
(2011) 08 JH CK 0118

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4778 of 2009

Chhanda Ghosh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311

Citation : (2011) 08 JH CK 0118

Hon'ble Judges : D.N. Patel, J

Bench : Single Bench

Judgement

D.N. Patel, J.—The present petition has been preferred against the order of dismissal, passed by Respondent No. 5 dated 27.12.2008 (Annexure-5 to the memo of petition), whereby the services of the Petitioner has been brought to an end mainly because of the fact that there is four days absentism. Besides the allegation of absentism; allegation of indiscipline, dereliction in duty, acting arbitrarily and doubtful behaviour, have also been levelled against the Petitioner, in the impugned order by Respondent No. 5.

2. It has been submitted by Learned Counsel for the Petitioner that neither any enquiry has been conducted nor any charge-sheet has been given to the Petitioner justifying these allegations nor any opportunity of hearing has been given to the Petitioner to meet with these allegations. Therefore, it has been submitted by Learned Counsel for the Petitioner that in the light of several decisions rendered by the Hon"ble Supreme Court (a) Union of India (UOI) and Others Vs. Mahaveer C. Singhvi, ; (b) Uptron India Limited Vs. Shammi Bhan and Another, (c) Basudeo Tiwary Vs. Sido Kanhu University and Others, and (d). 2004 (2) JLJR 185 even if the Petitioner is a Probationer then also during the course of probation period if the services of the Probationer is brought to an end by levelling serious allegations, opportunity of being heard ought to have been given to the Petitioner. Being the fact of the case, Petitioner is a probationer; she is a lady constable appointed after due process of selection on 20.3.2008 and by

those aforesaid allegations, her services ought not to have been brought to an end on 27.12.2008.

3. Learned Counsel appearing for the Respondents submitted that there is no need of holding enquiry when the services of the probationer has to be brought to an end. During the period of probation, services of the Petitioner has been brought to an end by virtue to Rule 668 of the Jharkhand Police Manual, 2000. Moreover, there are several allegations mentioned in the impugned order including absentism of four days. It is further submitted that necessary show cause notice was given to the Petitioner and explanation was sought for, for the allegations referred in the impugned order. In this show cause notice dated 3.12.2008, which is at Annexure 3 to the memo of petition, the allegations against the Petitioner are not only about the absentism but also about the indiscipline, dereliction in duty, acting arbitrarily and doubtful behaviour but it is true that no regular enquiry has been conducted for the allegations in question against the Petitioner.

4. Having heard Learned Counsel for both the parties and looking into the facts and circumstances of the case, I hereby quash and set aside the order passed by Respondent No. 5 dated 27.12.2008, which is at Annexure 5 to the memo of petition, for the following facts and reasons:

(i) The present Petitioner was appointed as lady constable by due process of law i.e. after publication of advertisement; after holding examination and upon clearance of examinations, including written, oral and (sic)

(ii) It appears that the Petitioner remained only absent for four days, which is for the period running from 26.7.2008 to 29.7.2008 due to sickness. For the absentism and for other allegations a show cause notice dated 3.12.2008 was issued to the Petitioner, which is at Annexure 3 to the memo of petition.

(iii) The allegations levelled against the Petitioner are as under:

(a) that she is absent for four days from 26.7.2008 to 30.7.2008.

(b) that she is indisciplined, there is dereliction in her duty, she is acting arbitrarily and she is having doubtful behaviour.

(iv) It further appears that the probation period of the Petitioner was going on, therefore, the Respondents in pursuance of Rule 668 of the Jharkhand Police Manual, 2000 has terminated the services of the Petitioner without holding any regular enquiry, which is not permissible in the eye of law when the serious allegations are levelled, as referred herein above. Respondents ought to have hold an enquiry against the Petitioner. In the facts of the present case, no regular enquiry was conducted. When the serious allegations are levelled against the Petitioner like indiscipline, dereliction in duty, acting arbitrarily and doubtful behaviour; then these allegations are bound to be proved by the Respondents. "Termination-Simplicitor" of services of the probationer; is permissible, without holding any enquiry under Rule 668 of the Jharkhand Police Manual, 2000 but

when the termination is punitive in nature, then the enquiry is must.

(v) Rule 668 of the Jharkhand Police Manual, 2000 reads as under:

668. Removal or reversion of officers appointed direct or promoted on probation:--

The following rules shall govern first appointments and the promotion of police and ministerial officers as detailed in Appendix 41:-

(a) All officers shall in the first instance be appointed or promoted on probation. Where the period of probation is not otherwise provided for in the rules it shall be for a period of two years in the case of executive officers and one year in the case of ministerial officers. The authorised to make such appointment or promotion, may at any time during such probationary period and without the formalities laid down in Rule 828, remove an executive officer directly appointed or revert such an officer promoted who has not fulfilled the conditions of his appointment or who has shown himself unfit for such appointment or promotion. Similarly probationary period may also be extended without any show cause. No appeal shall lie in such cases.

(b) Executive Officers appointed or promoted in other than permanent vacancies are also liable to removal or reversion in the manner indicated in Clause (a) above.

(vi) When there is termination simplicitor of service of the probationer, it can be done, without holding any enquiry under Rule 668 of the Jharkhand Police Manual, 2000 but when termination is punitive in nature, then enquiry is must.

(vii) It has been alleged in paragraph 13 of the memo of petition as under:

13. That the Petitioner submits that the impugned order of dismissal of the Petitioner without initiating any departmental proceeding against her is wholly illegal, arbitrary and violative of Article 14, 16 and 311 of the Constitution of India.

(viii) Reply to the aforesaid paragraph is given in paragraph 22 of the counter affidavit filed by the State, which reads as under:

22. That with regard to the statements made by the Petitioners in Paragraphs-12 and 13 of the instant writ application, it is humbly stated and submitted that the same is misconceived and is hereby denied.

(ix) Moreover, paragraph 13 of the counter affidavit reads as under:

13. That with regard to the questions of law formulated by the Petitioner in Paragraph-2 of the instant writ application for consideration of this Court, it is humbly stated and submitted that those are not correct. The Petitioner committed serious offence by making negligence and also she remained continuous absence in her duty without taking prior permission from her higher authority. Besides, she made false allegations against her higher officials. As

such disciplinary action has rightly been taken against her and the charges levelled against her have been found correct. As such, the Petitioner has rightly been dismissed from her service for violation of the mandatory provisions of the Police Manual and Service Code of Conduct.

(Emphasis supplied)

(x) Thus, once there is a punitive order passed against the Petitioner by way of termination of services, irrespective of the fact whether the Petitioner is a probationer or not, the departmental enquiry is required to be conducted.

(xi) It has been held by the Hon"ble Supreme Court in the case of Union of India (UOI) and Others Vs. Mahaveer C. Singhvi, , in paragraph 45 as under:

45. Since the High Court has gone into the matter in depth after perusing the relevant records and the learned Additional Solicitor General has not been able to persuade us to take a different view, we see no reason to interfere with the judgment and order of the High Court impugned in the special leave petition. Not only is it clear from the materials on record, but even in their pleadings the Petitioners have themselves admitted that the Order of 13-6-2002, had been issued on account of the Respondent's misconduct and that misconduct was the very basis of the said order. That being so, having regard to the consistent view taken by this Court that if an order of discharge of a probationer is passed as a punitive measure, without giving him an opportunity of defending himself, the same would be invalid and liable to be quashed, and the same finding would also apply to the Respondent's case.

(Emphasis supplied)

5. In view of the aforesaid facts and reasons and judicial pronouncement, I hereby quash and set aside the order dated 27.12.2008, which is at Annexure 5 of the memo of petition. This petition is allowed and disposed of. Liberty is reserved with the State of Jharkhand to take actions, if at all they are so choosing against the Petitioner in accordance with law and at least after following the principles of natural justice.