

(2005) 06 GAU CK 0048

In the Gauhati High Court

Case No : Writ Petition (C) No. 317 (AP) of 2004

Hikki Miwu

APPELLANT

Vs

State of Arunachal Pradesh and Another

RESPONDENT

Date of Decision : 16-06-2005

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5, 5(1)
Penal Code, 1860 (IPC) — Section 147, 149, 307, 324, 326

Citation : (2006) GLT 277 Supp

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Advocate : T. Michi, for the Appellant; B.L. Singh, for the Respondent

Judgement

H.N. Sarma, J.—Heard Mr. T. Michi, learned Counsel for the Petitioners and also heard Mr. B.L. Singh, learned Senior Govt. Advocate, on behalf of the State Respondents.

2. The Petitioners herein having been duly selected in a recruitment test conducted by the authority were appointed as Constables against existing vacancies of 1st & 2nd Indian Reserve Battalions under Arunachal Pradesh Police Department in the scale of pay of Rs. 2750-70-3800-75-4400/- p.m. vide order No. PHQ/ESTTA/RCT/IRBN/8/02 dated 8.1.2003. Continuation of the services of the Petitioners were subject to the following conditions as incorporated in the respective appointment orders:

- a) Successful completion of basic training.
- b) The appointment is purely temporary and may be terminated at any time without assigning any reason(s) thereof.
- c) They will be on probation for a period of two years.
- d) They are required to serve in RBN only & anywhere in the district and places of Arunachal Pradesh, in any State/UT of India and in anywhere they are posted

and detailed.

e) They are required to serve at least for three years from the date of joining, unless they are discharged or dismissed or certified by a civil surgeon to be unfit for such service. If the individual resigns before the expiry of the said three years, he has to refund the cost of training and i.e. pay drawn during the period he was under training plus the expenses of T.A. to join the training school.

f) They have to undergo Police basic training at recognized Police Training Centre as ordered by the authority concerned.

3. In terms of the aforesaid appointment, the Petitioners were sent for training at Police Training Centre at Banderdewa and they were participating in such training. Vide order No. PTC/ESTT/2nd IRBN/03 dated 04/10/2003, the Principal of the Police Training Centre, Banderdewa terminated the services of the Petitioners. A common termination order was issued in respect of the Petitioners. The said order, in respect of Mr. Hikki Miwu in WP(C) 317 (AP) 2004, is quoted herein below:

ORDER

In pursuance of the Proviso to Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I Shri. R. Yomcha, IPS, Principal, PTC, Banderdewa hereby terminate forthwith the services of Shri. Hikki Miwu, Recruit constable of 2nd IRBN, AP and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawn them immediately before the termination of his service, or, as the case may be, for the period by which such notice falls short of one month.

Sd/- (R. Yomcha) IPS Principal Police Training Centre Banderdewa

4. Against the aforesaid termination order 4.10.2003, the Petitioner submitted a representation to the Assistant Inspector General of Police, the appointing authority, requesting him to revoke the aforesaid impugned order of termination. But no action was taken. Hence, this writ petition.

5. An affidavit-in-opposition has been filed on behalf of he State Respondents. In the said affidavit at paragraph-5, it is stated as follows:

That with reference to the statement made in Para 4 of the petition, the statement and submits that a criminal case was registered against the Petitioner and 6 others vide Bihupuria PS Vase No. 337/2003 dated 04.10.2003 u/s 147/149/324/326/307 IPC. As per the investigation conducted by Bihupuria Police, on 03.10.2003 at about 12.55 PM, the Petitioner and 6 others while under training at PTC Banderdewa came out from PTC Banderdewa to Puja Mandap, Banderdewa armed with deadly weapons suddenly attacked the public without any reason. As a result 3 persons were seriously injured and the left hand of another one was chopped off, who later succumbed to the injuries. The Petitioner

and his other accomplices were arrested on 5.10.2003 and remanded to judicial custody who were later on released on bail on 27.11.2003. After the investigation, the aforesaid case has been submitted into charge sheet vide Bihupuria PS Case No. 81/2003 dated 30.5.2004, The case is pending trial at North Lakhimpur Court.

The Principal, PTC, Banderdewa issued the memo No. PTC/Estt/2nd IRBN/2003 dated 4.10.2003 thereby terminated the services of the Petitioner for his involvement in the aforementioned criminal case.

The Petitioner's services were terminated under Rule 5 of the CSS (Temporary service) Rules, 1965 and also in terms of service conditions as contained in the attestation form to which the Petitioner was the signatory.

6. Mr. Michi, learned Counsel for the Petitioners, has submitted that, although the Petitioners were terminated by applying the provision's of Rule 5 of the Central Civil Service (Temporary Services) Rules 1965, in fact, the said service rule is not applicable in the case of the Petitioners. Arguing, Mr. Michi submitted that by taking recourse to the aforesaid temporary service rules, the services of the Petitioners cannot be taken away while they were on probation. It is submitted by Mr. Michi that the Petitioners being on probation, the services could have been terminated for unsatisfactory performance and in that event, no notice is necessary, but, in the instant case, their services having been terminated on certain misconduct and the same should be proceeded by a departmental enquiry and that has not been done, the impugned order of termination is not sustainable. It is also pointed out by Mr. Michi that the Principal of the Police Training Centre not being the appointing authority is not authorized to issue the impugned order of termination.

7. Mr. B.L. Singh, learned Senior Govt. Advocate, on the basis of the statement made in the affidavit-in-opposition, has submitted that the services of the Petitioners were terminated as they committed serious act of misconduct, as a result of which, they are facing with criminal prosecution and they are found to be unsatisfactory for retention in the force. It is, further, submitted by Mr. Singh, that the CCS (Temporary services) Rules 1965 is applicable to the Petitioners and the Principal is the appointing authority, and so, there is no illegality or impropriety in passing the impugned order.

8. I have considered the submissions made by the respective counsels. As per the terms of their appointment order, they would be on probation for a period of 2 years i.e. up to January, 2005. Clause (b) of the conditions of service mentioned in the appointment order is to be read together-with Clause (c) i.e. while the Petitioners would be within the probationary period, their services can be terminated without any notice. In case the termination is for alleged misconduct, as in the instant case, it is difficult to take such a view that services of such probationers can be terminated without holding any enquiry or without issuing any show cause notice, as the case may be. There is a set of

departmental rules framed under Article 309, known as Arunachal Pradesh Police (Discipline & Appeal) Rules 1999, which regulates and guides discipline and conduct of the service personnel and procedures for imposing major punishment with termination of service has also been provided in the said Rule. In the instant case, services of the Petitioners were terminated by the Principal of the Police Training Centre without following the aforesaid provisions of the Police Service Rules 1999.

9. Mr. Michi has relied on the Division Bench decision of this Court reported in *Tabong Pasar Vs. State of Arunachal Pradesh and Others*, . In the aforesaid decision, relying on various decisions of the Apex Court, the Division Bench of this Court came into a finding at paragraph 11 as follows:

11. From the perusal of the decisions referred to above it clearly emerges out that in a case where the performance of a probationer is found to be not satisfactory during the period of probation, his services are liable to be dispensed with, without any legal obligation to provide him any opportunity of hearing. But in case the order terminating the services of probationer is not based on his unsatisfactory performance during the period of probation, but on an alleged act of misconduct which has direct nexus with the action taken by the authorities, it would be punitive in nature which will require opportunity of hearing before passing of the order.

10. In my considered opinion, the ratio of the aforesaid decision is squarely applicable in the instant case. There is another aspect of the matter. The Petitioners were appointed by the Asstt. Inspector General of Police, but their services have been terminated by the Principal of the Police Training Centre.

11. It is submitted by Mr. Singh that the post of Principal, Police Training Centre and Asstt. Inspector General of Police is of same rank, as stated in para-9 of the affidavit-in-opposition.

12. Even if an officer may be of same rank, but he may not be the appointing authority. Records do not disclose that the Principal, Police Training Centre has/had the jurisdiction to terminate or appoint any police constable within the State. There is no satisfactory materials available on records to arrive at a finding that the Principal, Police Training Centre is authorized to terminate services of the Petitioners, in the manner it has been done in the instant case.

13. In view of the aforesaid discussions and following the Division Bench judgment of this Court, I have no hesitation to hold that the impugned order of termination No. PTC/ESTT/2nd IRBN/03 dated 4.10.2003 is liable to be set aside and quashed and, accordingly, the same is quashed.

14. The writ petition is allowed. It is, however, observed that this order will not debar the Respondent authorities from proceeding in the matter in accordance with the law, if so advised, on the basis of the alleged misconduct.

15. No order as to costs.