

Ranjit Kumar Jha Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Aug-09-2016

Appellant : Ranjit Kumar Jha

Respondent : State of Jharkhand and Ors

Advocate for Pet/Ap. : Mr. Binod Kumar Dubey

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI. W.P. (S) No. 3906 of 2009 Ranjit Kumar Jha, son of Sri Dhirendra Kumar Jha, resident of village-Galma, P.S. Ghanshyampur, District-Darbhangha, at present residing at C/o Sushil Kumar Jha, Police Line, Dumka, P.O. P.S. and district-Dumka. Petitioner -V e r s u s- 1. The State of Jharkhand 2. The Director General of Police, P.O. P.S. Durwa, District- Ranchi.

3. The Inspector General of Police, P.O. P.S. and District-Dumka.

4. The Deputy Inspector General of Police, P.O. P.S. and district- Dumka 5. The Superintendent of Police, P.O. P.S. and district-Pakur. . Respondents CORAM: - HONBLE MR. JUSTICE PRAMATH PATNAIK. For the Petitioner : - Mr. Binod Kumar Dubey, Advocate. For the Respondents : - Mr. Dhananjay Kumar Dubey, Sr. S.C.-I. and Ms. Ruchi Rampuria, J.C. to Sr. S.C.-I 08/09.08.2016 In the instant writ application, the petitioner has inter alia prayed for issuance of appropriate writ in the nature of Certiorari for quashing the Appellate order dated 16.02.2006,

passed by the Respondent No. 4 (Annexure-10) as well as the order dated 31.05.2005 of the Respondent No. 5 (Annexure-4) in which the petitioner has been dismissed and has further prayer for issuance of an appropriate writ in the nature of Mandamus commanding upon the respondents-authorities to reinstate the petitioner in service and to pay him the consequential benefits including arrear of salary of intervening period alongwith statutory interest and has also prayed for issuance of writ in the nature of Prohibition commanding upon the respondents authorities from making any appointment on the post of the petitioner treating as vacant.

2. Bereft of unnecessary details, the relevant facts as disclosed in the writ application, in a nutshell, is that, in pursuance of Advertisement No. 1/04, the petitioner applied for appointment to the post of Constable. It has been averred in the writ application that as per the said advertisement, a person, who has completed 19 years and above of age as on 01st January, 2004, was eligible to apply and the date of birth of the petitioner, according to certificate, is 13th March, 1985. It has been submitted in the writ application that the advertisement was published sometimes in the middle of 2004, so he was approaching 19 years of age. It has been stated in the writ application that the petitioner, being otherwise eligible, applied for appointment and was called to take part in the written test and physical test and having come out successful, was given offer of appointment vide Memo No. 500, dated 17.04.2005 (Annexure-1 to the writ application). It has been further averred in the writ application that the documents having been found in order, and on his reporting to the respondent no. 5, the petitioner was appointed and joined in the service. It has been further stated in the writ application that suddenly, the Superintendent of Police, Pakur initiated a departmental proceeding against the petitioner and Inspector of Police was appointed as the Enquiry Officer, who asked the petitioner to submit his report on 31st May, 2005. The charge against the petitioner was that he was 2 months 11 days less than 19 years as on 1st January, 2004, his date of birth being 13th March, 1985 and in spite of the same, he filled up the Form for appointment, which amounts to misleading the officer for his appointment, shows doubtful character and he is inefficient Constable. In the departmental proceeding, the enquiry officer while held that the petitioner was 2 months 11 days less than 19 years as on 1st

January, 2004, also held that the charges proved against the petitioner. In view of such finding, the Superintendent of Police, Pakur (Respondent No.

5) dismissed the appellant from service vide order as contained in Memo No. 771 dated 31.05.2005. It has been further averred in the writ application that pursuant to final order passed in the case of the petitioner, the petitioner filed his separate appeal before the Respondent No. 4 on 22.06.2005. It has been further stated in the writ application that petitioner preferred a writ application before this Court in W.P. (S) No. 5921 of 2005 and vide order dated 01.11.2006, this Court has been pleased to dispose of the aforesaid writ application with a direction that if the appeal has been filed before the Appellate Authority, the Respondent No. 4 will dispose of the same by passing a reasoned order in accordance with law within six weeks from the date of receipt of a copy of the order. It has been further stated in the writ application that the petitioner submitted a copy of the said order alongwith representation before the Respondent No. 4 on 11.11.2006 but the Respondent No. 4 has not passed any order. Left with no other efficacious, alternative and speedy remedy, the petitioner has been constrained to approach this Court invoking the extraordinary jurisdiction of this Court under article 226 of the Constitution of India for redressal of his grievances.

3. Per contra Counter affidavit has been filed on behalf of the respondent no. 5, repelling the contentions made in the writ application, wherein, it has been inter alia, submitted that the required final order on the appeal application of the petitioner has been passed by the D.I.G. of Police, Dumka, whereby the punishment of dismissal of the petitioner given by the then S.P., Pakur has been confirmed.

4. Heard Mr. Binod Kumar Dubey, learned counsel for the petitioner and Mr. Dhananjay Kumar Dubey, learned Sr. S.C.-I for the Respondent- State.

5. Mr. Binod Kumar Dubey, learned counsel for the petitioner has vehemently submitted that a similarly situated person preferred a writ petition being W.P. (S) No. 4192 of 2005 before this Court which was dismissed vide order dated 13.09.2005 and thereafter the said similarly situated person subsequently preferred L.P.A. No. 660 of 2005, which was allowed vide order dated 04.05.2006

by setting aside the order dated 13.09.2005 passed in W.P. (S) No. 4192 of 2005 and the respondents were directed to reinstate the appellant with all consequential benefits including the salary of the intervening period.

6. On the other hand, Mr. Dhananjay Kumar Dubey, learned Sr. S.C.-I for the Respondent-State apart from justifying the impugned order of dismissal from service, has assiduously submitted that the required final order on the appeal application of the petitioner has been passed by the D.I.G. of Police, Dumka, whereby the punishment of dismissal of the petitioner given by the then S.P., Pakur has been confirmed, Learned counsel for the respondent has submitted that an illegal appointment cannot be legalized and similarly an appointment ab initio void cannot be recognized.

7. After hearing the learned counsel for the respective parties at length and on perusal of the records, I am of the considered view that the petitioner 4 has been able to demonstrate foundational facts and law to make out a case for interference due to the reasons stated hereinbelow : - (i) It is not in dispute that the petitioner was under age as on 1st January, 2004, by that time. The petitioner disclosed his date of birth as 13th March, 1985 and thereby, there was no mis- representation on his part. There is a provision to relax any condition of service, commonly known as 'Relaxation Rule', framed under proviso to Article 309 of the Constitution of India by the then State of Bihar vide Resolution No. 111/R1-2010/55A-11505 dated 28th November, 1956. The competent authority has been empowered to relax any condition of service in regard to any individual or a class of persons in case of hardship. Such power being vested with the competent authority, it is always open to any candidate to apply, though he may not fulfill one or other condition of service, such, as, minimum age prescribed for appointment and can expect that favourable decision is taken. If no such application is filed, there will be no occasion for the competent authority to exercise of power of relaxation as conferred by Rule dated 28th November, 1956. In such a situation, it was always open to any candidate to apply with a hope for relaxing the specific criteria and if no mis- representation is made, it cannot be held to be misleading the authority. (ii) If a person is not eligible, the appointment can be held to be irregular or illegal or ab initio void but that will not amount to mis-conduct or dereliction of duty or

insubordination and thereby, no departmental proceeding for major punishment is attracted. The service of a person can be terminated on the ground of irregular or illegal appointment or appointment ab initio void but such person cannot be dismissed from service as a major punishment. (iii) An illegal appointment cannot be legalized. Similarly an appointment ab initio void cannot be recognized. But if any appointment is irregular, it can be regularized or may regularize 5 automatically by efflux of time. If all procedures for appointment are made but if underage person is appointed, on attaining prescribed age, the appointment automatically stands regularized and, thereafter, it cannot be held to be illegal. Similar case fell for consideration before a Bench of this Court in the case of Cosmas Bhengra & Reena Kumari-Vrs.-State of Jharkhand, reported in 2005 (3) JCR271(Jhr). That was also a case where a person, who was under age, i.e. three years less than the prescribed age, was appointed. In his case also, the State of Jharkhand dismissed him on the ground of misconduct, he having been appointed below the prescribed age. The Court held that misconduct cannot be alleged without enquiry and further held that in case, the said petitioner was underage, the relaxation could have been granted under the Relaxation Rules. (iv) In L.P.A. No. 660 of 2005, the Division Bench of this Court after considering the entire facts and circumstances has been pleased to inter alia, hold that the authority could not have dismissed the appellant from service, there being no mis-conduct on his part and set aside the order of dismissal therein.

8. On cumulative effect of the facts, reasons and judicial pronouncements and as a logical sequitor, the impugned order of punishment of dismissal, dated 16.02.2006 (Annexure-10), passed by the Appellate Authority (Respondent No.

4) as well as the order dated 31.05.2005 of the Respondent No. 5 (Annexure-4) being not legally sustainable is hereby quashed and set aside. Accordingly, this writ petition, stands allowed with a direction to the respondents to reinstate the petitioner and to pay him the consequential benefits including the arrears of salary of the intervening period to which he is entitled to. (Pramath Patnaik, J.) APK