

Rajesh Kumar Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Jul-31-2015

Appellant : Rajesh Kumar

Respondent : State of Jharkhand and Ors

Advocate for Pet/Ap. : Mr. Delip Jerath

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 6276 of 2009
----- Rajesh Kumar, Son of Late Kedar Nath Singh, Resident of village Dharmpur,
P.O Rasulpur, P.S. Doriganj, District Chhapra (Saran), Bihar ... Petitioner Versus
1.The State of Jharkhand 2.Director General of Police, Jharkhand, Ranchi
3.Deputy Inspector General of Police, Hazaribagh. 4.Superintendent of Police,
Hazaribagh (Jharkhand) 5.Chairman Selection Board-cum-Superintendent of
Police, Koderma. Respondents With W.P.(S) No. 1433 of 2010 ----- Namo
Narayan Singh, Son of Sri Sahab Singh, Resident of Village Gangahara, P.O
Thamhanpura, P.S. Phenkana, District- Baliya (U.P.) ... Petitioner Versus 1.The
State of Jharkhand 2.The Director General of Police, Jharkhand, Ranchi 3.Deputy
Inspector General of Police, Hazaribagh, P.O, P.S and District: Hazaribagh.
4.Superintendent of Police, Hazaribagh (Jharkhand), P.O, P.S and District:
Hazaribagh. 5.Chairman Selection Board-cum-Superintendent of Police,
Koderma., P.O, P.S and District: Koderma. Respondents ----- CORAM:
HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioners : Dr. S.N.
Pathak, Sr. Advocate. For Respondents : Ms. Shivani Verma, J.C to A.G. -----

C.A.V. On 14.05.2015 Pronounced on 31/07/2015 Per Pramath Patnaik, J.: Both these writ petitions have been taken up together with the consent of the parties as common issues are involved in both the writ petitions and are being disposed of by this common order.

2. In W.P. (S) No. 6276/09, the petitioner has inter alia, made prayer for quashing of order dated 16.09.2009 passed by Superintendent of Police, Hazaribagh-Respondent no. 4, whereby candidature of the petitioner for appointment on the post of constable after being selected has been cancelled and also for issuance of writ 2 of mandamus commanding the respondents to reinstate the petitioner on the post of constable, on which, he was working.

3. In W.P. (S) No. 1433/10, the petitioner has inter alia prayed for issuance of writ of certiorari for quashing order dated 29.09.2008 passed by Superintendent of Police, Hazaribagh whereby the candidature of the petitioner for appointment on the post of constable after being selected has been cancelled and the petitioner has been dismissed from services and further for direction upon the respondents to reinstate the petitioner on the post of constable on which he was working.

4. The case of the petitioner in W.P. (S) No. 6276/09, in brief is that in pursuance to the selection for the post of constable, the Chairman of the Selection Board after following the entire process issued joining letter of the petitioner dated 10.04.2007 and accordingly joining of the petitioner was accepted on 23.04.2007 and the petitioner was allotted Constable No. 1394 and also received salary for one month. But, all of a sudden, the petitioner was issued show cause vide letter dated 26.05.2007 (Annexure 4), issued by Superintendent of Police, Hazaribagh, as to why his services may not be dismissed because of overwriting and interpolation in the master chart, to which the petitioner replied vide detailed reply dated 02.06.2007, vide Annexure 5 to the writ application. The reply of the petitioner was turned down vide order dated 12.06.2007, which was challenged by the petitioner by filing W.P. (S) No. 4351 of 2007 and the Court vide order dated 27.08.2008 quashed the order of dismissal, as evident from Annexure 7 to the writ application. Thereafter, the petitioner filed representation before the respondents-authorities for acceptance of his joining, which was accepted vide order dated

12.12.2008, vide Annexure 9 to the writ application. It 3 has been stated that after reinstatement, the petitioner was served with a charge-sheet vide order dated 16.03.2009 (Annexure

10) and was asked to show cause, which he replied, but it was not accepted and finally order of dismissal was passed vide order 16.06.2009, which is impugned before this Court.

6. The petitioner in W.P. (S) No. 1433 of 2010 has made out a case that pursuant to the selection process, the petitioner was declared successful and joining letter was issued to the petitioner vide memo no. 2521 dated 3.4.2007. Accordingly, the petitioner reported to the district allotted to him, i.e. Hazaribagh, but, his joining report was not accepted. Thereafter, all of a sudden, the petitioner was issued order dated 26.5.2007 issued by the Superintendent of Police, Hazaribagh that his candidature is cancelled because of overwriting and interpolation in the Master chart, as per Annexure 4 to the writ application. Being aggrieved, the petitioner approached this Court by way of filing W.P.(S) No. 4829 of 2007, which was disposed of quashing order dated 26.05.2007. Accordingly, the petitioner made representation for acceptance of his joining and instead of accepting joining, the respondents issued show cause notice dated 29.09.2008 on the same and similar charges and rejected the claim of the petitioner, which was not even communicated. In the writ petition, the petitioner has cited the case of similarly situated candidates, as reported in the case of Ranjay Kumar Singh Vs. State of Jharkhand & Ors as reported in 2009(4) JLJR543 and submitted that case of the petitioner is squarely covered by aforesaid decisions and on that score, prayer has been made for reinstatement in services.

7. Left with no alternative, efficacious and speedy remedy, the petitioners have approached this Court invoking extraordinary 4 jurisdiction of this Court under Article 226 of the Constitution of India for redressal of their grievances.

8. Counter affidavit has been filed on behalf of respondent no. 4 in W.P. (S) No. 1433/10, wherein it has been submitted that during course of inquiry-cum-verification difference in the petitioner's height was found and the matter was referred to Chairman-cum- Superintendent of Police, Koderma. The matter was

enquired and verified by the I.G of Police, North Chhotanagpur Zone, Bokaro and a detailed report was submitted by him vide memo dated 31.10.2005. In that enquiry report total 139 candidates were found forged and the petitioner's name was also found in that report. In the light of this irregularities, petitioner's candidature was also enquired by Selection Board and it was found that in the Master Chart there was only space of five candidate's name but names of ten candidates were mentioned. In general course in place of natural digit, word 'A' was added. Petitioner's roll number was found as 4011-A and no such type of roll number was allotted to any candidates. In the enquiry report of I.G. Of Police, North Chhotanagpur Zone, Bokaro, it is further stated that some application forms were received after the expiry of the last date for submitting application form. It is further stated that case of the petitioner is not covered by the decision passed in L.P.A. No. 296 of 2007. Another counter affidavit has been filed on behalf of respondent no. 5-Superintendent of Police, Ramgarh repelling the averments made in the writ petition. It has been submitted that admittedly the petitioner was declared successful and was directed vide memo no. 2521 dated 03.04.2007 to appear before the police lines at Hazaribagh on 10.04.2007 with all the relevant certificates in original for Medical Examination and re-measurement. It is clearly mentioned in the said memo that in case of any discrepancy or wrong 5 will be found in course of verification, his candidature shall be cancelled. It has further been mentioned in the memo that the letter does not deem to be an appointment letter. In course of verification, it was found that the petitioner applied for the post of constable after expiry of the last date fixed for filing application and, hence, he was allotted Roll No. 4011-A, which is forged one just to manage his candidature. Furthermore, his name was not in the list of candidates who successfully completed the running competition meaning thereby he was unsuccessful in running. Apart from that, in course of re- measurement, his height was found different from his height mention in the Master Chart, which would be evident from perusal of master chart as well as his explanation submitted 01.10.2008, Annexure 6 to the writ petition, where he has admitted his height as 180 cms, which proves the manipulation made in the Master Chart. It is further submitted that however, in compliance of order passed in W.P.S. No. 4829 of 2007 dated 15.07.2008, a show cause was called for, which was replied vide explanation dated 1.10.2008, which

was duly considered by the Selection Board and the Board in its meeting dated 19.12.2008 found the reply to show cause unsatisfactory and cancelled his candidature. It is further submitted that if the petitioner is allowed to join on the said post of constable, it would cause great injustice to those candidates, who are better than the petitioner in all aspects, save and except of means and approach.

9. Heard Dr. S.N. Pathak, learned Sr. counsel, Mr. Delip Jerath, learned counsel for the petitioners and Ms. Shivani Verma, J.C to A.G. in W.P.(S) No. 6276/09 & 1433/10, learned counsel for the respondents.

10. Learned counsel for the petitioners submitted that cases of both the petitioners are squarely covered by the judgment delivered 6 by the Division Bench of this Court in W.P. (S) No. 1242 of 2006 & analogous cases and further in Ranjay Kumar Singh (Supra), wherein the Hon'ble Court has held that any order of termination/cancellation based on subsequent list other than 932 is not permissible. It has further been submitted that the petitioners belong to 1085 candidates and not in 932 candidates. It has further been submitted that the judgments of Division Bench has never been challenged nor any review was file, hence, it has attained finality. Thus, any order holding the petitioner guilty of charges of malpractice in another list is not permissible in the eye of law.

11. Learned counsel for the petitioner submitted that in pursuance to the order passed in W.P. (S) No. 4351 of 2007 quashing the impugned order of dismissal of petitioner-Rajesh Kumar (presently petitioner in W.P. (S) No. 6276 of 2009, though the petitioner was allowed to join his services, but, to fill up the lacuna in the order of dismissal initiated departmental against the petition and finally vide order dated 16.06.2009 he was dismissed from service. Learned counsel for the petitioner further submitted that the master chart is in complete possession of the respondents and the petitioner cannot be held liable for interpolation/manipulation in the master chart.

12. In W.P. (S) No. 1433 of 2010, learned counsel for the petitioner submitted that though the petitioner was issued joining letter vide letter dated 3.4.2007 (Annexure 3), but, his joining was not accepted stating that his candidature has been cancelled stating that since the petitioner comes within 139 candidates, out of

them, 23 have been declared successful, and the petitioner is out of them, his candidature is cancelled. It has been submitted in the Ranjay Singh case, the Hon'ble Court rejected the plea of respondents withholding the candidates of 139 candidates and quashed the impugned with a 7 direction for acceptance of joining and applying the same principle, the petitioner may be given same benefit.

13. Reiterating the submissions made in counter affidavit, learned counsel for the respondents submitted that petitioner - Rajesh Kumar (presently petitioner in W.P.(S)No. 6276/09) challenging the impugned order of dismissal dated 12.06.2007, the petitioner at first preferred W.P. (S) No. 4351 of 2007, which was disposed of vide order dated 27.08.2008, directing as under:

8. Accordingly, this writ petition is allowed. The impugned order dated 12.06.2007 (Annexure

6) issued vide memo No. 4314 issued by the Superintendent of Police, Hazaribagh (respondent no.

4) is hereby quashed. Respondents are directed to reinstate the petitioner to the post on which he was initially appointed, forthwith. It is observed that if the respondents intend to take any action against the petitioner on any just grounds, they may do so only after complying the principles of natural justice.

14. It has been submitted complying the order passed by this Hon'ble Court, after accepting joining, a charge-sheet was served upon the petitioner and sufficient opportunity was afforded to place his case and thereafter considering the reply and materials available against him, the impugned order 16.09.2009 has been passed, after following the principles of natural justice, on the ground of interpolation and over-writing in the master chart.

15. In W.P. (S) No. 1433/10, learned counsel for the respondents submitted that during course of inquiry-cum-verification total 139 candidates were found forged and the petitioner's name was also found in that report. In the light of this irregularities, petitioner's candidature was also enquired by Selection Board and it was found that in the Master Chart petitioner's roll number was found as 4011-A

but such type of roll number was allotted to any candidates. It is further stated that case of the petitioner is not covered by the decision passed in L.P.A. No. 296 of 2006. It has further been submitted that though the petitioner was declared successful and was directed vide memo no. 2521 dated 03.04.2007, to appear before the police lines at Hazaribagh on 10.04.2007 with all the relevant certificates in original for Medical Examination and re-measurement with clear-cut instruction that in case of any discrepancy or wrong will be found in course of verification, his candidature shall be cancelled and In course of verification, it was found that the petitioner applied for the post of constable after expiry of the last date fixed for filing application and, hence, he was allotted Roll No. 4011-A, which is forged one just to manage his candidature. It is further submitted that however, in compliance of order passed in W.P.S. No. 4829 of 2007 dated 15.07.2008, a show cause was called for, which was replied vide explanation dated 1.10.2008, which was duly considered by the Selection Board and the Board in its meeting dated 19.12.2008 found the reply to show cause unsatisfactory and cancelled his candidature. Since in the instant case, the petitioners are guilty of adopting unfair means i.e. manipulation, he is not entitled to be appointed nor the action of the respondents can be termed as arbitrary exercise of power.

16. After giving my anxious consideration to the documents on record and rivalized submissions, I am of the considered view that the reliefs sought for by the petitioner is not legally sustainable for the following facts, reasons and judicial pronouncements: (i).From perusal of the judgment delivered in W.P. (S) No. 1242 of 2006 and Judgment delivered in L.P.A. No. 296 of 2006, it is quite evident that apart from 932 candidates, there were still some candidates against whom enquiry was going on and who were 9 found beneficiaries of manipulations. Therefore, the case of the petitioners were kept pending for various deficiencies and discrepancies in their records. Therefore, no fault can be found in the impugned orders. (ii).Admittedly, the petitioner in W.P. (S) No. 1433 of 2010, was declared successful and joining letter was issued stipulating therein that in case of any discrepancy or wrong will be found in the course of verification, his candidature shall be cancelled and in course of verification, it was found that the petitioner applied for the post of constable after expiry of last date fixed for filling application form and, hence, he was allotted Roll No. 4011-A, which is forged one.

Furthermore, his name was not in the list of candidates who successfully completed the running competition meaning thereby he was unsuccessful in running. Apart from that there was difference of height in course of re-measurement. Even otherwise, after due process of law and complying the principles of natural justice a show cause was issued, which on being found unsatisfactory, impugned order was passed. (iii). It appears that complying the order passed in W.P. (S) No. 4351 of 2007, a charge-sheet was served upon the petitioner affording sufficient opportunity and after considering the reply and materials available against him, the respondents have rightly issued the impugned order 16.09.2009, on the ground of interpolation and over-writing in the master chart. (iv). So far as fraud in appointment is concerned, the Hon'ble Apex Court in the case of Devendra Kumar Vs. State of Uttaranchal & Others as reported in (2013) 9 SCC363 has at paragraph nos. 13 as under:- 10

13. It is a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eye of the law. Fraud avoids all judicial acts, ecclesiastical or temporal. (Vide S.P. Chengalvaraya Naidu v. Jagannath.) In Lazarus Estates Ltd. v. Beasley the Court observed without equivocation that: (QB p.

712) No judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything. Hence, the manipulation/interpolation though detected at a later stage, the petitioners cannot be given benefit of manipulation. (iv). It is a settled principles of law that inclusion of name in the merit list does not give any indefeasible right to appointment as enunciated by Hon'ble Apex Court in the case of of Shankarsan Dash Vs. Union of India as reported in (1991) 3 SCC47.

17. On cumulative effect of aforesaid facts, reasons and judicial pronouncements, the impugned order dated 22.05.2007, whereby the candidature of the petitioners have been cancelled, does not warrant any interference by this Court. Accordingly, the writ petitions are dismissed being devoid of any any merit. (Pramath Patnaik, J.) Alankar/-

