

State of J and K and ors. Vs. Prob. Constable Bashir Ahmad

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Court : Jammu and Kashmir

Decided On : May-15-2008

Reported in : 2008(3)JKJ244

Judge : K.S. Radhakrishnan, C.J. and; Mansoor Ahmad Mir, J.

Appellant : State of J and K and ors.

Respondent : Prob. Constable Bashir Ahmad

Disposition : Appeal allowed

Judgement :

K.S. Radhakrishnan, C.J.

1. Since common questions arise for consideration in these appeals, we are disposing of both appeals by a common judgment.

2. LPA No. 100/2006 arises out of SWP No. 270/1996 and LPA No. 246/2005 arises out of SWP No. 613/1999. Petitioners in both the cases were working as probationary police constables in the Police Department. Services of both of them were terminated invoking Rule 187 of J&K; Police Manual. Contentions were raised by the petitioners in both the petitions that the orders were stigma tic in nature and hence punitive and, therefore, proper enquiry should have been conducted before- terminating their services.

3. Petitioner, Bashir Ahmad, was deputed for undergoing Basic Training to PTC, Kathua with other probationary constables vide office movement order dated November 18,1991. He absented himself from the training centre and the Principal of the training centre, vide order dated September 6,1992, struck off the said constable and reverted him back to his Battalion. His absence was recorded in the Battalion daily diary by DD report No. 28 dated November 11, 1992 with effect from September 16,1992. Notice was served on the petitioner at his home address vide office notice dated November 4,1992 with direction to report back for duty immediately failing which action would be initiated against him in accordance with rules. Record was also perused which revealed that earlier also he had absented himself for 35 days. In that factual situation, Commandant, JKAP III Bn., passed order of termination dated December 21, 1992, the operative portion of which reads as under:

It is evident that the Probationary Constable is not inclined to serve the department, thus keeping in view the above mentioned fact the Prob. Const. Bashir Ahmad No. 411/III is struck off from the roll of this Bn. under rule 187 of J&K; Police Manual with effect from date he absented from Training Centre, i.e. 16.9.92.

4. Constable Shabir Ahmad, who was writ petitioner in SWP No. 613/1999, was appointed in the Police Department in November, 1997. He was deputed for Basic Training to PTC Kathua from where the Constable was reverted back on January 2,1998 for one month's rest because he had developed some mental problem. The petitioner was then allowed to resume his duties in District Police Lines, Pulwama. He was again deputed for Basic Training to PTC, Kathua with effect from August 16, 1998. He did not go for the training but absconded himself. Under such circumstances, the Superintendent of Police, Pulwama passed an order on September 8,1998, the operative portion of which reads as under:

Therefore, Rect. Constable Shabir Ahmad No. 901/PL is hereby discharged from service in terms of rule 187 J&K; Police Manual w.e.f. the date he absconded from DPL, Pulwama i.e. 16-08-98, since he cannot prove to be a good police official in future.

5. Petitioners in both the cases contended before the learned Single Judge that the orders were stigmatic/punitive in nature and would have serious repercussions on future prospects of employment. In such circumstances, they contended, the department should have conducted a proper enquiry and then only their services could be dispensed with. It is contended that no enquiry was conducted and, therefore, it was clear violation of the service rules and both the orders are illegal. The learned Single Judge found that both the orders are stigmatic and, therefore, proper enquiry should have been conducted before taking any action against the petitioners. The learned Judge held as follows:

No doubt under Rule 187, a Superintendent of Police has got powers to discharge a probationer within three years of enrolment, if he is of the view that such probationer is not likely to prove a good police official, but since the finding casts a stigma on the career of the constables and there is likelihood that the discharge order or the ground for such discharge may act as an impediment for any future employment, provisions of Article 311 are attracted and the discharge order should not be passed without affording an opportunity to the official of being heard and a show cause notice against the proposed penalty.

Since the order under Rule 187 is to be passed only when the competent authority comes to the conclusion that the official is not likely to prove a good police officer, such an order will, by its very nature and basis, always be a stigmatic. So in every case where power is exercised under this Rule, enquiry is required to be done before passing the order.

6. The findings recorded by the learned Single Judge are assailed by the State. Mr. Rathore, learned AAG, submitted that the learned Single Judge committed an error in taking the view that in every case where power is exercised under Rule 187 of the Police Rules, enquiry is required to be conducted before passing the order. Learned Counsel submitted that the above findings of the learned Single Judge would have far reaching consequences, therefore, it was necessary to give a correct interpretation of Rule 187 of the J&K; Police Manual. Learned Counsel also submitted that the learned Single Judge has not properly appreciated the Division Bench judgment of this Court in Mohd. Shafi v. State of J&K; and Ors.

2000 SLJ 603, wherein the Division Bench has taken the view that it was not necessary to conduct an enquiry before discharging a probationary constable exercising power under Rule 187.

7. Law is well settled that services of a probationer can be terminated without holding an enquiry if the employer is satisfied that his services are no more required for reasons best known to the employer. For reaching that conclusion, it is always open to the authority to hold an enquiry for his satisfaction. Mere holding of a preliminary enquiry where explanation is called for from the employee, if followed by an innocuous order of discharge, may not be held to be punitive in nature but not when it is founded on a finding of misconduct. We have quoted operative portions of both the termination orders. We are not inclined to say that these orders were punitive in nature. Interpreting the scope of Rule 187 read with Rule 359 (I) of the J&K.; Police Manual, a Division Bench in *Mohd. Shafi v. State and Ors.* (supra) held as follows: We find that holding of inquiry was not required as precursor pre-condition for passing the impugned orders. Sub-rule (10) of Rule 359 of J&K; Police Rules specifically debars the holding of inquiry in case of a probationer during the period or at the end of the period of probation. The foundation of both the orders is unauthorised absence during training periods. Rule 187 of the Police Rules has no application in such like cases.... The long absence for more than nine months speaks for itself qua unsatisfactory conduct of the writ petitioner/probationer. A trainee who un-authorisedly absents from the training course and remains untraced for more than nine months cannot claim to be a suitable constable for the police force where discipline is a pre-requisite. In case he could not undergo the training, how can he be said to be a suitable candidate to serve in the police force where physical fitness is in demand for discharge of the duties. The order(s) in question cannot be termed as stigmatic...

8. The finding of the learned Single Judge that in every case where power is exercised under Rule 187 enquiry is required to be done before passing the order, is not the correct enunciation of law. Reference may be made to the decision of the Supreme Court in *State of Punjab v. Sukhwinder Singh* 2005 AIR SCW 3477 wherein the Apex Court held that 'where a police constable was appointed on probation about eight months back and was discharged from service on ground of

absence from duty as he was not, likely to become an efficient police officer, it cannot be said that the order was based upon misconduct and was, therefore, punitive in nature, which should have been preceded by a regular departmental inquiry'. We are of the view that only when the authority considering the record, gives a clear finding that the police official is negligent to his duty and is disciplined or it is recorded that the termination is on the basis of misconduct, it should precede with an enquiry. Reference may be made to decisions of the Apex Court in *State of Haryana v. Jagdish Chunder* : (1996)IILLJ737SC ; and *Nehru Yuva Kendra Sangathan v. Mehnhh Alan, Luskar* : (2008)IILLJ868SC . In *Nehru Yuva Kendra Sangathan's* case the Apex Court held that 'when the foundation for such an order is not an unsatisfactory performance on the part of the employee but overt acts amounting to misconduct, an opportunity of hearing to the employee concerned is imperative. In other words, if the employee is found to have committed a misconduct, although an order terminating, probation would appear to be innocuous on its face, the same would be vitiated if in effect and substance it is found to be stigmatic in nature'. The Apex Court further held that 'mere holding of a preliminary enquiry where explanation is called for from the employee, if followed an innocuous order of discharge, may not be held to be punitive in nature but not when it is founded on a finding of misconduct'.

9. We have gone through the orders of termination in the instant case which only state that the Constables did not go for basic training and absented themselves, and, therefore, would not prove to be good police officials. It was also noticed that they were not interested in serving the department. Hence, their names were struck off in exercise of powers conferred under Rule 187 of the Police Rules. We are of the view that the orders are not stigmatic warranting detailed enquiry before terminating their services.

10. We may further add, so far as petitioner Bashir Ahmad is concerned, he was terminated from service by order dated December 22,1992, but he had approached this Court only in the year 1996, therefore, there was delay and laches as well on the part of the petitioner in challenging his order of termination.

In such circumstances, we are inclined to allow these appeals. Appeals are accordingly, allowed and the common judgment of the learned Single Judge is set aside.

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