
(2008) 05 OHC CK 0071
In the Orissa High Court
Case No : Writ Petition (C) No. 11915 of 2007

Ashok Kumar Swain	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 07-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 255(1)
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 19
Penal Code, 1860 (IPC) — Section 376, 376(2)

Citation : (2009) 1 OLR 468 Supp

Hon'ble Judges : S.C. Parija, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : Krushna Ch. Das and S.N. Mishra, for the Appellant; A.G.A., for the Respondent

Judgement

S.C. Parija, J.—This writ petition has been filed by the Petitioner under Articles 226 and 227 of the Constitution of India assailing the legality and propriety of the order, dated 16.08.2007 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack, in O.A. No. 1827(C) of 2007 which reads as follows:

There is prima facie basis to admit the applicant. Admit. Four weeks to the Respondents to file counter and two weeks thereafter to the applicant to file rejoinder if any. List after six weeks i.e. 29.11.07. No interim orders.

Copies of these orders be handed over to the counsel for the parties for onward transmission to the parties concerned.

2. The main contention of the Petitioner is that the learned Tribunal having come to a prima facie finding regarding the merits of the Petitioner's case and having admitted the Original Application (O.A. No. 1827(C) of 2007), the non-consideration of grant of interim protection is improper and illegal.

3. The brief facts of the case is that the Petitioner having participated in the

process of selection for appointment to the post of Sepoy in the Orissa State Armed Police, was selected and accordingly, the Petitioner was appointed as temporary Sepoy as per the letter of appointment dated 24.12.2006, under Annexure-2 to the writ petition.

4. Pursuant to the Petitioner's joining as Sepoy, he was sent for training and posted at Keonjhar. While the Petitioner was continuing as temporary Sepoy in Keonjhar, he was served with a letter dated 07.06.2007, under which he was intimated that he is being discharged from police service w.e.f. 06.06.2007 AM, due to his involvement in Ramachandrapur P.S. Case No. 64 of 2001 u/s 376 I.P.C.

5. The further case of the Petitioner is that he was falsely implicated in the said Ramachandrapur P.S. Case No. 64 of 2001 corresponding to G.R. Case No. 328 of 2001 (I.T.C. No. 264 of 2002) for alleged commission of offence of rape u/s 376 I.P.C. The Petitioner was criminally prosecuted in the said case and after completion of trial, the judgment was delivered by the C.J.M.-cum-Principal Magistrate, Juvenile Justice Board, Keonjhar, dated 13.05.2004 acquitting the Petitioner from the charge u/s 376(2)(f) I.P.C., with the following findings:

In view of aforesaid analysis we find prosecution has failed to prove by cogent, clear, consistent, trustworthy and unimpeachable evidence that victim was raped by the juvenile in conflict with law. On the other hand prosecution has utterly failed to prove the offence u/s 376(2)(f) of I.P.C. against juvenile in conflict with law beyond all shadow of doubts and we do not find him guilty there under. So we acquit him of said offence as per Section 255(1) Code of Criminal Procedure and he be set at liberty forthwith.

6. The Petitioner submits that as a juvenile, he having been falsely implicated in the said criminal case and having faced trial, was acquitted u/s 255(1) Code of Criminal Procedure as per the findings arrived at by the learned Juvenile, Justice Board, Keonjhar and much thereafter, the Petitioner having applied for the post of Sepoy and in the application form, he having given declaration that there is no criminal case pending against him, he cannot be said to have concealed any material fact or failed to disclose relevant fact so as to warrant his discharge from police service. The Petitioner also submits that as the process of selection for the appointment to the post of Sepoy was made much after the delivery of judgment of acquittal, the allegation of he having concealed any material fact while applying for the said post cannot be a ground for his removal from service.

7. The Petitioner further submits that no opportunity of hearing has been provided to him before issue of impugned order of discharge from service and in that regard the basic principles of natural justice has been violated.

8. The opposite party No. 4 has filed a counter affidavit wherein it has been stated that the Petitioner was charge sheeted in Ramachandrapur P.S. Case No. 64 No. 2001 and had undergone trial by the Juvenile Justice Board but at the time of submission of application for the post of Sepoy, the Petitioner was a

major and was quite aware about the columns to be filled up in the application form. In Column No. 7, it was provided as under:

7. Whether applicant has ever been accused in a criminal case or has ever been imprisoned, if so give details.

9. The answer given by the Petitioner was "No". According to the said opposite party No. 4 that Petitioner could have written that he was accused in connection with a criminal case in Ramachandrapur P.S. Case No. 64 of 2001 as juvenile and was acquitted. Instead, the Petitioner without mentioning anything about the said case, has simply denied that he has not been accused in any criminal case. When this matter came to the notice of the authorities, it was found that he has suppressed the material fact and that such suppression was considered to be serious in view of the fact that the post of Sepoy constitutes a disciplined force and concealment of such fact may affect the society at large.

10. Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the "Act") provide for removal of disqualification attaching to conviction, which reads as follows:

(1) Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

(2) The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be.

11. As the present writ petition has been filed against the order of the Tribunal in not granting interim protection and the original application of the Petitioner is subjudice before the Tribunal, we are not inclined to interfere in the matter in exercise of extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution, inasmuch as, any finding given by this Court is bound to affect the adjudication of the O.A. pending before the Tribunal. It is open for the Petitioner to take such plea before the Tribunal as are available to him in law, including the plea of removal of disqualification attaching to conviction, as provided u/s 19 of the Act and if necessary, the Petitioner may seek amendment of the O.A. for incorporating such plea. If the pleadings are complete and the O.A. is otherwise ready for hearing, the Tribunal will do well to dispose of the same as expeditiously, as, possible, preferably within a period of six months from the date of production of certified copy of this order.

The writ petition is accordingly disposed of.