

5. Per contra, Mr. A. K. Sahani, the learned counsel for the respondent-employee submits that after about 22 years when the writ petitioner was appointed on a vacant post of Accounts Clerk, it would be inequitable in law now to remove him from service. The learned counsel referring to the termination order dated 03.05.2003 submits that the enquiry against the writ petitioner proceeded on a charge that he was illegally appointed however, termination order has been issued on the ground that the writ petitioner got himself transferred for suppressing his illegal appointment.

6. We notice that the appointment of the respondent on a vacant post of Accounts Clerk has not been disputed by the appellant-State of Jharkhand. The respondent was allotted G.P.F. account in the year, 1985 and his service-book was duly opened. Subsequently, the 4 respondent was posted as Senior Accounts Clerk on sanctioned vacant post in the pay-scale of Rs. 580-10-620-15-770. The respondent approached this Court in W.P.(S) No. 5122 of 2001 however, the plea challenging the appointment of the respondent as illegal was not taken by the State. The enquiry report also records that appointment of the respondent was on a vacant post. The respondent was granted benefit of pay revision and he passed the departmental examination. The enquiry officer opined that the departmental proceeding against the respondent-employee may be dropped. In the aforesaid facts, the appointment of the respondent cannot be termed illegal, may be, it was an irregular appointment. It is also a matter of record that the respondent continued in service without an order of the Court. The learned Single Judge noticed that there was no allegation against the writ petitioner that he made a false representation or committed fraud for continuing in service. It was also not brought on record that the writ petitioner by manipulation continued in service. The learned Single Judge held as under; 15. The respondents, after expiry of the period of six months from the date of the initial appointment of the petitioner, neither passed any order terminating his engagement nor passed any specific order for regularization of the service. As a matter of fact the petitioner continued in service since he was never removed from the service and, therefore, by continuing in service for over 16 years, a right accrued to the petitioner to continue in service which could not have been taken away by dismissing him from service for no fault on his part. In any view, the service of the petitioner can be deemed to have been regularized. The respondents after more than 16 years of the service of the petitioner could not have dismissed him from service on the ground that his initial appointment was only for a period of six months. The fault, if any, lies with the respondents themselves and for their own fault, the petitioner cannot be penalized and he cannot be thrown out of service.

16. From the impugned order as contained in Annexure-10, it also appears that the same was issue by the Superintending Engineer only on the instructions and directions of his superiors and not on his independent application of mind. No

reason has been assigned for not accepting the findings and recommendation of the Enquiry Officer. The dismissal of the petitioner from service, in my view, is absolutely illegal and arbitrary for the reasons already stated herein above.

7. The disciplinary authority did not disclose the reason for not accepting the recommendation of the enquiry officer. It appears that the appellant-State terminated the service of the respondent merely on the ground that his appointment was only for six months. However, the 6 subsequent events, during the service of the respondent, such as allotment of PF account, pay revision, passing of departmental examination etc., have been ignored by the appellant-State of Jharkhand.

8. In Umadevi Case, the Hon'ble Supreme Court has held that a person illegally appointed has no vested right to continue in service however, the Hon'ble Supreme Court has drawn a distinction between illegal appointment and irregular appointment. Dealing with the cases of irregular appointment continuing for more than 10 years, the Hon'ble Supreme Court ordered thus; 53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR128 , R.N. Nanjundappa[(1972) 1 SCC409 and B.N. Nagarajan [(1979) 4 SCC507 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 abovereferred to and in the light of this judgment.

9. The appointment of the respondent was not illegal though, no formal order of regularization of service 7 has been issued by the State. The appellant-State of Jharkhand instead of regularizing the service of the respondent passed an order terminating the service on an erroneous presumption. It is thus apparent that different considerations would arise in a case of irregular appointment, continuing for more than 10 years. In the facts of the present case the learned Single Judge held the order of termination dated 03.05.2003, bad.

10. Apart from the above consideration, in law, we are of the opinion that once a departmental proceeding was initiated against an employee in which the department adduced evidence in support of the charge framed against the employee, and there is no categorical finding of illegal appointment. The ratio in Umadevi case cannot be pressed to terminate an employee from service like the respondent. We are of considered view that, Umadevi case is not applicable in the present set of circumstances. We notice that the Hon'ble Supreme Court has directed the State Government to frame scheme for regularization of such irregular appointments in the following terms : 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 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.

11. We are informed that the State of Jharkhand has framed a scheme for regularization, in the light of the above directions of the Hon'ble Supreme court. We, thus are not inclined to interfere in the matter and, resultantly, the instant Letters Patent Appeal stands dismissed.

12. Consequently, I.A. Nos. 5512 of 2015 & 710 of 2016 also stand dismissed.
(Virender Singh, C.J.) (Shree Chandrashekhar, J.) Satyarthi

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com