

(2009) 04 JH CK 0040

In the Jharkhand High Court

Case No : Writ Petition (S) No's. 1017 and 1024 of 2003

Arun Kumar Singh and Others and Upendra Kumar Sinha and
Another APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 29-04-2009

Acts Referred:

Citation : (2011) 3 JCR 415

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : Dr. S.N. Pathak, O.P. Prasad and Rajesh Kumar, for the Appellant;
J.C. to A.G., for the Respondent

Final Decision : Allowed

Judgement

1. These writ petitions have been preferred mainly for the reason that though the petitioners were appointed on the post of Police Constable in the Year 1996-97 and though they were working smoothly to the satisfaction of the respondents, their services have been terminated in the month of December, 2002, unilaterally and arbitrarily. Thus, after putting approximately 5-6 years of services, the services of the present petitioners have been terminated without holding any inquiry and without giving an adequate opportunity of being heard to the petitioners. In support of this contention, counsel for the petitioners is relying on a decision rendered by this Court in a case of Hare Krishna Singh (in W.P(S) No. 6717 of 2006) Shiv Shankur Pandey (in W.P(S) No. 4191 of 2006) v. The State of Jharkhand and Ors. as reported in 2009 (1) JLR 584. It is submitted that the facts of the aforesaid decided case are much similar to the facts of the present case. It is vehemently submitted by the counsel for the petitioners that the petitioners' services have been terminated mainly on the ground that their appointment de hors the law, but, no provision of any law, rules, regulations or statutory and enforceable Government orders or even rules of thumb has been quoted in the impugned order at Annexure-10 whereby services of the present

petitioners have been brought to an end. In fact, if proper opportunity of being heard would have been given to the petitioners, the petitioners would have pointed out that their appointments were absolutely legal and there is no violation of any law in the year 1996-97 and therefore, the impugned order dated 10th December, 2002 at Annexure-10, deserves to be quashed and set aside.

2. I have heard counsel appearing on behalf of the respondents, who has submitted that as the petitioners were not appointed in accordance with law, the services of the petitioners have been terminated vide order dated 10th December, 2002 by respondent No. 3. It also submitted by the counsel for the respondents that the State of Bihar vide their letter dated 4th September, 2000 has given a direction to terminate the services of the present petitioners and therefore, petitioners are not entitled for any relief, as prayed, in the memo of the petition.

3. Having heard counsels for both the sides and looking to the facts and circumstances of the case, it appears that:

(i) the present petitioners were working on the post of Police Constable since. 1996-97. it appears that State of Bihar had given a direction to terminate the services of the present petitioners and the said order was challenged before this Court and it was directed by this Court in W.P.(S) No. 3189 of 2002 dated 11th June, 2002 that the State of Jharkhand is directed not to implement letter No. 1046 dated 7th March, 2002 issued by I.G. (Administration), Bihar, Patna mechanically. The relevant part of the said order reads as under:

In the facts and circumstances, the competent authority of the State of Jharkhand is directed not to implement the letter No. 1046 dated 7.3.2002 mechanically. The competent authority may apply its independent mind and if necessary, may give notice to the petitioners and call for records from the State of Bihar and then to take any decision, in accordance with law.

(ii) the aforesaid order of the Court has not decided the legality or propriety of the appointment of the petitioners and therefore, the State of Bihar has issued show cause notice which was replied by the present petitioners and ultimately termination order dated 10th December, 2002 was passed by respondent No. 3 at Annexure-10 to the memo of the petition. Looking to the impugned order, it has been stated that for selection of the candidates, a committee has to be constituted and no such Committee was constituted for the selection of the petitioners nor rules of reservation were observed nor any public advertisement was given. Counsel for the petitioners has relied upon the decision rendered in this Court in case of Hare Krishna Singh (in W.P.(S) No. 6717 of 2006) Shiv Shankar Pandey (in W.P.(S) No. 4191 of 2006) v. The State of Jharkhand and Ors. as reported in 2009(1)JLJR 584, Paragraph 7 of the aforesaid judgments reads as under:

In the instant case as observed above, the termination of the services of the

petitioners was made only on the basis of a communication received from the Office of the Director General of Police, Bihar, Patna suggesting that the appointments of the present petitioners and several others, were not made in accordance with the Rule 661B of the Bihar Police Manual. Since neither of the petitioners continued to remain under the services of the Bihar Government, the Director General of Police, Bihar, Patna could not have exercised any authority to terminate the services of either of the petitioners who were employed under the State Government of Jharkhand.

Furthermore, even though the Government of Bihar by making the Police Manual and by providing Rule 661B therein, had directed all its officers including the Director General of Police to recruit the constables in the manner as has been provided in the said Rule, it was open to the State Government of Bihar to make a departure from that Rule in appropriate cases. The Rules were admittedly relaxed by the Government of Bihar in appropriate and deserving cases for the purpose of rewarding persons who had shown exemplary courage on occasions of crisis. Such relaxation, no doubt, could not have been made by any individual officer. It further appears that many appointments were made on special grounds during the tenure of Mr. S.K. Saxena, the then Director General of Police, Bihar. Those appointments were investigated, and the investigation revealed that some of such appointments were illegal and instructions were accordingly issued to terminate the services of such illegal appointees. However, in the instant case, the consistent claim of the petitioners, as stated by them even in their show cause replies submitted to their respective Superintendents of Police, is that their appointment to the post of constables were made on the basis of the relaxed rules and after their undergoing the physical and medical tests and on being found successful in such tests. As such, before deciding to terminate the services of the petitioners, an enquiry ought to have been conducted to find out as to whether at the relevant time, a relaxation was made by the State Government of Bihar in Rule 661B of the Bihar Police Manual in order to reward the persons who had shown exemplary courage on occasions of crisis and whether the petitioners were in fact the recipients of the benefits of the relaxed Rules.

In the instant cases, before deciding to terminate the services of the petitioners, no such enquiry was conducted to find out as to whether the appointments of the petitioners were made on the basis of the relaxed rules of the State Government or merely under the assumed authority of the then Director General of Police. No opportunity was given to either of the petitioners to rebut the presumption that their appointment was made contrary to the Rules.

In view of the aforesaid decision also without holding any enquiry to the effect that whether appointment of the present petitioners was legal or otherwise no termination order can be passed. No provisions have been pointed out or no legal requirements have been pointed out for the alleged irregularities in appointment. It appears from the termination order that a Selection Committee was not constituted before the selection of the present petitioners, but, the counsel for

the respondents is unable to point out any legal provision before this Court that under which provision of law, what committee is required to be constituted for the selection process likewise, in the impugned order it is mentioned that rules of reservation have not been complied with. Counsel for the respondents is unable to point out any rule or regulations or Government orders about the rules of reservation in the appointment of the post of Constable likewise, in the impugned order it is mentioned that there was no public notice before selection of the petitioners. Counsel for the respondents is unable to point out any provision or statutory requirements for publication of the notice. On the contrary looking to the " aforesaid decision and the Rule b61B of Police Manual of the Government of Bihar permits the departure from the rules in the appropriate cases. Petitioners were appointed prior to bifurcation of the State of Jharkhand in the year 1996-07. Looking to the reply filed by the petitioners of the show cause notice (Annexure-9 to the memo of the present petition), it appears that the selection procedure was followed and a Selection Committee was also constituted and after taking the tests, the present petitioners were appointed as per the paragraph-2 of the Annexure-9 to the memo of the present petition. This aspect of the matter has not been properly appreciated by the respondent No. 3 while passing the impugned order at Annexure-10 dated 10th December, 2002.

(iii) no personal hearing was given to the present petitioners when the petitioners are serving since long i.e. from 1996-97 and when their services are to be brought to an end after several years, petitioners must be personally heard by the respondents. Thus, if an adequate opportunity of being heard would have been given to the petitioners they would have pointed out effectively and efficiently that their appointments were true, correct, legal and in consonance with the law.

4. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, hereby, allow these writ petitions. The respondents are at liberty to give adequate opportunity of being heard to the petitioners and thereafter, they are at liberty to pass order about the services of the present petitioners. Till then, the termination order dated 10th December, 2002 of the present petitioners are hereby quashed and set aside.

5. Accordingly, the writ petitions are allowed to the aforesaid extent.