

Ashraf Ali Vs. Road Construction

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Court : Jharkhand

Decided On : Jul-18-2016

Appellant : Ashraf Ali

Respondent : Road Construction

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 747 of 2016 ... Ashraf Ali, S/o Ali Hussain, resident of Village-Gaidehra, P.O. & P.S.-Govindpur, District- Dhanbad (Jharkhand) ... Petitioner -V e r s u s- 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, Ranchi Project Building, Dhurwa, P.O & P.S-Dhurwa, District-Ranchi (Jharkhand). 5.The Superintending Engineer, Road Construction Deptt., 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 ... CORAM:

HONBLE MR. JUSTICE PRAMATH PATNAIK ... For the Petitioner : Mr. Anjani Kumar Verma, Advocate. For the Respondents : Ms. Nilam Tiwari, J.C to Sr. S.C. I. ... th 05/Dated:

18. July, 2016 Per Pramath Patnaik, J.:

1. Mr. Anjani Kumar Verma, learned counsel appearing for the petitioner submits at the outset that the case of the petitioner is squarely covered by the order dated 04.09.2015, passed in W.P. (S) No. 3662 of 2010, Girja Shankar Dubey Vrs. The State of Jharkhand and others and therefore, this writ petition may be disposed of at this stage without filing of counter affidavit.

2. Ms. Nilam Tiwari, learned J.C to Sr. S.C. I for the respondent- State raises no objection.

3. In this writ application, the petitioner has inter alia, prayed for direction upon the respondents to give same and similar benefits of regularization of service on the post of Roller Driver to the petitioner, which has been given to other similarly situated Roller Drivers of 2 Deoghar District in terms of order dated 12.07.2006 passed in W.P. (S) No. 171 of 2004 by this Court and also for quashing Memo no. 934 dated 16.07.2002, by which, service of the petitioner has been terminated from the post of Roller Driver in Road Construction Department after performing more than 14 years of service and further prayed for disposal of the case of the petitioner in terms of order dated 12.07.2006 passed in W.P. (S) No. 171 of 2004.

4. Heard Mr. Anjani Kumar Verma, learned counsel appearing for the petitioner and Ms. Nilam Tiwari, learned J.C to Sr. S.C. I for the respondent-State.

5. The facts, as delineated in the writ petition, in a nutshell, is that the petitioner was 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.

6. 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, Ranchi sent an intimation to the Executive Engineer to send the details of 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 petitioner was also shown at serial no.

10. 7. It has been contended in the writ application that on the one hand, the details of Roller Driver etc. working on daily wages was 3 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 Engineers, Road Construction Department, Jharkhand to stop taking work from the daily wagers, who have been appointed after 01.08.1985 in the Road Construction Department. In pursuant to the aforesaid direction, the services of the petitioner was terminated vide Memo No. 934 dated 16.07.2002.

8. 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.

9. 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.

10. It has been contended that in the meantime, the services of the 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 also been regularized. 4 11. 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 petitioner, 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.

12. Being aggrieved, petitioner has approached this Court invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India for mitigating his grievance.

13. 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 14. Having heard learned counsel for the respective parties and on perusal of the record, it appears that the petitioner has rendered more than 10 years of service prior to his 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-13, it appears that the case of Roller Driver Girja Shankar Dubey similarly situated to the petitioner was recommended for regularization, but till date no decision has been taken.

15. Therefore, in the fitness of things, the writ petition is disposed of with a direction to the respondents-authorities to consider the case of 5 the petitioner for regularization of his 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 in 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.

16. With the aforesaid observations and directions, the writ petition is disposed of.
(Pramath Patnaik, J.) APK

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