
(2014) 11 JH CK 0006
In the Jharkhand High Court
Case No : W.P.(S) No. 569 of 2012

Krishna Deo Prasad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Citation : (2015) 1 AJR 446 : (2015) 1 JLJR 415

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Rajesh Kumar, Advocates for the Appellant

Judgement

Sujit Narayan Prasad, J.—Petitioner being aggrieved with the orders dated 3.2.2011, 6.8.2011 and 5.12.2011 passed by the disciplinary authority, appellate authority and the revisional authority by which he had been dismissed from service, has approached this Court.

2. It has been argued on behalf of petitioner that he was appointed on 20.3.2010 as Constable in terms of an advertisement and after following procedure of law. Subsequently, on the basis of one anonymous complaint regarding genuineness of certificate of Class seven of the petitioner, internal inquiry had been conducted by Assistant Commandant cum Inquiry Officer, Jharkhand Armed Police Force, Bokaro who had submitted his report on 9.9.2010, in which however, he had found that the certificate of Class seven produced by the petitioner is doubtful.

3. It has further been submitted that since petitioner was appointed against a permanent post in terms of an advertisement and as such, only on the basis of one internal inquiry the services of the petitioner cannot be taken away that too without following due procedure of law i.e. without initiating a regular departmental inquiry. It has further been submitted that the order has been passed by the disciplinary authority in exercise of power conferred under Rule 668(a) of Police Manual which itself suggests that there is no requirement of initiating departmental proceeding as contained in Rule 828(b) of Police Manual.

It has further been submitted that since there is an allegation of commission of forgery as such, a regular departmental proceeding is required to be initiated by the authorities concerned before passing the major punishment of dismissal from service.

4. On the other hand counsel appearing on behalf of respondents has submitted that the petitioner had been dismissed from service on the ground of commission of forgery as certificate of Class Seven produced by the petitioner was found to be forged in view of the inquiry report submitted by Assistant Commandant cum Inquiry Officer, Jharkhand Armed Force dated 9.9.2010. It has further been submitted that by exercising power conferred under Rule 668(a) of Police Manual the order impugned had been passed because of the reason that the petitioner had submitted forged educational certificate and as such, there is no requirement to initiate departmental proceeding.

5. Heard the parties.

6. Rule 668(a) of the Police Manual 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 authority authorized 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".

7. From perusal of Rule 668(a) of Police Manual it is apparent that the power conferred under the said Rule can only be exercised when it comes to the knowledge of the authority that a candidate has not fulfilled the conditions of his appointment, or has shown himself unfit for such appointment or promotion, he can be dismissed.

8. Here in the instant case it had not been found by the authority concerned that the petitioner was not eligible for appointment to the said post rather, the ground has been taken in this case that the certificate which had been produced by the petitioner is forged one and the respondent authority had come to the conclusion in pursuance of an internal inquiry behind the back of the petitioner as would be evident from a report dated 9.9.2010 annexure 2 to the writ petition.

9. Admittedly, no departmental proceeding had been initiated as such, the power which has been conferred under Rule 668(a) of Police Manual had been exercised

by the authority concerned is without application of mind rather, a departmental proceeding should have been initiated by the authority concerned as provided under Rule 828(b) of Police Manual. Considering the nature of allegation levelled against the petitioner since, it is a question of dismissal of an employee from service as such, before dismissing a permanent employee on the basis of commission of forgery a departmental proceeding is necessary to be initiated as contained under Rule 828(b) of Police Manual which reads as under:

"828(b) Without prejudice to the provision of the Public Servants Enquiries Act, 1850, no order of dismissal, removal, compulsory retirement or reduction shall be passed on any police officer (other than an order based on facts which have led to his conviction in a criminal court) unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself."

10. In view of the facts stated hereinabove, since the order dated 3.2.2011 passed by the disciplinary authority is without following due procedure of law as provided under Rule 828 of Police Manual and the same has been passed in exercise of power conferred under rule 688(a) of Police Manual hence, the said order is not sustainable in the eye of law and as such, the same is hereby quashed and consequent upon the same subsequent orders passed by the authority concerned dated 6.8.2011 and 5.12.2011 is also quashed.

11. Matter is remanded to the concerned authority to proceed afresh after initiating a departmental proceeding and complete the same within a reasonable period preferably within six months from the date of receipt of copy of this order.

12. Petitioner is directed to give full co-operation in the proceeding and if the petitioner will not appear the department is at liberty to conclude the same ex-parte within a period aforesaid.

13. With this observation instant writ petition is disposed of.