

(2011) 01 JH CK 0105

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2584 of 2005

Maresh Prasad Swarnkar and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 2 JCR 151

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

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present petition has been preferred mainly for the reasons that the benefit of Assured Career Progression (for short "ACP") granted to the Petitioners vide order at annexure-4 dated 9th January, 2004 has been withdrawn by subsequent order which is at annexure-6 dated 12th January 2005, unilaterally, arbitrarily, in breach of principle of natural justice and without assigning any reason worth the name and therefore, the present petition has been preferred by the Petitioners challenging the order, at Annexure-6 dated 12th January. 2005.

2. Having heard the counsel for the parties and looking to the facts and circumstances of the case, it appears that:

(i) the Petitioners are working at the relevant time on the post of IV Grade as Cooks, Water Carriers, Barbers, Gardeners, Sweepers etc. with the Respondents.

(ii) It further appears that initially writ petitions bearing CWJC No. 7810 of 1988 with CWJC No. 5485 of 1989 were instituted before the Hon'ble High Court of Patna for regularization of their services and it has been observed by the Division Bench of the Hon'ble Patna High Court vide order dated 12th March 1996 (annexure-1 to the memo of petition), in paragraphs-7 and 8, which read as under:

7. Accordingly, I direct the Respondent State of Bihar and its authorities to consider the case of Petitioners along with all similarly situated persons for regular appointment in terms with Rule dated 5th March, 1948 (annexure-9) taking into account their respective date of entry in service, if necessary, be making the posts as permanent posts against which the Petitioners are performing their duties. Such action is to be taken and according orders to be passed by the Respondents within a period of two months from the date of receipt/production of copy of this order. It is made clear that the order is to be produced before the Secretary, Home (Police) Department of the State of Bihar with a copy to the Director General of Police-cum-Inspector General of Police.

8. The writ petitions are allowed. No cost.

(iii) It appears that the Superintendent of Police, Padma Training Centre, Hazaribagh has passed an order dated 9th January, 2004, whereby the Petitioners were granted the benefit of ACP scheme upon completion of 12 years of services vide order at annexure-4 to the memo of petition.

(iv) It further appears from the facts of the present case that the Superintendent of Police, Padma Training Centre, Hazaribagh has withdrawn the benefit of ACP scheme granted to the Petitioners after lapse of a period of 12 months i.e. on 12th January 2005 vide order at annexure-6 to the memo of petition.

(v) It further appears from the facts of the present case that the order at annexure-6 has been passed without affording any notice to the Petitioners. To notice prior to withdrawal of ACP benefit has been given to the Petitioners. The Petitioners were not given any opportunity to represent their cases prior to withdrawal of the accrued benefit. After approximately 12 months, the benefit accrued was withdrawn by the Respondents and that too, without giving any notice and without giving any opportunity to the Petitioners to represent their cases. Thus, there is gross violation of the principles of natural justice before passing the order at annexure-6 to the memo of petition dated 12th January, 2005 and hence, the same deserves to be quashed and set aside.

(vi) It further appears from the impugned order at Annexure-6 dated 12th January, 2005 that the benefit of ACP scheme has been withdrawn because of "some irregularities". This is no reasoning in the eyes of law. What were those irregularities, nothing has been mentioned in the impugned order. Thus, the impugned order is thoroughly a non-speaking order. Whenever any accrued benefit is being withdrawn by the State Authorities, the reasons must be assigned prior to such withdrawal.

(vii) Looking to the impugned order at annexure-6, it only refers that there are some irregularities and therefore, the benefit of ACP has been withdrawn. The Petitioners are kept in dark about the reasons for withdrawal of the benefit of ACP. Non-speaking orders always lead to arbitrariness. Arbitrariness and equality are sworn enemies of each other. If arbitrariness is present equality is always absent and where equality is present arbitrariness is always absent.

(viii) Looking to the impugned order at Annexure-6, it appears that it is thoroughly a non-speaking order without assigning any reasonings and full of arbitrariness and hence, is violative of right of equalities vested in the Petitioners and also violative of Article 14 of the Constitution of India. Hence, the impugned order at annexure-6 dated 12th January, 2005 deserves to be quashed and set aside.

(ix) It has been contended by the counsel for the Respondents that in the counter-affidavit at para-graphs-5 and 6, the reasons have been narrated that the Petitioners have not completed 12 years of service and therefore, the benefit of ACP has been withdrawn. This argument is not accepted by this Court mainly for the reasons that no reasons can be supplied in the counter-affidavit, to justify a thoroughly non-speaking order otherwise all the non-speaking and arbitrariness orders will be converted into well reasoned and speaking orders by the passage of time, by way of counter-affidavits filed in the Court. No reasons can be supplied subsequently in the counter-affidavit by the Government. Reasons must have been mentioned in the impugned order itself. It has been held by the Hon"ble Supreme Court in the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , paragraph 9 thereof reads as under:

9. An attempt was made by referring to the Commissioner's affidavit to show that his was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

(x) The aforesaid decision has also been followed in several subsequent decisions like in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , in paragraph-8 which reads as under:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may there draw attention to the observations of Bose, J. in Gordhandas Bhanji:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are

addressed and must be construed objectively which reference to the language used in the order itself.

Order are not like old wine becoming better as they grow older.

(xi) In view of the aforesaid decision also subsequent supply of reasons in the counter-affidavit cannot convert a non-speaking into a speaking order. Thus, the contention raised by the counsel for the Respondents that the reasons have been assigned in paragraphs-5 and 6 of the counter-affidavit which makes a non-speaking order into a speaking one, is not accepted by the Court.

(xii) It further appears from the facts that annexure-4 is an order passed by the Superintendent of Police, Padma Training Centre, Hazaribagh dated 9th January 2011 which grants the benefit of ACP scheme and the same very authority has reviewed the order and passed a fresh order at Annexure-6 withdrawing the benefit granted much earlier that prior to 12 months. In fact, the same authority at least should have granted a notice and an opportunity of hearing ought to have been given to the Petitioners. Reviewing the order by the same authority and that too giving any notice and without assigning any reason worth the name makes the order vulnerable and hence, the order dated 12th January. 2005 deserves to be quashed and set aside.

(xiii) It has been held by this Court in a case of Kamal Kant Sahay v. State of Jharkhand and Ors., reported in 2010 (2) JCR 558 (Jhr), that without giving notice and without giving an opportunity of being heard, the benefit of ACP which is already granted, cannot be withdrawn. In the facts of the present case also, the benefit, which was granted on 9th January 2005, vide at annexure-4, has been withdrawn by order dated 12th January 2005 at annexure-6, without giving any notice to the Petitioners and without giving any opportunity of being heard or to represent their cases and that too by thoroughly a non-speaking order.

3. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, I hereby quashed and set aside order passed at annexure-6 dated 12th January 2005 passed by the Superintendent of Police, Padma Training Centre, Hazaribagh.

4. This writ petition is, accordingly, allowed and disposed of.