

Sunil Kumar Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Oct-30-2015

Appellant : Sunil Kumar

Respondent : State of Jharkhand

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 3649 of 2011
Sunil Kumar, son of Sri Manager Pandey, permanent resident of village Manikpur,
Post Phulwaria, Police Station Phulwaria, District Gopalganj, Bihar Petitioner
Versus 1. The State of Jharkhand 2. The Director General of Police, Jharkhand,
Ranchi, officiating from Project Bhawan, Dhurwa, Post Dhurwa, Police Station
Jagarnathpur, District Ranchi; 3. The Inspector General of Police (Training),
Jharkhand, Ranchi, officiating from Project Bhawan, Dhurwa, Post Dhurwa, Police
Station Jagarnathpur, District Ranchi .. . Respondents ----- CORAM: HONBLE
MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : Mrs. Ritu Kumar,
Advocate For the Respondents : Mrs. Shweta Singh, J.C. to G.P.V. ----- rd
CAV on:03 September, 2015 Pronounced on .././2015 Per Pramath Patnaik, J.:

1. In the accompanied writ application, the petitioner has inter alia prayed for quashing of order as contained in Memo no.127 dated 11.04.2011 (Annexure-9 to the writ application) issued by the Inspector General of Police (Training), Jharkhand, Ranchi by which the representation filed by the petitioner has been rejected and for quashing of the order dated 23.07.2003 (Annexure-6) passed by the Deputy Inspector General of Police, C.I.D, Jharkhand, rejecting the appeal

thereby confirming the order of dismissal and for quashing the order dated 05.04.2003 (Annexure-5) issued by the Superintendent of Police, C.I.D, Jharkhand pertaining to dismissal of the petitioner from service with immediate effect and also the petitioner has further prayed for direction to the respondent to reinstate the petitioner in service with all consequential benefits.

2. The factual matrix, as has been delineated in the writ application in a nutshell is that initially the petitioner was appointed against a vacant sanctioned post of Constable in the year 1997 after following the procedures of appointment in accordance with law on account of his being successful in physical as well as medical test conducted by the authorities of the then Government of Bihar. After bifurcation of the State in the year 2000, the petitioner while working at C.I.D, Bihar was allocated Jharkhand cadre and thereafter he gave his joining in the office of C.I.D, Ranchi, Jharkhand and started discharging his duties to the satisfaction of all concerned but to the utter surprise of the petitioner while working at C.I.D., Ranchi he received a memo of charge contained in Memo No.3516 dated 10.12.2002 whereby a show cause was asked from the petitioner on the charge that his appointment has been said to be illegal by the State of Bihar since he was appointed without publication of any advertisement and physical measurement as evident from annexure-1 to the writ application. A departmental proceeding was initiated against the petitioner vide annexure-2 to the writ application and the inquiry officer submitted his enquiry report vide annexure-3 to the writ application. Thereafter, the petitioner was directed vide letter dated 24.03.2003 to file his second show cause as to why his services be not terminated vide annexure-4 to the writ application. In pursuance to the aforesaid direction, the petitioner submitted his reply denying the allegations levelled against him bringing the entire facts to the knowledge of the disciplinary authority but the petitioner was dismissed from service with immediate effect vide order dated 05.04.2003 vide annexure-5 to the writ application. Being aggrieved by the order of dismissal, the petitioner filed a departmental appeal on 06.06.2003 before the appellate authority and the said appeal has been rejected by the appellate authority by order dated 23.07.2003 vide annexure-6 to the writ application. Being aggrieved by the order of the disciplinary authority as well as the appellate authority, the petitioner filed W.P.(S) No.4308 of 2003 challenging the order passed by the disciplinary

authority as well as the appellate authority, in which this Hon ble Court vide order dated 30.08.2003 has been pleased to dispose of the matter with certain direction and observation to file representation before the Director General of Police, Ranchi enclosing a copy of order of dismissal along with copy of the order. In deference to the direction of this Court dated 30.08.2003 the petitioner filed representation before the Director General of Police, Ranchi. The petitioner also preferred a letters patent appeal against the order dated 30.08.2003 passed in W.P.(S) No.4308 of 2003 which was registered as L.P.A. No.673 of 2003 and the said L.P.A was dismissed by order dated 20.05.2010 with liberty to pursue his representation vide annexure-8 to the writ application. Being aggrieved by the order under annexure-9, left with no alternative, efficacious and speedy remedy, the petitioner has approached this Court under Article 226 of the Constitution of India, invoking extraordinary jurisdiction of this Court for redressal of his grievance.

3. Counter affidavit has been filed on behalf of the respondents controverting the averments made in the writ application. In the counter affidavit, it has been inter alia stated that against the order passed in W.P. (S) No.4308 of 2003, the petitioner has preferred L.P.A. No.673 of 2003 which has been withdrawn by the appellant with liberty which is annexed as annexures-7 and 8 of the writ application and so far as Cont. Case (Civil) No.768 of 2010 is concerned, the order has already been complied. It has further been submitted that the order dated 11.04.2011 has already been passed in pursuance to order passed to the Honble Court also considering the fact that the petitioner has been appointed illegally and he has rightly been dismissed from the service in view of the catena of decisions and the judgments passed by this Honble Court. It has further been submitted that since the petitioner was appointed in violation of Rule 663 of the Bihar Police Manual and he has rightly been dismissed from service. It has further been submitted that since the petitioner was appointed illegally as the requirement of rule is that to notify the vacancy in the newspaper and advertise the same through employment exchange which undisputedly has not been done in the present case.

4. Heard Mrs. Ritu Kumar, learned counsel appearing for the petitioner as well as Mrs. Shweta Singh, J.C. to G.P-V appearing for the respondents.

5. Learned counsel for the petitioner during course of argument has referred to supplementary affidavit whereby some of the judgments/orders passed by this Court have been cited and the petitioner claims that he stands on the same footing. Further, it has been submitted that the case of the petitioner stands on the same footing as petitioner in W.P. (C) No.2619 of 2007 (Annexure-10 to the writ petition) and in W.P. (S) No.3504 of 2004 (Annexure-12 to the writ petition) and in pursuance to order of this Court they have been reinstated in services. Further, learned counsel has referred to rejoinder to the counter affidavit wherein it has been submitted that the petitioner was appointed by Director General of Police on special ground for his bravery and exemplary courage in times of crisis. Though 661 B of the Bihar Police Manual lays down the rule for appointment of the Constables, the rules could be relaxed by the State Government in appropriate cases for rewarding such persons like the petitioner who had shown bravery and 4 courage in various occasions. No charges of being illegally appointed by way of fraud or misrepresentation were levelled against the petitioner and considering all these aspects, the Division Bench of the Honble Patna High Court by order dated 02.07.2008 passed in L.P.A. No.221 of 2008 has held that the Government of Bihar made an exception and departure from the rules which was framed by it to accommodate the persons like the present petitioner who had shown courage and bravery at the time of crisis. It has further been submitted that rules as contained in Bihar Police Manual was framed by the Government of Bihar which can make an exception consciously and employ persons like the present petitioner under special circumstances of bravery. This would not defeat the purpose of Article 14 and 16 as it can be made for persons showing bravery and courage and as an encouragement for the youths to act fearlessly in times of crisis and also to curb the situation like paucity in the police forces. Various persons similarly situated to the present petitioner have been reinstated in the services by the order passed by the Honble High Court. The learned counsel for the petitioner further submits that the case of the petitioner is being discriminated as on one hand the respondents have terminated his service on account of being appointed without following the provisions of appointment and on another hand the respondents are employing several persons after exempting/deviating from the rules.

6. Learned J.C. to G.P.V appearing for the respondents has assiduously countered the submissions advanced on behalf of learned counsel for the petitioner by submitting that petitioner was appointed neither through advertisement nor through employment exchange or any newspaper where vacancies were published, which violates Rule 663 (d) of the Bihar Police Manual and thereby petitioner was appointed in violation of Article 14 and 16 of the Constitution of India. Learned counsel for the respondents further submitted that the appointment of the petitioner was infraction of recruitment rules and the same would be violation of Article 14 and 16 of the Constitution of India and being nullity could be liable to be cancelled. In the present case as the vacancies were not advertised being infraction of Rules 663(d) of the Bihar Police Manual and also in view of violation of Article 14 and 16 of the Constitution of India rendering the appointment of the petitioner as illegal as such the respondent authorities have terminated the services of the petitioner in accordance with law. 5 7. After having gone through the writ application, supplementary affidavit and the counter affidavit as well as the rejoinder to the counter affidavit and the decisions cited by the learned counsel for the petitioner, the impugned order vide annexure-9 to the writ application, is not sustainable due to the following facts, reasons and judicial pronouncements: (I) That in the instant case the petitioner was appointed illegally as the requirement of the rule is that to notify the vacancies in the newspaper and to advertise the same through employment exchange which undisputedly has not been done in the present case. One similar matter has also been decided by the Division Bench of the Honble Court which has been affirmed by the Honble Apex Court, as per Annexure-A and B to the counter affidavit. (II) That the petitioner was appointed due to the bravery and gallantry shown in curbing the violence by the then Director General of Police and Inspector General of Police (Training), Jharkhand being found medically fit. After reorganization of the State of Bihar, the petitioner was allocated to the State of Jharkhand but since very appointment of the petitioner was infraction of Rule 14 and 16 of the Constitution of India and Rule 663(d) of the Police Manual, therefore, the very appointment of the petitioner was considered to be void from the very inception. Accordingly, the impugned order of punishment of dismissal from service has been passed vide order dated 05.04.2003 (Annexure-5 to the writ application) and order dated 23.07.2003

(Annexure-6 to the writ application) passed by Deputy Inspector General of Police, C.I.D, Jharkhand confirming the order of dismissal and order dated 11.04.2011 (Annexure-9 to the writ application) issued by Inspector General of Police (Training), Jharkhand by which the representation of the petitioner has been rejected.

8. On cumulative effect of the facts and reasons stated in the foregoing paragraphs, the impugned order dated 11.04.2011 (Annexure-9) issued by the Inspector General of Police (Training), Jharkhand, Ranchi by which the representation filed by the petitioner has been rejected and for quashing of the order dated 23.07.2003 (Annexure-6) passed by the Deputy Inspector General of Police, C.I.D, Jharkhand, rejecting the appeal thereby confirming the order of dismissal and for quashing the order dated 05.04.2003 (Annexure-5) issued by the Superintendent of Police, C.I.D, Jharkhand do not warrant any interference by this Court. 6 9. Accordingly, the writ petition is dismissed being devoid of merit. (Pramath Patnaik, J.) Saket/-

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