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Through Vats, Adv
Amritanesh Vats, Adv
F No - D/2764/2014
27/3/2020

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
(CIVIL WRIT JURISDICTION)**

W.P.(S) No.

of 2020

IN THE MATTER OF :-

An application under Article
226 of the Constitution of
India;

AND

IN THE MATTER OF :-

Chandramouli Kumar Jha, aged about 36 years, S/o Kapildeo
Jha, resident of Govind Bhawan, Kalirakha, Jhausagadi,
Deoghar, P.O –Deoghar, P.S – Deoghar (Town), Dist – Deoghar.

..... Petitioner

Versus

1. State of Jharkhand through the Secretary, Department of Home,
Prison, & Disaster Management, Government of Jharkhand,
having office at Project Building, Dhurwa, P.O. – Dhurwa, P.S. –
Jagarnathpur, District – Ranchi.

2. Inspector General of Prison, Jail Inspectorate Department, Government of Jharkhand, having office at Engineers Hostel, Golchakkar, Dhurwa, P.O. & P.S. – Dhurwa, District – Ranchi.
3. Department of Labour & Employment through its Secretary, Government of Jharkhand, having office at Project Building, Dhurwa, P.O. – Dhurwa, P.S. – Jagarnathpur, District – Ranchi.
4. Jail Superintendent, District Jail, Lohardaga, P.O. & P.S. – Lohardaga, District – Lohardaga.
5. Ministry of Labour & Employment, Government of India through its Joint Secretary, having office its Local Office 3rd Floor, R.I -III Building, CMPDIL, Gondwana Palace, Kanke Road, Ranchi.

..... Respondents

To

The Hon'ble Mr. Justice Dr. Ravi Ranjan, the Chief Justice of the High Court of Jharkhand at Ranchi and His other companion Judges of the said Hon'ble Court.

The humble petition on behalf of
the petitioner above named.

Most Respectfully Sheweth:-

1. That in this writ application the petitioner named above prays for the following reliefs:-

- (i) For issuance of an appropriate writ in the nature of certiorari or any other appropriate writ(s), order(s) or direction(s) for quashing of Letter dated 17.3.2020 as contained in Memo No. 339/J, Lohardaga (**Annexure-13**) issued under the signature of the Jail Superintendent, Lohardaga (Respondent No. 4); whereby and whereunder the petitioner has been directed to be relieved from the services w.e.f. 01.04.2020, who is presently working at the post of Video Conferencing Operator at Lohardaga Jail (working since 2008 as daily wage employee) on the ground that his services are no more required since two other computer operators are working regularly. That the said letter dated Letter dated 17.3.2020 further fit to be set aside/ quashed in light of advisory issued by Ministry of Labour & Employment, Government of India vide letter dated 20.3.2020, whereunder guidelines are issued to all Departments not to terminate the services of any casual/ daily wages/ contractual employees due to present epidemic of COVID-19.

AND

- (ii) For issuance of a further appropriate writ in the mandamus or any other appropriate writ(s), order(s) or direction(s) commanding upon the respondents to continue the services of the petitioner and further be directed to forthwith regularise the services of the petitioner.

AND

- (iii) During pendency of this writ application, execution, implementation and operation of the Letter dated 17.3.2020 as contained in Memo No. 339/J, Lohardaga (**Annexure-13**) be stayed and further be directed that the services of the petitioner shall not be disturbed;

AND/OR

- (iv) For issuance of such other writ, order or direction as Your Lordships may deem fit and proper for doing conscionable justice to the petitioner.

2. That the petitioner has not earlier moved this Hon'ble Court for the reliefs claimed in the present writ application.

However, the petitioner has earlier moved before this Hon'ble Court through his registered Association namely Jharkhand Rajya Kara Dainik Karmi Association in W.P.(S) No. 6423/2014 praying therein for regularisation of their services and also for direction for make equal pay for equal work of the daily wage employees; whereby and whereunder vide judgement dated 4.2.2019 this Hon'ble High Court directed the Respondents for regularisation of the services of daily wage employees, who have completed 10 years of regular service by examining each and individual cases.

Photocopies of the judgement dated 4.2.2019 passed in W.P.(S) No. 6423/2014 is annexed herewith and marked as **Annexure-1** to this writ application.

3. That the main points involved for determination in the writ application are as under: -

- a. Whether the act of the respondents in not complying/ implementing the advisory/ guidelines of Ministry of Labour & Employment, Government of India, whereby and whereunder a guidelines has been issued vide letter dated 20.3.2020 to all the State Governments, Departments, Institutions directing therein not to terminate the employees from the job in any scenario is illegal, arbitrary and bad in eyes of law ?
- b. Whether the act of the respondents in the present situation when the entire country is suffering from Corona Virus (Covid 19) and during this period of lockdown the act of the respondents by terminating the services of the petitioner at this particular period is an act of highhandedness, inhuman and unreasonable?
- c. Whether the act of the respondents in terminating/relieving the services of the petitioner without issuing any show cause notice and without affording any opportunity of hearing is violation of principles of natural justice and the same is justified in the eyes of law?

- d. Whether the act of respondents by relieving the petitioner from his services on a vague and unreasonable ground as contained in letter dated 17.3.2020 is an act of arbitrariness, biasness and not proper in eyes of law ?
- e. Whether the act of the respondents in not implementing the order dated 4.2.2019 of this Hon'ble High Court, whereby it has been directed to consider the individual case of the employees for regularisation and contrary to the order of this Hon'ble High Court, the respondents are terminating the services of the petitioner, who has given more than 10 years service to the respondent authorities?
- f. Whether the act of the respondents in not considering the fact that the petitioner is working since September, 2008 and has given more than 10 years of regular services as a daily wage employee and at present he is overage for any new job should be considered for

regularisation of services in light of various judicial pronouncements of the Hon'ble Supreme Court of India?

- g. Whether the rule of law is followed and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirement of Articles 14 and 16 of the Constitution of India. It also means that the State should not expect from its employees nor should seek to take advantage of helplessness and misery of either unemployed persons or employees as the case may be?
- h. Whether as is often stated that the State must be a model employer, it is for this reason it is held that the scale of pay must be given for equal work, which is indeed is one of the directive principle of the constitution, it is for this very reason it is held that the person should not be kept in a temporary or ad-hoc status for long. Where temporary and ad-hoc appointment is continued for long, the court presumes that there is a need and

warrant for a regular post and accordingly direct regularization?

- i. Whether the law that having made rule for recruitment to various services under the State or to a class posts under the State, the State is bound to follow the same and to have a selection of candidates made as per the recruitment rules and appointment shall be made accordingly?
- j. Whether question of regularization in any service including any government service arises in two contingencies, Firstly if on any available clean vacancies which are of long duration appointment are made on ad-hoc basis or daily wage by a competent authority and are continued from time to time and if it is found that the incumbents concerned have continued to be employed for a long period of time with or without any artificial break and their services are otherwise required by the institution, which employees them, a time may come in the service career of such employees who have

continued on ad-hoc basis for a given substantial length of time to regularise them so that the employees concerned can give their best by being assured security of tenure?

k. Whether the act of the respondents in not regularising the services of the petitioner even though he is working continuously for last 10 years on vacant and sanctioned posts is violative of fundamental rights as guaranteed under Articles 14 and 16 of the Constitution of India?

4. That the cause of action for filing this writ application has arisen within the territorial jurisdiction of the Hon'ble Jharkhand High Court at Ranchi.

5. That the petitioner was appointed to the post of Video Conferencing Operator as a daily wage employee since September 2008 at District Jail, Lohardaga.

Photocopy of the relevant part of the Employment Register of District Jail, Lohardaga showing the name of the petitioner a Daily

Wage Employee is annexed
herewith and marked as
Annexure-2 to this writ
application.

6. That it is submitted that since then the petitioner was regularly given his service to utmost satisfaction of the respondent no. 4 and till date his services is spotless and no allegation was ever alleged with regard to the services of the petitioner.
7. That the petitioner is working on vacant and sanctioned post of Video Conferencing Operator as a daily wage employee and the same was approved till the higher authority which is evident from letter dated 24.10.2011 as contained in memo no. 1165 issued under the signature of the Respondent No. 4.

Photocopy of the letter dated
24.10.2011 as contained in memo
no. 1165 is annexed herewith and
marked as **Annexure-3** to this writ
application.

8. That in the year 2014, the petitioner along with other similarly situated employees have preferred a writ application through their association being W.P.(S) No. 6423/2014, whereby the Respondent No. 4 had asked the writ petitioner for giving the service record of the writ petitioner for filing an affidavit before this Hon'ble High Court whereunder the respondent no. 4 has attested the fact that the petitioner is working as an daily wage employee on vacant and sanctioned post, which is evident from Prapatra-II.

Photocopy of the Prapatra-II attested by respondent no. 4 is annexed herewith and marked as **Annexure-4** to this writ application.

9. That in the year 2017 on 12.5.2017 the petitioner met with a serious road accident where he suffered a serious head injury which has also affected his brain cells and he went through medical treatment and was also advised to take proper bed rest for several months.

That about the said road accident the petitioner through his relatives has duly informed the concerned authority and the same was in the knowledge the respondents.

Photocopies of the Medical Certificate & Prescription of the petitioner are annexed herewith and marked as **Annexure-5 Series** to this writ application.

10. That when the petitioner was declared medically fit, he vide letter dated 4.3.2019 requested the respondent no. 4 to accept his joining on the same post of Video Conferencing Operator and further requested to condone his absence from services due to road accident.
11. That upon receipt of the same, it was ordered by the respondent to examine his medical fitness as well as medical records and if the same is found true, he can be taken back in the services. That after verification of all the medical records and by medical examination the petitioner was declared fit and

his medical records were found true, he was directed to give his joining on 18.6.2019.

Photocopy of the letter dated 4.3.2019 is annexed herewith and marked as **Annexure-6** to this writ application.

12. That after the medical verification and examination of medical records as produced by the petitioner of his absence period, following the direction issued on the petitioner to give his joining, the petitioner vide his letter dated 18.6.2019 had requested the respondent no. 4 to accept his joining and condone his absence in view of road accident which was duly accepted by the respondent no. 4.

Photocopy of the letter dated 18.6.2019 is annexed herewith and marked as **Annexure-7** to this writ application.

13. That upon receipt of request of petitioner for acceptance of his joining, the respondent no. 4 vide his letter dated 16.7.2019 as

contained in memo no. 875/Jail, Lohardaga addressed to the I.G. (Prison), whereunder the respondent no. 4 requested the respondent no. ~~3~~ sought guidelines and instruction with regards to the case of the petitioner.

Photocopy of the letter dated 16.7.2019 as contained in memo no. 875/Jail, Lohardaga is annexed herewith and marked as **Annexure-8** to this writ application.

14. That in spite of giving joining as per instruction of the respondent no. 4, the petitioner had not received any concrete direction with regard to acceptance of his services after his absence from service, the petitioner made a complaint before the Chief Minister Public Grievances Cell on 23.9.2019 being Grievance No. 2019-112531, whereby the petitioner's complaint was resolved and his services was accepted and he started working since 4.10.2019 and his absence of 2 years of services due to road accident was condoned.

Photocopy of the complaint before the Chief Minister Public Grievances Cell on 23.9.2019 being Grievance No. 2019-112531 is annexed herewith and marked as **Annexure-9** to this writ application.

15. That after the order of this Hon'ble High Court in the writ petition being W.P.(S) No. 6423/2014 which was preferred by the petitioner through their Association, the respondent no. 3 issued a letter to all the Jail Superintendents of Jharkhand for complying the directions passed by this Hon'ble Court for regularisation of the services of the petitioner and further it was directed to verify the service record of all the daily wages employees individually and the records should be made available to the respondent no. ~~3~~ within a period two days.

Photocopy of the letter dated 19.6.2019 as contained memo no. 1778 issued under the signature

of the respondent no. 3 is annexed herewith and marked as **Annexure-10** to this writ application.

16. That during the service of the petitioner he was regularly being paid his remuneration along with Dearness Allowances time to time as directed by the respondent no. 3/Authority. The same is evident from the letter dated 10.1.2020 and also the remuneration of the petitioner was timely revised in lieu of 7th Pay Revision Commission as directed by the Joint Secretary, Govt. of Jharkhand, Department of Labour & Employment and the benefits thereof was given to the petitioner.

Photocopy of the letter dated 10.1.2020 and the letter dated 25.20.2019 issued under the signature of Joint Secretary, Govt. of Jharkhand is annexed herewith and marked as **Annexure-11 Series** to this writ application.

17. That it is relevant to bring to the knowledge of this Hon'ble Court that at present in Lohardaga Jail one post is sanctioned for the post of Computer Operator and another post is sanctioned for Video Conferencing Operator, where the petitioner is working and the same is evident from the letter dated 16.1.2020.

Photocopy of the letter dated 16.1.2020 is annexed herewith and marked as **Annexure-12** to this writ application.

18. That it is further relevant to bring to the knowledge of the Hon'ble Court that in Lohardaga District Jail there is only two posts which is sanctioned for Computer Operator, out of which one post is available for Video Conferencing Operator, which is a very essential post in the District Jail by which the prisoners give their appearances in the learned District Courts.

19. That vide a letter dated 17.3.2020 as contained in memo no. 339/J, Lohardaga issued under the signature of the respondent no. 4, whereby in a very vague and unreasonable manner the petitioner has been directed to be relieved from the services of Video Conferencing Operator w.e.f. 1.4.2020 without providing any reasonable opportunity of hearing and also without giving any show cause notice before passing the impugned order.

Photocopy of the letter dated 17.3.2020 as contained in memo no. 339/J, Lohardaga is annexed herewith and marked as **Annexure-13** to this writ application.

20. That further in view of aforesaid facts, in what manner, the respondent no. 4 is claiming that he had sufficient number of Video Conferencing Operator and the services of petitioner is no more required and would be additional.

21. That the impugned letter dated 17.3.2020 was issued during the epidemic period of Covid 19 virus which is spread all over the country and for controlling that the entire State is under lockdown and by **violating the guidelines and advisories issued by the Ministry of Labour & Employment, Government of India addressed to Media Houses and all Employers association directing therein not to terminate any casual/daily wage/contractual employees during this period of Covid-19. However, the respondent no. 4 has completely violated the advisory/ guidelines of the Ministry of Labour & Employment, Government of India.**

Internet downloaded copy of the letter dated 20.3.2020 from the website of Ministry of Labour & Employment, Government of India issued under the signature of Joint Secretary is annexed herewith and marked as **Annexure-14** to this writ application

22. That the petitioner has made a detailed representation dated 26.03.2020 sent to all the respondent authorities attaching the said letter dated 20.3.2020 issued by the Ministry of Labour & Employment, Government of India requesting therein not to terminate the petitioner's services during this period of epidemic of Covid-19 and keep the letter 17.3.2020 in abeyance since at present the legal remedy is also not available to the petitioner due to closure of Hon'ble High Court and at present the petitioner cannot avail the opportunity to knock the door of this Hon'ble High Court.

Photocopy of the representation of the petitioner is annexed herewith and marked as **Annexure-15** to this writ application.

23. That it is stated and submitted that the respondents are sitting tight over the matter and have not taken any step in view of the guidelines/ advisory issued by the Ministry of Labour &

Employment, Government of India nor have passed any order on the representations of the petitioner till date.

24. That it is submitted that the act of the respondents in not complying/ implementing the advisory/ guidelines of Ministry of Labour & Employment, Government of India, whereby and whereunder a guidelines has been issued vide letter dated 20.3.2020 to all the State Governments, Departments, Institutions directing therein not to terminate the employees from the job in any scenario is illegal, arbitrary and bad in eyes of law
25. That it is further submitted that the act of the respondents in the present situation when the entire country is suffering from Corona Virus (Covid 19) and during this period of lockdown terminating the services of the petitioner is an act of highhandedness, inhuman and unreasonable.
26. That it is stated and submitted that the act of the respondents in terminating/relieving the services of the petitioner without issuing any show cause notice and without affording any

opportunity of hearing is violation of principles of natural justice and the same is not justified in the eyes of law.

27. That it is stated and submitted that in the letter dated 17.3.2020 as contained in Memo No. 339 the reason stated for relieving the petitioner from his services on a vague and unreasonable ground is not legal, valid and proper.
28. That it is stated and submitted that the act of the respondents in not implementing the order dated 4.2.2019 of this Hon'ble High Court, whereby it has been directed to consider the individual case of the employees for regularisation and contrary to the order of this Hon'ble High Court, the respondents are terminating the services of the petitioner, who has given more than 10 years service to the respondent authorities.
29. That it is stated and submitted that the act of the respondents in not considering the fact that the petitioner is working since September, 2008 and has given more than 10 years of regular services as a daily wage employee and at present he is overage for any new job should be considered for

regularisation of services in light of various judicial pronouncements of the Hon'ble Supreme Court of India.

30. That it is stated and submitted that the rule of law is followed and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirement of Articles 14 and 16 of the Constitution of India. It also means that the State should not expect from its employees nor should seek to take advantage of helplessness and misery of either unemployed persons or employees as the case may be.
31. That it is stated and submitted that as is often stated that the State must be a model employer, it is for this reason it is held that the scale of pay must be given for equal work, which is indeed is one of the directive principle of the constitution, it is for this very reason it is held that the person should not be kept in a temporary or ad-hoc status for long. Where temporary and ad-hoc appointment is continued for long, the court presumes that there is a need and warrant for a regular post and accordingly direct regularization.

- 32.** That it is stated and submitted that the law that having made rule for recruitment to various services under the State or to a class posts under the State, the State is bound to follow the same and to have a selection of candidates made as per the recruitment rules and appointment shall be made accordingly.
- 33.** That it is stated and submitted that question of regularization in any service including any government service arises in two contingencies, Firstly if on any available clean vacancies which are of long duration appointment are made on ad-hoc basis or daily wage by a competent authority and are continued from time to time and if it is found that the incumbents concerned have continued to be employed for a long period of time with or without any artificial break and their services are otherwise required by the institution, which employees them, a time may come in the service career of such employees who have continued on ad-hoc basis for a given substantial length of time to regularise them so that the employees concerned can give their best by being assured security of tenure.

34. That it is stated and submitted that the act of the respondents in not regularising the services of the petitioner even though he is working continuously for last 10 years on vacant and sanctioned posts is violative of fundamental rights as guaranteed under Articles 14 and 16 of the Constitution of India.
35. That the petitioner shall suffer serious loss and irreparable injury if the impugned letter/order is allowed to stand.
36. That the petitioner has got no other equally expeditious and efficacious alternative remedy than to move the extra ordinary writ jurisdiction of this Hon'ble Court.
37. That this application is being filed bonafide and in the interest of justice.

It is, therefore, prayed that Your Lordships may graciously be pleased to admit this application for grant of following reliefs: -

- (i) For issuance of an appropriate writ in the nature of certiorari or any other appropriate writ(s), order(s) or direction(s) for quashing of

Letter dated 17.3.2020 as contained in Memo No. 339/J, Lohardaga (**Annexure-13**) issued under the signature of the Jail Superintendent, Lohardaga (Respondent No. 4); whereby and whereunder the petitioner has been directed to be relieved from the services w.e.f. 01.04.2020, who is presently working at the post of Video Conferencing Operator at Lohardaga Jail (working since 2008 as daily wage employee) on the ground that his services are no more required since two other computer operators are working regularly. That the said letter dated Letter dated 17.3.2020 further fit to be set aside/ quashed in light of advisory issued by Ministry of Labour & Employment, Government of India vide letter dated 20.3.2020, whereunder guidelines are issued to all Departments not to terminate the services of any casual/ daily

wages/ contractual employees due to present epidemic of COVID-19.

AND

(ii) For issuance of a further appropriate writ in the mandamus or any other appropriate writ(s), order(s) or direction(s) commanding upon the respondents to continue the services of the petitioner and further be directed to forthwith regularise the services of the petitioner.

AND

(iii) During pendency of this writ application, execution, implementation and operation of the Letter dated 17.3.2020 as contained in Memo No. 339/J, Lohardaga (**Annexure-13**) be stayed and further the services of the petitioner shall not be disturbed.

AND/OR

Pass such other order or orders, as to Your Lordships may appear just and proper in the facts and circumstances of this case..

AND

For this act of grace the petitioner shall ever pray.

By
Amitanesh Vats, Adv
ENo - D/2764/2014
27/3/2020.