

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 6054 of 2022

Umesh Kumar Singh Petitioner

Versus

1. The State of Jharkhand
2. The Secretary, Department of Education, Jharkhand, Ranchi.
3. The Director, Secondary Education, Govt. of Jharkhand, Ranchi.
4. The Regional Deputy Director of Education, North Chhotanagpur Division, Hazaribag.
5. The District Education Officer, Dhanbad.

..... Respondents

CORAM : HON'BLE DR. JUSTICE S.N. PATHAK

For the Petitioner : Mr. Mahesh Tewari, Advocate
For the Respondents : Ms. Priti Priyamvada, AC to GP-V

7/ 22.07.2024 The petitioner has approached this Court with a prayer for a direction upon the respondents to regularize the services of the petitioner from 23.7.1992 i.e. the date of his illegal termination, till 30.11.2009 when the petitioner has been allowed to join to his original post as Assistant / Clerk in light of the order of this Court and treat the period from 23.07.1992 till 30.11.2009 as continuation in service and count it for grant of all consequential benefits including post-retirement and pensionary benefit.

2. Mr. Mahesh Tewari, learned counsel for the petitioner submits that the petitioner was appointed as a Clerk in J.K.R.R. High Court, Chirkunda in the district of Dhanbad in the year 1989. The petitioner was doing his service to the satisfaction of the higher authorities but all of a sudden, his services were terminated by the Memo No.327 dated 23.07.1992 on the ground that sanction for appointment of the petitioner and others was not obtained from the competent authority, namely the District Education Officer (DEO), Dhanbad. He further submits that the said termination order was challenged by the petitioner in C.W.J.C. No.3540 of 1993(R), which was disposed of vide order dated 25.1.1995 with direction to the respondent concerned to consider the case of the petitioner, as sanction order was not required to be obtained from the D.E.O. However, the case of the petitioner was rejected. Again the petitioner approached this Court in W.P.(S) No. 1332 of 2003, which was allowed by order dated 16.7.2009 directing the

respondents to reinstate the petitioner to his original post in regular vacancy against the sanctioned post He also submits that the said order passed by the Writ Court was tested by the respondent-State before the Division Bench of this Court in L.P.A. No.124 of 2009, which was dismissed vide order dated 08.08.2019. He submits that similarly situated persons had also moved this Court, wherein also the State has lost before the Division Bench of this Court in L.P.A. No. 64 of 1998(R) and the same was further challenged before the Hon'ble Supreme Court in S.L.P. No.7153 of 1999, which was also dismissed vide order dated 06.01.2000. He further submits that after the order of the Division Bench, the petitioner was directed to join his services on 30.11.2009. He also submits that the petitioner has been paid retirement benefits counting his services w.e.f. 30.11.2009 and the period of illegal termination i.e. from 23.07.1992 till 30.11.2009 was not counted by the respondent-State, as a result of which, the petitioner has been constrained to move this Court. He submits that the petitioner's claim for regularization of the said period cannot be rejected by the respondent authorities on the ground that termination order has already been quashed by this Court and in view of the that, the petitioner is entitled for all the consequential benefits including for counting of the said services for pensionery benefits.

3. Ms. Priti Priyamvada, learned counsel for the respondent-State by way of referring counter affidavit submits that the petitioner is not entitled for regularization of service for the period from 23.07.1992 to 30.11.2009 as he has not worked during that period. He further submits that the High Court has not directed for grant of any back wages while quashing the termination order and in view of that, the petitioner is not entitled for counting of that period, however, she does not dispute dismissal of the said L.P.A. as well as S.L.P. by the Division Bench of this Court as well as the Hon'ble Supreme Court respectively.

4. It is an admitted position that the petitioner was appointed as Clerk in the year 1989. Subsequently, the service of the petitioner was terminated by the order dated 23.07.1992, which was challenged by the petitioner before this Court in C.W.J.C. No.3540 of 1993(R) and thereafter in W.P.(S) No. 1332 of 2003 and vide order dated 16.7.2008 passed in W.P.(S) No. 1332 of 2003, the termination order of the petitioner was quashed, which

was further challenged by the respondent-State before the Division Bench of this Court in L.P.A. No. 124 of 2009. Similarly situated persons also moved this Court against their termination order, which was allowed and the State has preferred L.P.A. No. 64 of 1998(R). Again the State has lost in appeal. Against the order passed in L.P.A. Court, again the State filed S.L.P. No. 7153 of 1999 which was also dismissed by the Hon'ble Supreme Court vide order dated 06.01.2000. Thus, quashing order has attained finality.

5. In this background, it is an admitted position that so far as consequential benefit including counting of service for intervening period is concerned, there is no doubt that if the petitioner has not worked for certain period on the basis of No work No Pay, the order can be passed, but there are parameters of passing such order. If the Court comes to the conclusion that there is illegality on behalf of the authority concerned not to allow the petitioner to work, the Court is required to pass appropriate order.

6. In the case at hand, it has already been held by this Court in earlier round of litigation that the said termination order was not in accordance with law and, as such, the termination order was quashed, which was affirmed upto the Division Bench and so far as case of similarly situated persons are concerned, it was affirmed by the Hon'ble Supreme Court also. Thus, for the wrong of the respondent-State, the petitioner was prevented to work and if such a situation is there, the case of the petitioner is covered in light of the judgment of the Hon'ble Supreme Court in the case of *Pradeep son of Raj Kumar Jain v. Manganese Ore (India) Ltd.*, reported in (2022) 3 SCC 683, in which, it has been held that the question arises as to whether the back wages is to be given and as to what is to be the extent of that back wages, these are the aspects which will depend on the facts of the case as noted in the case of *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors.*, reported in (2013) 10 SCC 324.

7. Thus, it is well settled that in a case where it is found that the employee was not at all at fault and yet, he was visited with illegal termination or termination which is actually activated by malice, it may be unfair to deny him the fruits of the employment which he would have enjoyed, but for the illegal/malafide termination, he was not allowed.

8. It is crystal clear that the petitioner was not allowed to work,

for which liability cannot be fastened upon the petitioner and in that view of the matter, it is a fit case to command upon the respondent-State in the nature of mandamus to count the services of the petitioner w.e.f. 23.07.1992 to 30.11.2009 and to pay retirement benefits counting that period. The respondent-State is directed to release salary and other consequential benefits including retirement benefits in favour of the petitioner counting the said period within a period of six weeks from the date of receipt/production of a copy of this order.

9. Accordingly, this petition is allowed in above terms and disposed of.

(Dr. S. N. Pathak, J.)

R.Kr.