
(2014) 08 OHC CK 0039

In the Orissa High Court

Case No : Writ Petition (Civil) No. 5335 of 2014

Maheswar Sahoo

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Orissa Home Guards Act, 1961 — Section 8
Penal Code, 1860 (IPC) — Section 186, 294, 332, 336, 34

Citation : (2015) 119 CLT 157 : (2014) 2 ILR 1014 : (2014) LabIC 4251 :
(2014) 2 OLR 739

Hon'ble Judges : Biswajit Mohanty, J

Bench : Single Bench

Judgement

Biswajit Mohanty, J.—The petitioners, who are two in numbers, have filed this writ application with a prayer for directing the opposite parties" to reappoint/reinstate them as Home Guards after quashing the orders under Annexure-2 series and Annexure-5.

2. The undisputed facts of this case are as follows:

"The petitioners being selected were appointed as Home Guards in the year 2002 and their terms of office were renewed from time to time every three years. While being engaged as Home Guards, the petitioners were arrested in criminal case on 15.2.2011 in connection with Athagarh P.S. Case No. 28/dt. 15.2.2011 corresponding to C.T. Case No. 76 of 2011 for allegedly committing offences under Sections 341/ 332/ 353/ 294/ 506/ 186/ 336 read with Section 34, IPC. Subsequently, they were released on bail on 7.3.2011. Since they were in custody from 15.2.2011 to 7.3.2011, they could not perform their duties, as a result of which an explanation was called for from them by opposite party No. 3 on 7.3.2011 in order to explain their absence in duty during the aforesaid period. On receipt of letter dated 7.3.2011, the petitioners submitted their explanations explaining the reason for their absence in the duty. In the said explanations under Annexure-1 series, the petitioners explained that they were arrested by

the police without any reason for which they could not perform their duties. Upon receipt of the explanation as aforesaid opposite party No. 3 discharged the petitioners from the Cuttack City Home Guards Organization on 17.9.2011 under Annexure-2 series. Perusal of the discharged orders under Annexure-2 series makes it clear that both the petitioners were discharged from service on account of their involvement in Athagarh P.S. Case No. 28/dt. 15.2.2011 under Sections 341/ 332/ 353/ 294/ 506/ 186/ 336/ 34, IPC as their explanations were not found satisfactory. Upon receipt of the orders of discharge, the petitioners filed appeals before the appellate authority. The appellate authority dismissed the said appeal on 27.10.2011 vide Annexure-3. While the matter stood thus, the criminal case registered against the petitioners came up for trial and the learned S.D.J.M., Athagarh vide judgment dated 20.4.2013 in C.T. Case No. 76 of 2011/ Trial No. 497 of 2011 acquitted the petitioners from all charges levelled against them. After acquittal from the criminal case, the petitioners preferred representations before opposite party No. 2 under Annexure-4 series praying therein for reinstatement in service. Since, no action was taken on the representations, the petitioners finding no other alternative, approached this Court in W.P. (C) No. 22512 of 2013, which was disposed of on 10.12.2013 with a direction to opposite party No. 2 to take a final decision on their appeal/ representations within a period of two months. Pursuant to the above noted order, opposite party No. 2 vide orders dated 19.2.2014 (Annexure-5) disposed of the appeal/representations of the petitioners by stating that as per Rule 8 of the Orissa Home Guards Rules, 1962, in short "the Rules" the term of office of a member of the Home Guard was three years. The petitioners completed their statutory tenure of three years and thereafter they ceased to be Home Guards. Thus, it was not a case of punishment under Section 8 of the Orissa Home Guards Act, 1961, in short "the Act". Therefore, in such case, the question of appeal did not arise. According to opposite party No. 2 neither there was any cause for an appeal, nor any merit in the petitions of the petitioners. However, opposite party No. 2 directed opposite party No. 3 to consider the case of the petitioners for appointment as Home Guards (i) if there was vacancy in the district, (ii) if they submitted applications in prescribed proforma as per Rule 4 of the Rules and (iii) if they were found suitable meeting all the requirements and qualifications as per Rules 3 and 9 of the Rules including age, medical fitness, physical fitness, physical efficiency tests, etc. Accordingly, opposite party No. 2 disposed of the representations of the petitioners. Being aggrieved by the said orders of opposite party No. 2 under Annexure-5, the petitioners have filed the present writ application."

3. I have heard Ms Deepali Mahapatra, learned counsel for the petitioners and Mr. Muduli, learned Additional Standing Counsel for the State.

4. Ms. Mahapatra, learned counsel for the petitioners submitted that opposite party No. 2 had passed the orders under Annexure-5 without any proper application of mind. According to her, here was a case, where as per the orders under Annexure-2 series, the petitioners were discharged from their service only

on account of their involvement in a police case and once they were acquitted from the charges by a competent criminal Court, as per the settled principle of law, the authorities should have reinstated the petitioners in their services as they were within the prescribed age limit and as per their representations under Annexure-4, they had all throughout discharged their duties sincerely and honestly. Thus, according to Ms Mahapatra, opposite party No. 2 should have reinstated the petitioners on their acquittal instead of passing the impugned orders under Annexure-5 directing opposite party No. 3 to consider the case of the petitioners with a number of conditions. In this context, she relies on a decision of this Court in the case of Sri Sudarsan Das Vs. The Chairman, Food Corporation of India and Others and a decision of the Hon'ble Supreme Court in the case of Basanti Prasad Vs. The Chairman, Bihar School Examination Board and Others, . Ms Mahapatra put special emphasis on paragraphs-21 and 22 of the above noted decision of the Hon'ble Supreme Court. Ms Mahapatra also relying on Annexure-6 submitted that as presently there existed a number of vacancies under opposite party No. 3, opposite party No. 2 ought to have directed for reinstatement of the petitioners in their services subject to their clearing medical/physical fitness tests. According to her, opposite party No. 2 had gone wrong in directing the petitioners to submit applications as per Rule 4 of the rules, which according to her, had no application to the facts of the present case. She further stated that there had been total non-application of mind on the part of opposite party No. 2 in coming to a conclusion that the petitioners ceased to be Home Guards on account of completion of their statutory tenures and therefore, such cessation were not by way of punishment particularly, when the report of opposite party No. 3 referred to in Annexure-5 made it clear that he petitioners were discharged on account of their involvement in Athagarh P.S. Case No. 28/dt. 15.2.2011. A perusal of the impugned orders under Annexure-5 would reveal that while on one hand, opposite party No. 2 referred to the report of opposite party No. 3, which categorically revealed that the petitioners were discharged from their services on account of involvement in a police case" and on the other hand, opposite party No. 1 noted that the petitioners were discharged from their services on account of completion of their statutory tenure. In such background, she prayed for quashing of Annexure-2 series as well as both the orders under Annexure-5 and prayed that the opposite parties be directed to reinstate the petitioners forthwith as Home Guards subject to their clearing the medical fitness and physical fitness tests, etc.

5. Mr. Muduli, learned Additional Standing Counsel for the State on the other hand submitted that the writ application was thoroughly misconceived and vehemently defended the orders dated 19.2.2014 under Annexure-5 passed by opposite party No. 2 with regard to both the petitioners. He also refuted the allegations of non-application of mind against opposite party No. 2.

6. In such background, let us see whether in the facts and circumstances of the case and in the background of settled principle of law, opposite party No. 2 has committed any wrong in not reinstating the petitioners as Home Guards. At the

outset, it may be noted that a perusal of records clearly reveal that both the petitioners were discharged from their services not on account of completion of their statutory tenure but clearly on account of involvement of Athagarh P.S. Case No. 28 of 2011, as would be clear from the discharge orders issued under Annexure-2 series. In the counter-affidavit filed on behalf of opposite party No. 3 the above noted facts are also clear from paragraphs-4, 8 and 13. Therefore, opposite party No. 2 was not correct in coming to a conclusion under Annexure-5 that the petitioners ceased to be Home Guards on account of completion of their statutory tenure and, therefore, such cessation cannot amount to punishment. Now, coming to the two decisions cited by Ms Mahapatra, learned counsel for the petitioners, let us first start with the decision of this Court as rendered in Sri Sudarsan Das's case (supra). In the said case, this Court has made it clear that when the dismissal from service was solely and entirely based on conviction and once such conviction was set aside and the employee was acquitted of the charges, it would be taken as if the employee was never convicted. This means that when sole basis for dismissal no more existed, the order of dismissal was liable to be quashed, and the employee is entitled under law to be reinstated in his service. In Basanti Prasad's case (supra) it has been made clear that when punishment of termination of service was based on the order of conviction and once the order of conviction is set aside, the order terminating the services of the employee requires to be set aside. The present case stands on a still better footing inasmuch as here orders of discharge of the petitioners were issued only on the basis of involvement in police case not on the basis of any conviction. Further upon trial the petitioners were acquitted of the charges. In such background opposite party No. 2 ought to have directed reinstatement of the petitioners as Home Guards subject to their clearing medical fitness and physical fitness tests. It is not disputed that in the meantime, Circular Order No. 7/2013 has been repealed and now a large number of vacancies are available as per Annexure-6 dated 9.6.2014 and also as per averments made at Paragraph-12 of the counter-affidavit. For all these reasons, opposite party No. 2 has gone wrong in saying that there was no merit in the appeal/representations of the petitioners. In such background, this Court has no hesitation to hold that instead of directing reinstatement in services, the direction of opposite party No. 2 for submission of applications in prescribed proforma is not warranted under law. In such view of the matter, this Court sets aside the discharge orders under Annexure-2 series and further quashes the orders dated 19.2.2014 issued in respect of both the petitioners under Annexure-5 except the directions contained therein with regard to checking their physical fitness and medical fitness, etc. as per law. Consequently, this Court, directs the opposite parties to reappoint/reinstate the petitioners as Home Guards subject to their clearing medical fitness and physical fitness tests, etc. The entire exercise should be completed within two months from today.

7. In the result, the writ application is allowed to the extent indicated above. There would be no order as to costs.