

Phoola Devi Vs. Supt., Central Jail and ors.

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Court : Allahabad

Decided On : May-04-1990

Reported in : [1991(61)FLR70]; (1992)ILLJ125All; (1990)3UPLBEC1786

Judge : K.P. Singh and ;R.A. Sharma, JJ.

Acts : Uttar Pradesh Female Jail Warders Service Rules, 1983

Appeal No. : C.M.W.P. No. 1048/1989

Appellant : Phoola Devi

Respondent : Supt., Central Jail and ors.

Advocate for Pet/Ap. : Pankaj Srivastava, Adv.

Disposition : Petition allowed

Judgement :

R.A. Sharma, J.

1. Petitioner was appointed as Female Jail Warder on January 31, 1976 in District Jail, Banda and has continued to serve in that capacity upto 1981. In October, 1981 the entire staff of Male Jail Warders in the State of U.P. including in District Jail, Banda went on strike. It is alleged by the petitioner that Female Jail Warders were forced by the Male Warders to join the strike. The Government of U.P. on

account of strike terminated the services of the entire staff of Male and Female Warders in all the districts. After the strike was over, necessary instructions were issued to reinstate all the Jail Warders, whose services were terminated on account of the strike. The Inspector General of Police (Prison), U.P., Lucknow vide his order dated January 10, 1982 directed that all Male and Female Jail Warders be reinstated forthwith. It appears that inspite of the direction issued by the Government, the petitioner was not reinstated and as such, she made representation to the Inspector General of Police (Prison), U.P., who vide his order dated August 8, 1982 directed the Superintendent, District Jail, Banda to reinstate the petitioner without any further delay. Inspite of this specific direction the petitioner was not reinstated and she continued to make representations for her reinstatement according to the Government orders. Ultimately, the Superintendent, Central Jail, Naini, Allahabad who has become appointing authority of the petitioner after the enforcement of U.P. Female Jail Warders Service Rules, 1983 (hereinafter referred to as the Rules), issued an order dated December 1, 1987 directing the Superintendent, District Jail, Banda to comply with the orders of the Government regarding the reinstatement of the petitioner and pay her arrears of salary. It appears that the Superintendent, District Jail, Banda informed the Superintendent, Central Jail, Naini, Allahabad that the petitioner does not possess the requisite educational qualifications for appointment as Female Jail Warder under the Rules. The Superintendent, Central Jail, Naini, Allahabad accordingly passed the impugned order dated May 14, 1989 (Annexure X to the writ petition), declining the reinstatement of the petitioner on the ground that she does not possess the requisite minimum qualifications for the post of Female Jail Warder.

2. In 1976 when the petitioner was appointed as Female Jail Warder, there were no rules providing for minimum requisite qualifications and the matter was governed by executive instructions issued by the Government. The petitioner was fully qualified to be appointed as Female Jail Warder according to the Government instructions. Rules were framed in 1983. The rules are not retrospective in operation and cannot affect the appointments validly made before the enforcement of the rules.

3. The minimum qualifications are required to be looked into at the time of initial appointment. Appointment validly made cannot be deemed to have become invalid on account of some new qualification introduced by rules subsequently. Even if a person is appointed, although not having some of the minimum qualifications, and had been allowed to continue to work for a considerably long time, it will be unfair to terminate his service on the ground that he was not having some of the minimum qualifications at the time of entry into service. The Supreme Court in *Bhagwati Prasad v. Delhi State Mineral Development Corporation* (1990-I-LLJ-320) has held that the persons appointed, though not possessing initial minimum prescribed qualifications at the time of appointment, cannot be refused confirmation subsequently on the ground that they did not possess requisite qualifications. Relevant passage from this judgment is extracted below (p.322):

'The initial minimum educational qualification prescribed for the different posts is un-doubtly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications.'

4. After the services of the petitioners along with other Jail Warders were terminated on account of the strike, the Government issued direction for reinstatement of these employees. It was, as such, the duty of the Superintendent, District Jail, Banda to reinstate the petitioner and it was not open to him to find out as to whether the petitioner possesses the requisite minimum qualifications according to new rules. The Superintendent, District Jail, Banda and the Superintendent, Central Jail, Naini, Allahabad acted arbitrarily in not reinstating the petitioner inspite of the specific direction issued by the Inspector General of Police (Prison), U.P.

5. Learned counsel for the petitioner has argued that the petitioner is entitled to be reinstated with effect from August 8, 1982 (the date of the order of the Inspector General of Police (Prison), U.P. for reinstatement of the petitioner) with at least half pay and allowances. The submission of the learned counsel appears to be fair

and reasonable.

6. The writ petition is accordingly allowed with costs and the impugned order dated May 14, 1989 (Annexure X to the writ petition) is quashed. The petitioner will be reinstated forth with as Female Jail Warder and will be paid half pay and allowances from August 8, 1982 up to the date of reinstatement.

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