

Bharat Kumar Vs. The State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Jul-21-2017

Appellant : Bharat Kumar

Respondent : The State of Jharkhand and Ors

Judgement :

1 W.P.(S) No. 4977 OF 2016 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 4977 OF 2016 Bharat Kumar, son of Late Ramji Singh Petitioner VERSUS 1 The State of Jharkhand, 2. The Director General-cum-Inspector General of Police, Jharkhand, Ranchi.

3. The Deputy Inspector General of Police, Singhbhum (Kolhan) Range, Chaibasa.

4. The Superintendent of Police, Saraikella-Kharsawan, Officiating from Saraikella Kharsawan. ... Respondents. CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK For Petitioner : Mrs. M.M. Pal, Sr. Advocate. Mrs. Ruby Pandey, Advocate. For Respondents : Mr. Ajit Kumar, AAG C.A.V. On 12/07/2017 Pronounced on 21/07/2017 Dr. S.N.Pathak, J.

Heard learned counsel for the parties.

2. Petitioner has approached this Court with a prayer for quashing the order contained in Memo No. 89/D, Dated 07.04.2014 (Annexure- 13), passed by the Director General-cum-Inspector General of Police, Jharkhand, Ranchi whereby the claim of the petitioner for counting his services working as Bal Police has been

rejected. Further prayer has been made for quashing the order contained in Memo No. 346, Dated 01.06.2005 (Annexure-7), passed by the Deputy Inspector General of Police, Singhbhum (Kolhan) Range, Chaibasa whereby petitioner has been appointed with effect from 19.05.2005. Petitioner has also prayed for a direction upon the respondents to treat date of appointment of the petitioner on the post of Bal Police as 03.11.2002 and constable as 19.11.2004 instead of 19.05.2005 with all consequential benefits.

3. The factual matrix as has been delineated in the instant writ petition is that petitioner's father Late constable 468 Ramji Singh was a permanent government employee working at JAP-2, Tatisilwai, Ranchi who died in harness on 22.12.2001 leaving behind his widow, three minor sons including the petitioner and a minor daughter. The date of 2 W.P.(S) No. 4977 OF2016 birth of the petitioner is 19.11.1985. Since mother of the petitioner and widow of late Ramji Singh was not keeping well and as such, petitioner, though a minor, being eldest son of deceased, applied for his appointment on the post of Bal Police in the year 2002. It is case of the petitioner that he was validly and legally appointed on the post of Bal Police vide Memo No. 601, Dated 03.11.2002 by the Superintendent of Police, Saraikella Kharsawan in respect of letter dated 23.09.2002, issued by the office of the Director General-cum-Inspector General of Police, Jharkhand, Ranchi. It is case of the petitioner that he was appointed in view of Police order no. 209/88, Dated 11.08.1988, issued under the signature of the Director General-cum-Inspector General of Police wherein it was specifically stated that the Bal Constable were required to go to the school in the first half and in the second half i.e. from 04:00 p.m. to 5:30 p.m., they were to do the work of file movement in the office of Commandant/ Superintendent of Police from one table to another. It is further averred that letter no. 4471/P-2, Dated 04.09.1998 was issued laying down that the Bal Police would automatically after completion of the specified are engaged or employed, would be engaged/ employed as Constable after fulfilling all the requisite educational and physical qualification. It is alleged that in complete violation of the aforesaid order no. 209/88, petitioner was forced to do household work of the official of the Police Department. Petitioner could not make any protest in view of the fact that his family members were in dire need of money after death of his father.

4. It is alleged that on 07.02.2004, a false complaint in writing was lodged against the petitioner alleging therein that he quarreled and disobeyed the orders of his superiors. On the basis of said complaint, the petitioner was dismissed from service by District Order No. 729/2004, as contained in Memo No. 727, Dated 25.08.2004 wherein the Superintendent of Police, Seraikella Kharsawan dismissed him from the service on the allegation of unauthorised absence and also of quarreling and fighting with other Constable Sanchu Oraon. It is case of the petitioner that he was dismissed from his services without any show-cause notice prior to order of dismissal. Neither any opportunity of hearing was afforded as contemplated under Article 311(2) of the Constitution of India. On 14.10.2004, the petitioner preferred an appeal against the order of dismissal dated 25.08.2004 before the appellate authority and the said order of dismissal was quashed and partly allowed by the Deputy Inspector of Police, Singhbhum vide order as contained in memo no. 346, dated 01.06.2005 appointing the petitioner in service with effect from 09.05.2005 specifically mentioning that the petitioner would not be entitled for any salary for the period of his dismissal. Since petitioner was in dire need of job, as such he gave his joining pursuant to the order as contained in memo no. 346, Dated 01.06.2005 but immediately filed a representation before the Deputy Inspector General of Police, Singhbhum (Kolhan) Range, Chaibasa on 29.11.2006 to reinstate him in service instead of appointing him with effect from 19.05.2005. The representation of the petitioner was not considered and rejected vide letter dated 05.10.2007 and thus he preferred a representation before the Director General-cum-Inspector General of Police, which was duly recommended by the Superintendent of Police, Saraikella Kharsawan vide memo no. 494, dated 22.02.2009.

5. It is further alleged that on attaining the age of eighteen years, the petitioner was adjusted on the post of Constable with effect from 19.02.2009, as would be evident from the Police order no. 48/2011, as contained in Memo No. 1004, Dated 02.09.2011. Petitioner made several representations before the Director General - cum - Inspector General of Police and his last representation was recommended and forwarded by the Superintendent of Police Seraikella Kharsawan vide Memo No. 1309, Dated 17.05.2013. The said representation of the petitioner stood rejected vide order dated 07.04.2014 with an observation that petitioner cannot

claim any benefits for the period he has not worked as Bal Police and the date of appointment of the petitioner was upheld as 19.05.2005. Petitioner has preferred this writ petition challenging the order dated 07.04.2014 as well as 01.06.2005, passed by Deputy Inspector General of Police and Director General-cum-Inspector General of Police, Jharkhand.

6. Mrs. M.M. Pal, learned Sr. Counsel assisted by Ms. Ruby Pandey submitted that order of the disciplinary authority as well as that of the appellate authority and revisional authority are illegal, arbitrary and 4 W.P.(S) No. 4977 OF2016 against the provisions of law. Learned Sr. Counsel further submitted that the respondents authorities have not considered case of the petitioner in proper perspective and have rejected the same mechanically and arbitrarily. Learned Sr. Counsel further submitted that the petitioner is entitled for the entire benefits as the order of dismissal has been quashed and as a result of said quashment right has accrued on him for getting the benefits from the date of dismissal to that of reinstatement. Learned Sr. Counsel further submitted that there cannot be fresh appointment rather it is reinstatement in service after dismissal. Learned Sr. Counsel further submitted that the respondents authorities cannot fix the imaginary date of appointment as per their sweet will but as the petitioner was appointed on the post of constable on 19.11.2004, the said date is to be taken into consideration.

7. On the other hand, counter affidavit has been filed. Mr. Ajit Kumar, learned AAG and Sr. Counsel assisted by Mr. Chanchal Jain submits that the petitioner is not entitled for any relief from this Court as the petitioner had rightly been dismissed from the service after due enquiry but taking lenient view, he has been reinstated in service. Learned AAG further submitted that action of the Director General-cum-Inspector General of Police is fully justified and rightly grievance of the petitioner has been rejected and directed to be appointed from 19.05.2005. Learned AAG further tried to justify the order of appointment of the petitioner from 19.05.2005 and submitted that the said date of appointment is legal and there is no question of any malafide or arbitrariness.

8. Be that as it may, having gone through the rival submission of the parties, this Court is of the considered view that case of the petitioner deserves consideration.

The order of dismissal was quashed by the appellate authority taking lenient view but specifically it was mentioned that the petitioner is not entitled for any benefits other than appointment in service. Though the respondents are justified in holding that petitioner is not entitled for backwages for the period he was not in service but the petitioner is entitled for the fresh appointment from 19.11.2004 instead of 19.05.2005. There cannot be any imaginary date fixed by the respondents for appointment. Since the order of dismissal has been quashed and the petitioner has been reappointed, the date of 5 W.P.(S) No. 4977 OF2016 reappointment to the post of constable would be treated as 19.11.2004 instead of 19.05.2005. On query made by this Court to the respondents, neither any satisfactory answer was given nor any averment has been made in the counter affidavit regarding fixing of imaginary date. From perusal of the Police Order No. 209/88, it is clear that appointment of Constable from Bal Police are made on attaining the age of 19 years, after fulfilling the requisite qualification for appointment as such. It is also mentioned at Clause-3 of the said Police Order No. 209/88 that Bal Police will be paid half the salary of the minimum pay scale.

9. In the result, the order as contained in Memo No. 89/D, Dated 07.04.2014 (Annexure-13), passed by the Director General-cum- Inspector General of Police, Jharkhand, Ranchi and the order contained in Memo No. 346, Dated 01.06.2005 (Annexure-7), passed by the Deputy Inspector General of Police, Singhbhum (Kolhan) Range, Chaibasa are hereby quashed and set aside. The respondents authorities are directed to consider date of appointment of the petitioner as 19.11.2004 i.e. the date of appointment on the post of Police Constable on attaining the age of 19 years. As a result of quashment of the orders, the petitioner is entitled for all consequential benefits.

10. This writ petition thus succeeds. There shall be no order as to costs. (Dr. S.N. Pathak, J.) High Court of Jharkhand at Ranchi Dated 21st July, 2017 RC/

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