

777 Safiquel Rahman Son of Sri Abdul Rahman Presently Posted as Constable 4th Battalion Vs. State of U.P. Through Secretary, Ministry of Home, Police Anubhag, Civil Secretary, U.P. Shasan,

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Court : Allahabad

Decided On : Sep-09-2008

Reported in : 2009(1)AWC627; [2008(119)FLR1108]

Judge : Tarun Agarwala, J.

Appellant : 777 Safiquel Rahman Son of Sri Abdul Rahman Presently Posted as Constable 4th Battalion

Respondent : State of U.P. Through Secretary, Ministry of Home, Police Anubhag, Civil Secretary, U.P. Shasan, ;th

Judgement :

Tarun Agarwala, J.

1. An advertisement was issued in the year 2004 inviting applications for appointment on the post of Constable. The petitioner applied and was selected and thereafter was sent for training. Upon completion of his training, the petitioner was posted as a Constable in the 4th Battalion P.A.C. at Allahabad and rendered two years of service. It transpires that the respondents took a decision to re-examine all the records, on the basis of which, the petitioner was medically re-examined in which it was found that he was colour blind and was unable to distinguish between red and green colour. On the basis of this medical report, the authorities passed the impugned order dated 27.7.2007 dispensing his services by invoking the provisions of U.P. Temporary Government Servant (Termination of Service) Rules, 1975, The petitioner, being aggrieved by the said order, has filed the present writ petition.

2. Heard Sri C.B. Yadav, the learned Counsel for the petitioner, Sri Ghanshyam Dwivedi and Sri Piyush Shukla, the learned standing counsels for the respondents.

3. The learned Counsel for the petitioner submitted that at the time of his recruitment after selection, the petitioner was medically examined twice by a Medical Board constituted by the respondents, in which no defect of any kind was detected or was found. Consequently, the defect of colour blindness which was detected in the third round of the medical examination during his service period could have occurred during the service period. The learned Counsel submitted that if the petitioner incurs a disability during his service, he cannot be relieved from the service in view of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (hereinafter referred to as the Disabilities Act). The learned Counsel submitted that, in view of the provisions of the Disabilities Act, the services of the petitioner could not be dispensed with and that the authorities were obliged to give the petitioner a sedentary job in the Police department. The learned Counsel for the petitioner further submitted that the Rules of 1975 are not applicable nor can be applied to the petitioner since he was not a temporary employee and that Para 541 of the Police Regulations would apply in the case of the petitioner which prescribed that a show cause notice and an opportunity of hearing was required to be given by the petitioner before he could

be discharged. The learned Counsel for the petitioner submitted that in the present case no show cause notice was given nor the procedure prescribed under paragraph 541 of the Police Regulations was followed and consequently, the impugned order was wholly illegal. The learned Counsel for the petitioner submitted that colour blindness was not a disqualification for an appointment on the post of Constable under the Police Act as well as under the Government Order of 1959. In support of his submission, the learned Counsel placed reliance upon a decision of the Supreme Court in Union of India and Ors. v. Satya Prakash Vasisht .

4. On the other hand the learned standing counsel submitted that the petitioner was not appointed as a probationer on a substantive vacancy but was appointed on an adhoc basis on a non-existing vacancy with a condition that he could be absorbed as and when a vacancy came into existence. The respondents submitted that large scale selections were made in the police force by the previous Government and when these large scale infirmities in the selection process came into existence, the present State Government took a policy decision to review the selections and, on this basis, every individual case was examined and the appointments of those persons were cancelled who were found disqualified and those candidates who had no shortcomings were protected. The learned Counsel submitted that the petitioner was appointed on an adhoc basis and that he was not found medically fit, consequently, his services was dispensed with by invoking the provisions of the Rules of 1975 by giving him one month's pay in lieu of notice. The learned Counsel submitted that colour blindness is a disability which is not permissible in the police force and a defective colour vision as tested on Ishihara's plate constitute a disqualification. The learned standing counsel submitted that as per the Government Order dated 24.12.1959 a defective colour vision as tested on Ishihara's plate would constitute a disqualification in the police service. Consequently, in terms of paragraph 411, 412 and 415 of the Police Regulations, the petitioner was not found medically fit and therefore, could not be recruited in the police force and accordingly his services was dispensed with in accordance with the provisions of law.

5. Having heard the learned Counsel for the petitioner at some length, this Court is of the opinion, that the petitioner is not entitled for any relief. At the outset, lengthy arguments were raised on the question of colour blindness and whether it would constitute a disqualification under the Police Act and its Regulations. The learned Counsel has also relied upon certain decisions. In my opinion, it is not necessary to dwell on this aspect of the matter at length, in view of the fact that identical arguments were raised which was dealt at length and rejected by a decision of this Court in Prempal Singh v. State of U.P. and Ors. and connected writ petitions decided on 4.10.2007, 2008(1)ESC 14 and Ravi Kumar Kanshal v. State of U.P. and Ors. and connected writ petitions decided on 4.10.2007, 2007(9) ADJ 626. In the aforesaid decisions the Court has categorically held that in view of the provisions of paragraph Nos. 411, 412 and 415 of the Police Regulations read with the Government Order of 1959, colour blindness constitutes a disqualification in the police force and, such persons therefore cannot be selected or recruited in the Police force. The Court found that a person who was not medically fit, could not be recruited in the police force. In my opinion, the aforesaid judgments are squarely applicable to the issue raised in the present writ petition and it is not necessary for this Court to elaborate the same point all over again. Consequently, this Court holds that since the petitioner was found to be medically unfit on account of the colour blindness he could not be recruited in the police force.

6. This leads to the second question as to whether the services of the petitioner could be dispensed with by invoking the Rules of 1975 and whether the provisions of paragraph 541 of the Police Regulations are required to be followed.

7. For facility, Rule 3 of the Rules of 1975 and Para 541 of the Police Regulation are quoted herein below:

3. Termination of service.- (1) Notwithstanding anything to the contrary in any existing rules or orders on the subject, the services of a Government servant in temporary service shall be liable to termination at any time by notice in writing given either by the Government servant to the appointing authority, or by the appointing authority to the Government servant.

(2) The period of notice shall be one month:

Provided that the services of any such Government servant may be terminated forthwith, and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances, if any, for the period of the notice or as the case may be, for the period by which such notice falls short of one month at the same rates at which he was drawing them immediately before the termination of his services;

Provided further that it shall be open to the appointing authority to relieve a Government servant without any notice or accept notice for a shorter period, without requiring the government servant to pay penalty in lieu of notice;

Provided also that such notice given by the Government servant against whom a disciplinary proceeding is pending or contemplated shall be effective only if it is accepted by the appointing authority, provided in the case of a contemplated disciplinary proceedings, the Government servant is informed of the non-acceptance of his notice before the expiry of the notice.

Para 541 of the Police Regulation

541. (1) A recruit will be on probation from the date he begins to officiate in a clear vacancy. The period of probation will be two years except in the following cases:

(a) those recruited directly in the Criminal Investigation Department or District Intelligence Staff will be on probation for three years, and

(b) those transferred to the Mounted Police will be governed by the directions in paragraph 84 of the Police Regulations.

If at the end of the period of probation conduct and work have been satisfactory and the recruit has been approved by the Deputy Inspector General of Police for service in the force, the Superintendent of Police will confirm him in his appointment.

(2) In any case in which either during or at the end of the period of probation, the Superintendent of Police is of the opinion that a recruit is unlikely to make a good police officer he may dispense with his service. Before, however this is done the recruit must be supplied with specie complaints and ground on which it is proposed to discharge him and then he should be called upon to show cause as to why he should not be discharged. The recruit must furnish his representation in writing and it will be duly considered by the Superintendent of Police before passing the orders of discharge.

(3) Every order passed by the Superintendent under sub paragraph (2) above shall, subject to the control of the Deputy Inspector General be final.

8. The Rules of 1975 and Para 541 of the Police Regulation operate on different fields. The Rule of 1975 is applicable for temporary appointments to such persons who do not hold a lien on a permanent post. On the other hand, paragraph 541 of the Police Regulations applies to those recruits who are appointed on probation in a clear vacancy and thereby hold a lien on that post.

9. In the present case, the advertisement, on the basis of which the petitioner was selected, indicates that the advertisement was for a temporary recruitment as a Police Constable, which was only to be confirmed as and when there was a vacancy. Regulation 541 of the Police Regulations is not applicable, inasmuch as, the said provision is for such recruitments who are appointed against a clear vacancies on probation and are not appointed on a temporary basis.

10. A Full Bench decision in Nanak Chand v. State of U.P. and Ors. 1971 ALJ 724, held that paragraph 541 of Police Regulations applies to those constables who were appointed as probationers against a clear vacancy and that if the appointment was made in a temporary capacity then paragraph 541 would have no

application. In the present case, it is an admitted fact that the petitioner was appointed on a temporary basis against a non-existing vacancy. Consequently, paragraph 541 of the Police Regulations is not applicable and the provisions of the Rules of 1975 becomes applicable upon the petitioner since he was appointed on a temporary basis. Similar view was held by this Court in *Jitendra Pratap Singh v. State of U.P. and Ors.* 2008 (1) ADJ 474. The decision cited by the learned Counsel for the petitioner in *Virendra Nath Nath Ojha v. State of U.P. and Ors.* 2005(1)ESC 67 and *Chandra Prakash Sahai v. State of U.P. and Ors.* 2000(2)UPLBEC 1661 is distinguishable and is not applicable to the present facts and the circumstances of the case.

11. This leads us to the last question. The learned Counsel for the petitioner submitted that upon the selection of the petitioner and after training of one year, the petitioner was posted in the P.A.C., Battalion where he served for two years. At the time of the recruitment, the petitioner was medically examined and was found to be fit for service. The learned Counsel submitted that it is possible that the petitioner incurred the disease of colour blindness during the course of his service and therefore, even though the petitioner may not be fit for service on a technical post he may be given a sedentary job. The learned Counsel invited the attention of the Court to the provision of Section 47 of the Disabilities Act, which provides that it is mandatory upon the respondents to provide the petitioner with an alternative job. The learned Counsel submitted that the Disabilities Act was a beneficial piece of legislation which had been enacted to eliminate discrimination against persons with disabilities and that the Act called for a positive obligation on the State and its authorities to eliminate such discrimination.

12. Even though no averments or factual evidence has been made in the writ petition, but, since the learned Counsel for the petitioner made a submission, the same has been considered. No doubt the Disabilities Act is a beneficial piece of legislation which has been enacted with the object of eliminating discrimination against persons with disabilities. This protection was also available under Article 21 of the Constitution of India. The Courts were always conscious of the provisions of Article 21 of the Constitution of India in the matter of right to livelihood and protection was given to the persons with disabilities. The enforcement of the Disabilities Act only acknowledged the constitutionally unacceptable discrimination practised against the disabled for years and the Disabilities Act only seeks to correct that discrimination by casting a positive obligation on the State and its authorities to eliminate such discrimination.

13. Normally colour blindness is genetic and is inherited but colour blindness can also be incurred even after birth and, in the present case, the colour blindness has been detected after the petitioner joined the service. In, in my opinion, the obligation of the employers under Section 47 of the Disabilities Act is only related to those employees who are working on a substantive post. Consequently, this Court is of the opinion that the Disabilities Act would protect those employees who are working on a substantive post and will not apply to those employees who are working on a non-existent post or on a temporary basis.

14. In view of the aforesaid, this Court finds that the Disabilities Act will not be applicable to the petitioner since he was only appointed on a temporary basis and is not entitled to be given an alternate sedentary job.

15. For the reasons stated aforesaid, I do not find any error in the order of termination issued by the authority exercising its powers under the U.P. Temporary Government Servant Termination of Service) Rules, 1975. The writ petition fails and dismissed. There shall be no order as to cost.

16. Upon the dismissal of the writ petition, the learned Counsel for the petitioner placed reliance on a decision of a Division Bench of the Court in *Raish Ahmad Ansari v. State of U.P. and Ors.* in Special Appeal No. 1569 of 2007, decided on 21.11.2007, wherein the Court directed constitution of a larger Medical Board to medically re-examine the appellants and submitted that similar orders may be passed in the present case directing the respondents to constitute a larger Medical Board to re-examine the petitioner. In my opinion, the relief granted in *Raish Ahmad Ansari's* case (supra) cannot be given to the petitioner. The petitioner has nowhere questioned the opinion of the Medical Board and therefore this Court is not inclined to issue any direction to the respondents to constitute a larger Medical Board.

