
(2014) 01 JH CK 0142

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5482 of 2012

Manoj Kumar Mandal

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Citation : (2014) 1 AJR 562

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Ranjan Prasad Ram and Pyar Kumar, for the Appellant; Vaibhav Kumar, J.C. to A.G., for the Respondent

Judgement

S. Chandrashekhar, J.—The petitioner has approached this Court seeking quashing of orders dated 23.04.2011, 13.05.2011 and 11.07.2011. Heard the learned counsel appearing for the parties and perused the documents on record.

2. The brief facts of the case are that, the petitioner was appointed as a member of Home Guards on 26.10.1989. In the year, 2009 one Satyanarayan Mandal made a complaint against the petitioner and an enquiry was conducted into the matter. The enquiry officer submitted a report on 20.02.2010 and another enquiry report was submitted on 23.03.2011. By the impugned order dated 13.05.2011, the petitioner was discharged from service. Pursuant to order dated 13.05.2011, order dated 11.07.2011 has been passed by the Commandant Jharkhand Home Guards, Godda.

3. A counter-affidavit has been filed on behalf of respondent No. 4 stating as under:

9. That it is humbly stated and submitted that again on the instruction of homeguard headquarter Ranchi memo No. 175/c dated 09.09.2010, the then Divisional Commandant Jharkhand Homeguard hazaribagh/Dumka made an enquiry in Godda against Mr. Monoj Kumar Mandal and submitted his enquiry report to Director General-cum-Commandant General Jharkhand homeguards

Ranchi vide letter No. 01 dated 23.04.2011.

10. That it is humbly stated and submitted that on the basis of his findings in his detailed enquiry report he recommended for discharge of homeguard 1439 Mr. Manoj Kumar under suitable sections of homeguards rule. Commandant General homeguards is empowered to discharge a homeguard as described in section 7 sub-section IV of Bihar homeguard rule 1953.

4. The learned Senior counsel appearing for the petitioner has submitted that, neither any show-cause notice was issued to the petitioner nor a charge was framed against the petitioner and the enquiry report dated 04.08.2013 and 23.03.2011 would indicate that the enquiry was conducted for several allegations levelled against the petitioner and therefore, without affording an opportunity to defend himself, the order of discharge dated 13.05.2011 could not have been passed against the petitioner. The learned Senior counsel has further submitted that, none of the witnesses examined during the enquiry, has supported the allegations against the petitioner however, on the basis of the enquiry report submitted on 23.04.2011 the petitioner has been discharged from service.

5. As against the above, the learned counsel appearing for the respondents has submitted that, since the petitioner has been discharged under Rule 7(iv) of the Bihar Home Guards Rules, 1953 there was no requirement under the Rules for initiating a regular departmental proceeding against the petitioner. He has further submitted that, Rule 5 of the Bihar Home Guards Rules, 1953 provides that a person discharged, may be enrolled for a fresh term of service in accordance with Rules and therefore, the petitioner would not be prejudiced by the impugned order of discharge.

6. A perusal of the enquiry reports dated 04.08.2011 and 20.02.2010 would indicate that the enquiry was conducted on various allegations against the petitioner which includes the petitioner contracting second marriage, mistreating his family and his children and extracting money from other home guards. In both the enquiry reports, the enquiry officer has concluded that the petitioner appears to be a controversial person and therefore, action may be taken against him. A perusal of the impugned order would also indicate that the order of discharge has been passed on the ground that the petitioner has been found to be a controversial person. Neither from the impugned order nor from the enquiry reports, I gather any material on the basis of which a finding has been recorded by the enquiry officer that the petitioner appears to be a controversial person and therefore, I am of the opinion that the petitioner should have been granted an opportunity to defend himself which admittedly has not been afforded to the petitioner in the present case. I further find that only on suspicion, the petitioner has been discharged from service which cannot be a basis for passing order of discharge from service.

7. In view of the aforesaid, the impugned orders are hereby quashed. The matter is remitted to the Commandant, Jharkhand Home Guards, Ranchi for taking a

decision afresh in the matter after issuing show-cause notice to the petitioner. However, it is made clear that the order passed by this Court would not be construed as an order of automatic reinstatement of the petitioner in service. This writ petition is disposed of in the aforesaid terms.