

(2015) 02 JH CK 0166

In the Jharkhand High Court

Case No : WP(S) No. 6828 of 2012 and IA No. 8624 of 2013

Abinash Kumar Mahto

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:

Citation : (2016) 1 AJR 496 : (2015) 2 JLJR 265

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : Devesh Krishna, for the Appellant

Final Decision : Disposed off

Judgement

Pramath Patnaik, J.—In the instant writ petition, the petitioner has, inter alia, prayed for issuance of an appropriate writ(s), order(s) or direction(s) in the nature of certiorari for quashing Memo No. 2199 dated 30.4.2012, under Annexure-5 to the writ application, passed in Departmental Proceeding No. 32/2011 by the Superintendent of Police, Hazaribagh and for quashing of order as contained in Memo No. 2750 dated 16.10.2012, under Annexure-6 to the writ application, passed by appellate authority i.e. Deputy Inspector General of Police, North Chhotanagpur Area, Hazaribagh, whereby the services of the petitioner has been terminated/dismissed and the petitioner has also prayed for directions in the nature of mandamus commanding upon the respondents to reinstate the petitioner in service with all consequential benefits. The factual matrix, as described in the writ application, in brief, is that pursuant to appointment of the petitioner as Home Guard, he was enrolled as Home Guard, bearing Registration No. 1581, on 8.4.2003 and Identity Card was, obtained by the petitioner on 12.2.2004, as per Annexures-1 and 2 respectively of the writ petition. The petitioner thereafter underwent Home Guard training from 3.1.2004 to 13.3.2004. An advertisement No. 1/2004 was published inviting applications from eligible candidates for the post of police constable, as per Annexure-7 to the supplementary affidavit and the last date for submission of application form

was on 15.2.2004. It is stated that the petitioner along with other persons submitted a representation on 20.11.2004 before the Chair-man-cum-Superintendent of Police, Police Selection Committee, Dhanbad, under Annexure-8 to the writ application, for their appointment. The petitioner was appointed as Police Constable in the category of Home Guard for Hazaribagh District. A charge-sheet was served on the petitioner and departmental enquiry was initiated by the order of Superintendent of Police, Hazaribagh and as per order dated 25.6.2011, Annexure-3, and the charges pertain to; (a) petitioner gave wrong detail with respect to Home Guard Training in the Application Form and (b) Petitioner obtained Identity Card through wrongful means before completing Home Guard training; the matter was enquired into and the report of the enquiry officer dated 31.1.2012, under Annexure-4 to the writ application, was submitted to the Superintendent of Police, Hazaribagh. After completion of the enquiry in the departmental proceeding the order of dismissal dated 30.4.2012 from services of the petitioner was passed by the Superintendent of Police, Hazaribagh, under Annexure-5 to the writ application. Being aggrieved of the order passed by the disciplinary authority, the petitioner submitted an appeal against the order of dismissal from services before the Deputy Inspector General of Police, North Chhotanagpur Area, Hazaribagh, vide Annexure-6 dated 16.10.2012 but the same was dismissed vide memo No. 2750 dated 16.10.2012. Being aggrieved by the order of the disciplinary authority as well as of the appellate authority, the petitioner has filed the instant writ application for redressal of his grievance.

2. The respondents have filed counter affidavit on behalf of Superintendent of Police, Hazaribagh controverting the averments made in the writ application. In the counter affidavit, it has been submitted that by the time of Advertisement No. 1/2004, the petitioner was not a trained Home Guard rather at that time he was under training, therefore, he was not eligible to submit the application form for the post of Constable. It has further been submitted in the counter affidavit that the petitioner was appointed in the category of Home Guard but later on it was found that he was not a trained Home Guard and he was under training at the time of publication of advertisement No. 1/2004. It is submitted that a declaration was submitted by the petitioner before the concerned authority, in which, he had mentioned that he is a trained Home Guard, which was found false because as per advertisement No. 1/2004, Home Guard means one who is trained Home Guard before publication of advertisement No. 1/2004. It has further been submitted in the counter affidavit that due to aforesaid false report and false declaration, a departmental proceeding bearing No. 32/2011 was initiated against the petitioner and the Police Inspector, Barhi Circle, Hazaribagh conducted the proceeding and during course of proceeding many witnesses were examined by the conducting officer and final defence was also submitted by the petitioner before the conducting officer and thereafter considering all facts and documents, petitioner was found guilty, and, after considering all the materials available on record, the disciplinary authority has dismissed the petitioner from

services, which has rightly been upheld by the appellate authority.

3. During pendency of the writ application, the petitioner has filed an Interlocutory Application, being I.A. No. 8624 of 2013 for disposal of the instant writ application in terms of the order/judgment dated 13.11.2013 in W.P.(S) No. 3277 of 2013.

4. Heard learned counsel for the petitioner and learned counsel for the respondents.

5. Learned counsel for the petitioner has strenuously urged before this Court that very initiation of the proceeding was based on vague charges and no opportunity has been given to meet the charges and as per Section 2 read with Section 8 of the Bihar Home Guards Act, 1947, the petitioner comes within the definition of Home Guard and the charges basing on which disciplinary proceeding was initiated is thoroughly misconceived and resultantly the impugned order of punishment of dismissal confirmed by the appellate authority is unsustainable in the eye of law.

6. On the other hand, learned counsel for the respondents has confined his argument to the contention raised in the counter affidavit and has urged that there is absolutely no procedural error or infirmity in the disciplinary proceeding and the punishment has been inflicted as per the charges and punishment is commensurate with the gravity of charges, which has been confirmed by the appellate authority.

7. During the course of argument, learned counsel for the petitioner has placed reliance on the judgment rendered by this Court in the case of Satyendra Kumar v. The State of Jharkhand and Ors. passed in W.P.(S) No. 3277 of 2013 dated 13.11.2013, which has been brought on record by filing an Interlocutory Application, being I.A. No. 8624 of 2013, and vehemently submitted that the case of the petitioner is squarely covered by the above cited judgment. Learned counsel for the petitioner also taken recourse of the judgments rendered in the case of Shiv Bachan Kumar Vs. The State of Jharkhand and Others, (2014) 1 AJR 835 : (2014) 1 JLJR 241 and also in the case of Shambhu Mahto Vs. The State of Jharkhand and Others, (2014) 2 AJR 648 : (2014) 3 JLJR 237 . Learned counsel for the petitioner submitted that facts and the issues of the instant case are almost similar to the cases cited hereinabove and the same be disposed of on the terms of the orders passed in the aforesaid cases.

8. Learned counsel for the respondents has accepted the said position and submitted that the writ application can be disposed of in terms of order/judgment passed in the aforesaid writ application.

9. After having gone through the writ application, counter affidavit, and the order/judgment passed in aforesaid writ applications, I am in respectful agreement with the judgment of this Court rendered in the above-referred cases and I am of the opinion that the petitioner is entitled to the relief, as has been

granted in the aforesaid writ applications. Accordingly, the writ petition is allowed and the impugned order of dismissal from service of the petitioner vide Memo No. 2199 dated 30.4.2012, under Annexure-5, the order passed by Superintendent of Police, Hazaribagh and the order passed by the appellate authority vide Memo No. 2750 dated 16.10.2012, under Annexure-6, are hereby quashed and the respondents are directed to reinstate the petitioner in service with all consequential benefits.

Resultantly, I.A. No. 8624 of 2013 also stands disposed of.