
(2008) 06 JH CK 0044
In the Jharkhand High Court
Case No : W.P (S) No. 3504 of 2004

Arun Kumar Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-06-2008

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 72
Constitution of India, 1950 — Article 311(2)

Citation : (2008) 56 BLJR 2757 : (2008) 3 JCR 637

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Ritu Kumar, for the Appellant; I. Bhaduri, J.C. to A.G., for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—The petitioner is aggrieved by the order dated 8.7.04 issued by the Senior Superintendent of Police, Ranchi whereby he has been asked to explain as to why he be not terminated from the services.

2. The petitioner was appointed as Constable on temporary basis. His appointment was regularized by Nawada District Order No. 1260 dated 1.10.1990 issued by the Superintendent of Police, Nawada. The petitioner was then sent for training to the Police Centre, especially in traffic and vehicle control. Thereafter, he passed the training in first class vide order dated 15.4.1993 of the Principal, Traffic and Motor Vehicle Training School, Jamshedpur. The petitioner was transferred to Ranchi Police. While serving in the Police Centre, Ranchi, the petitioner was served with a notice dated 19.2.02 issued by the Superintendent of Police, Nawada asking the petitioner to explain as to why he be not terminated from the service. The petitioner had challenged the said notice before this Court in W.P(S) No. 1593/2002. After hearing the parties, this Court had quashed the said notice by order dated 8.3.2002. Even after quashing the said notice, a fresh show cause notice dated 8.7.04 has been issued asking the petitioner to show

cause as to why his appointment be not terminated (Annexure-3). It has been submitted by the petitioner that the impugned order is wholly arbitrary, unjust and illegal. The petitioner has been appointed by the then existing State of Bihar and subsequently he was transferred and posted at Ranchi. His services cannot be terminated by the State of Jharkhand in view of the clear provision of Section 72 of the Bihar Reorganization Act, 2000. The petitioner has been working for more than a decade. After his appointment and approval of the same, his initial appointment cannot be now challenged by the respondents. There is no legal justification to issue the impugned show cause and the same is liable to be quashed.

3. The writ petition has been contested by the respondents. In the counter affidavit it has been stated, inter alia, that the petitioner was initially appointed as Constable by Nawada District Order No. 1260 dated 1.10.1990. Thereafter, the petitioner was transferred to Ranchi. The appointment of the petitioner was made without following the prescribed procedures. The Government of Bihar had declared the petitioner's appointment as illegal. A show cause notice had also been issued to the petitioner, but the same was quashed by this Court on the ground that the Government of Bihar has no authority to take any action against the employee posted in the territorial jurisdiction of the Government of Jharkhand after bifurcation of the State. On receipt of the service record of the petitioner, the same was considered by the Senior Superintendent of Police, Ranchi and the impugned order as contained in Memo No. 3040 dated 28.6.06 was passed and communicated to the petitioner asking him to show cause as to why his services be not terminated. Thereafter, the petitioner preferred appeal against the order. It has been contended that for the appointment of the petitioner, there was no compliance of the prescribed procedures.

4. I have heard learned Counsel for the parties and considered the facts and materials on record. By the impugned notice/order, the respondents have sought to assail the appointment of the petitioner made in the year 1990. The petitioner's appointment is said to be illegal. It is an admitted position that the petitioner has been holding a permanent post. He has been allowed to continue in service since 1990 i.e. for about more than 17 years. From the impugned notice, it is evident that the petitioner's appointment has been made contrary to the legal procedures and provisions. The respondent No. 3 has arrived at the said conclusion without initiation of any proceeding or serving any memorandum of charge or holding any enquiry in accordance with the prescribed procedures. Article 311(2) of the Constitution of India specifically envisages that a Government employee cannot be dismissed or removed from service, except after enquiry in which he has been informed of the charges against him and after giving reasonable opportunity of being heard in respect of those charges. The impugned notice has been issued communicating the said conclusion and the punishment without holding any enquiry in accordance with the said mandatory provision of the Constitution. The said notice is, thus, wholly illegal, invalid and violative of the principles of natural justice.

5. In the case of Uptron India Limited Vs. Shammi Bhan and Another, it has been held by the Hon"ble Apex Court that conferment of "permanent" status on an employee guarantees security of tenure of service. Such permanent services cannot be terminated abruptly and arbitrarily. A permanent employee is, thus, entitled to continue in service till completion of his tenure, unless he is dismissed or removed from the services after holding an enquiry on the charges framed against him and after giving him a reasonable opportunity of being heard. The order of dismissal/termination pursuant to the said notice is, thus, vitiated. The impugned order of the Senior Superintendent of Police, Ranchi issued by Memo No. 3040 dated 28.6.06 (Annexure-7) as also the order contained in Memo No. 274 dated 3.4.07 (Annexure-8) passed by the Deputy Inspector General of Police, South Chotanagpur Range, Ranchi are, hereby, quashed.

6. This writ petition is allowed. The petitioner stands reinstated in service with immediate effect with all consequential benefits including the arrears of pay. The arrears of pay must be paid to the petitioner within a period of six weeks from the date of his reinstatement.