
(1989) 09 PAT CK 0026
In the Patna High Court
Case No : C.W.J.C. No. 2806 of 1986

Jagarnath Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-09-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 311

Citation : (1990) 1 BLJR 151 : (1990) 1 PLJR 471

Hon'ble Judges : S.C. Mookherji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Mookherji, J.—This is an application under Articles 226 and 227 of the Constitution of India for issuance of an appropriate writ/direction/order in the nature of certiorari quashing the initiation of a departmental proceeding and dismissing the petitioner from the post of Writer Constable by respondent Nos. 1 to 3 in confirmation of the order passed by respondent No. 4.

2. The petitioner, it is statad, was appointed as Writer Constable against a permanent vacant post by an order No. 670 dated 22.2.1974 with effect from 1.1.1972 and was entrusted with the work of despatch in the office of B.M.P. Kutihaar and his work was found to be satisfactory by the concerned authorities, la the year 1977 when the petitioner was deprived of that work, he ventilated his grievances to the I.G.M.P.I. Bihar, who issued instructions by order No. 670 dated 22.2.1970 to all the commandants to take work from the Writer Constables who had been appointed as such. In reply to Memo No. 2273 dated 11.7.1977 by the Commandant B.M.P. 7 Katihar, the Additional Inspector-General. B.M.P. 7 Bihar, Patna issued a direction to the effect that the petitioner having been appointed as Writer Constable, should be pasted in another Company and is pursuance (hereof, the petitioner was transferred from B Company to D 2(4) Company by au order dated 29.8.1277 Annexure 2. That a Command dated 1.9.1977 was issued to join at D Company on the post an Writer Constable and lie joined the

said post at Kursella and took charges of valuable documents, paper, etc. from one Kamleshwary Prasad Singh on 16.9.1977 (Annexure 3). The petitioner was moving with that company as Writer Constable from place to place and he was never assigned for rifles duties for the Company Commander. In the year 1980 he made a prayer to the Additional I.G.M.P. to give him a chance to appear as the departmental examination for promotion to the post of Additional Sub-Inspector as he would have been eligible for that post only after passing the departmental examination and this move of the petitioner caused annoyance to his higher officers of the B.M.P. 7, who managed to make out a case of disobedience of the order of the in charge Company Commander while he (petitioner) was on deputation at Muzaffarpur, Railway Station, in violation of the rule, the Company Commandant deputed the petitioner for outdoor duty knowingly that the petitioner would not perform that duty being a writer Constable, in order to make a way to remove him from service or to punish him. Thereafter, the petitioner was served with a notice on 16.5.1980 stating various charges of disobedience, of which he submitted a detailed explanation but in spite of that, a departmental enquiry was set up bearing No. 18 of 1980 and thereafter he was dismissed from service by respondent No. 4.

3. Against that order the petitioner preferred an appeal before the higher authorities, but the same was also dismissed. That all the orders passed against the petitioner for dismissing him from service are bad in law, without jurisdiction and had been passed with a mala fide intention inasmuch as, instead of a minor, a major punishment has been inflicted on him despite his 18 years' service in the department without any adverse remark in violation of Rule 661 of the Police Manual.

4. A counter-affidavit has been filed on behalf of respondent No. 1 (Commandant B.M.P. 7 Katihar stating, inter alia, that the petitioner was appointed as a constable and that he had never passed the qualifying examination for being promoted as literate constable and that, he continued on that post till the date of his dismissal.

5. That the Government instruction bifurcating the literate and illiterate constables of Military Police has been invalidated in C.W.J.C. 360 of 1971 and since then, the constable of Military Police either literate or illiterate are being treated as one in general cadre and they are required to perform similar duties. That the petitioner was not qualified for being appointed a literate constable inasmuch as, there was no occasion for holding a departmental examination, for the post of literate constable in view of the judgment in C.W.J.C. No. 360 of 1971. The petitioner was reverted from the temporary charge of Writer Constable to his Section in May, 1976 after that decision and since then he was doing rifle duty.

6. That in the year 1976 a departmental proceeding was instituted against him in which, he was found guilty for the lapses committed by him during train escorting duty, but he was reinstated in view of the judgment passed in C.W.J.C.

No. 2496 of 1381. Thereafter, he was required to perform rifle duty, but he refused to perform the said duty for which another departmental proceeding was instituted in which he was found guilty and was ultimately dismissed from service.

7. The posting of the petitioner as literate constable was a stop gap arrangement as there was no post of literate constable in B.M.P. but that too was taken away after the said decision and since the petitioner was drawing rifle allowance, he was required to perform rifle duty and therefore, the Commandant was competent to call upon him to perform outdoor duties and when assigned, he disobeyed to perform such duty while posted at Muzaffarpur. The claim of the petitioner that he was drawing Rs. 10/- as literate allowance has been disputed.

8. A rejoinder to this counter affidavit has been filed stating therein that in view of the order dated 22.2.1974 as contained in Annexure 6, the petitioner was duly appointed and adjusted to the post of literate constable with effect from 1.1.1972. That after the order of his reinstatement was passed in C.W.J.C. No. 2496 of 1981, he joined his duty to the post of Writer Constable and was never posted/deputed on rifle duty, except one or two occasions during emergency, like election and other work. He also informed the enquiring officer that as his broken rifle was deposited in armoury shop of Battalion he was unable to perform the rifle duties and accordingly, made a request to Reserve Officer for supply of a rifle but at the same time he went to Railway Station to join his duty, still then, he was not supplied with any rifle and such, he was helpless in discharging the said duty. That in violation of Rule 828 of Bihar Police Manual major punishment was inflicted on him. That on the superannuation of Lalita Singh, D.S.P. who was appointed as conducting officer to hold enquiry, when a Subedar named Sri Ram Prahalad Singh was appointed, the petitioner made a request for his change, but it was turned down and on account of this request, that Subedar was prejudiced against him. In a supplementary affidavit, it is stated that by an order dated 22.2.1974 as contained in Annexure 6, the D.I.G. of Military Police had appointed the petitioner as Writer Constable along with 16 others and therefore, his order of dismissal dated 22.11.1984 Annexure 4 is without jurisdiction in view of Article 311 of the Constitution at the Commandant, B.M.P. 7, Katihar was not competent to pass an order of dismissal, being subordinate to D.I.G. Military Police, who alone was empowered to pass such an order.

9. The first point that has been raised is that the petitioner could not have been dismissed from the service on the charges levelled against him, because being a literate constable, he was not required to perform the duties allegedly entrusted to him. In support of this contention, it is stated that even after the judgment of this Court passed in C.W.J.C. No. 360 of 1971, the department issued a notification as contained in Annexure 6 dated 22.2.1974 appointing the petitioner as literate constable with effect from 1.1.1972 vide serial No. 16. Further, it is stated that in that decision the court had examined Rule 661 of old police Manual to consider the classes of constable, but even in the revised Police Manual of the year 1978, provisions for two categories of constable i.e. literate constable and

ordinary constable have been made and therefore, the petitioner, in any event, could not have been asked to perform the duties meant for ordinary constable as after that judgment he had been appointed as Writer Constable with retrospective effect i.e., 1.1.1972. In this context, it is also stated that although the Commandant was the original appointing authority of constable, after the order of appointment as Writer Constable was passed by a Higher Official Annexure 6, the Commandant, B.M.P., Katihar ceased to be a competent authority to pass an order of dismissal.

10. On the other hand, the learned Counsel appearing for the State has submitted that after the judgment in C.W.J.C. No. 360 of 1971, the constable of military police either literate or illiterate are being treated as one in general cadre and they are required to perform similar duties and therefore, the petitioner was just like as an ordinary constable and continued to be so still before his order of dismissal. As regards the instruction issued in Annexure 6 appointing some constables as literate constables with effect from 1.1.1972 is concerned, the learned Counsel has submitted that this instruction is of no advantage to the petitioner for, firstly, the letter itself will show that in the light of the decision of this Court only paper adjustment was made and secondly, the petitioner cannot also take advantage of Rule 661 of the revised Police Manual of 1978 as he does not fulfil the qualifications provided therein for being distinguished as literate constable.

11. Rule 661(a) of the Bihar Police Manual, 1978 reads as follows:

Classes of Constable.--Constables shall be distinguished as (i) Writer Constables, and (ii) Ordinary Constables. Those constables who are at least marticultates and have qualified at the competitive examination for promotion to the rank of Assistant Sub-Inspector as per Rule 685 shall be known as Writer Constables whose duties will solely be those of a station writer at police stations and will not be given out door work. He will perform office duties and conduct routine business of the police-station in absence of the Sub-Inspector and Assistant Sub-Inspectors for which ho shall get an allowance of at least Rs. 7 per month.

12. It is not in dispute that the petitioner, who is only a Matriculate, had not qualified at the competitive examination for promotion to the rank of Assistant Sub-Inspector as per Rule 685 and therefore, he cannot claim to be distinguished as a Writer Constable under Rule 661(a) of the Manual 1978. The petitioner has also not denied the averment made in the counter affidavit that he was reverted from the officiating position of literate Constable after the judgment of the Court and was placed in the general cadre of Constable. Thus, in any event, the petitioner was a Constable at the time of his dismissal. As a Constable he was required to perform escort, patrolling, traffic control and other duties as provided is Chapter 2 of the Police Manual 1978. It is not in dispute that the appointing authority of a Constable is the District Superintending of Police [see Rule 661 (b)] The Commandant B.M.P., who is of the rank of District Superintendent, was thus competent to pass an order of punishment against a Constable of B.M.P. for

disobeying the orders of his superior to perform the duties, which under the rules he has to perform.

13. The next point that has been raised is that in the past, when the petitioner's earlier order of dismissal was quashed in C.W.J.C. No. 2496 of 1981 the authorities in a mala fide way in order to remove him, initiated another departmental proceeding, which is bad in law. It appears that on that occasion some illegality was committed by the authorities concerned in passing the order of dismissal and on the ground alone the order was set aside and not on merit. In the circumstances, the mala fide pleaded by the petitioner has also no merit.

14. The third point that has been taken is that impugned departmental enquiry was not conducted in accordance with law and as such, any order passed on that basis is bad in law, I regret, this contention cannot be accepted, because nothing could be shown to suggest or indicate that any illegality/irregularity was committed in conducting the departmental proceeding. As a matter of fact, sufficient opportunity as required under the rules was given to the petitioner to defend himself and there is nothing to show that he was denied of any right to which he was entitled to, to defend himself in the proceeding.

15. Lastly, it has been submitted that the major punishment of his dismissal should not have been passed in view of his 18 years of service in the department without any adverse remark. Rule 824 describes the nature of departmental punishments. Dismissal is one of the punishments, which is a major punishment under Rule 828. The charges against the petitioner are very serious. In a police force, where discipline is the primary consideration, if a Constable refuses to perform his duties and brazenfacedly disobeys the order of his superior it will not only be an act of indiscipline but also of insubordination and in such a situation the order of dismissal is the proper punishment. In the circumstances, the punishment inflicted upon the petitioner does not call for any interference.

16. The result is that, the application is dismissed. There shall, however, no order as to costs.