
(2012) 07 JH CK 0230

In the Jharkhand High Court

Case No : Writ Petition (S) No. 7086 of 2011

Md. Sarfaraj Ahmad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 419, 420, 467, 468

Citation : (2013) 1 AJR 376 : (2013) 1 JLJR 522

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

Bench : Single Bench

Judgement

D.N. Patel, J.—Party in person has argued out his case and submitted that he has not been allowed to join his duties as Homeguard Volunteer and as per his original seniority, he may be posted with all consequential benefits from 2002 onwards. Party in person has pointed out that he is a permanent Homeguard and he has been working as a Guard Commander, which is equal to Hawaldar and a post of Non-Commissioned Officer. Party in person has also previously preferred some writ petitions and the orders were passed to allow him to join the service as Homeguard. He has, thereafter, worked for few months at Maithon Dam Area and thereafter, he was not allowed to discharge his duties and, therefore, this writ petition has been preferred.

2. Learned counsel for the State has submitted that the respondent-State has filed a detailed counter-affidavit, wherein, at paragraph Nos. 9 to 18 it has been stated that the Home-guard Organization has been created under the statute, namely, Jharkhand Home Guard Act, 2005, which is purely a Volunteer Organization and, as such, the Homeguard Volunteers are not entitled to salary, seniority or promotion at par with the regular Government employees. At the highest, the Home Guard Volunteers are entitled to honorarium, which is fixed on per day basis. It is further submitted by the learned counsel for the State that initially a writ petition bearing W.P. (S) No. 1964 of 2003 was preferred by the petitioner, wherein, the State was directed to accept the joining of the petitioner.

Thereafter, "the petitioner had also filed a contempt petition bearing Cont. Case (Civil) No. 397 of 2009 and thereafter, the respondents allowed the petitioner to join his duties as a Home Guard Volunteer and he worked for four months continuously at DVC Maithon and at BSNL Office, Dhanbad. The petitioner was also paid daily allowance at the rate of Rs. 175/- per day and thereafter, the petitioner was asked to perform further duties, but, he preferred an application dated 16th December, 2011, which is at Annexure-C to the counter-affidavit, wherein, it has been stated that he is mentally and physically not fit to perform his duties and, therefore, he himself has voluntarily left the services. Learned counsel for the State submitted that under the aforesaid circumstances, the writ petition may not be allowed by this Court.

3. Having heard learned counsel for the respondents as also the party in person as a petition and looking to the facts and circumstances of the case, it appears that earlier a writ petition bearing W.P. (S) No. 1964 of 2003 was preferred before this Court, wherein, this Court had passed an order on 15th April, 2009, directing the respondents to accept the joining of the petitioner, if there is no termination or dismissal of the petitioner from service and the respondents were also directed to pay the consequential benefits from the date of his acquittal i.e. from 5th September, 2002 in G.R. Case No. 1568 of 2000, in which the petitioner was prosecuted for the offences punishable under Sections 467, 468, 419 and 420 of the Indian Penal Code. Since the petitioner was acquitted, the aforesaid order was passed and, thereafter, a contempt case bearing Cont. Case (Civil) No. 397 of 2009 was also filed by the present party in person and ultimately, the petitioner was allowed to join his duties as Home Guard Volunteer. Thereafter, it further appears from the facts of the case that the petitioner had worked for two months at DVC, Maithon and for further two months at BSNL Office, Purana Bazar, Dhanbad and was paid daily allowance at the rate of Rs. 175/- per day. It further appears from the facts of the case that thereafter, an application was given by the party in person i.e. the petitioner, which is at Annexure-C to the counter-affidavit dated 16th December, 2011, wherein, it has been stated by the petitioner that he is mentally and physically unfit to perform the duties and, thereafter, he was not allowed to resume the duties. Thus, it appears that there is no laches on the part of the respondents, looking to the application preferred by the party in person to the effect that he was not fit to perform the duties as a Home Guard Volunteer. Moreover, there is no rejoinder affidavit to the counter-affidavit, filed by the respondent-State.

4. Thus, the relief sought for in the memo of petition by the party in person i.e. the petitioner for allowing him to resume the duties, cannot be granted by this Court, while exercising the power under Article 226 of the Constitution of India.

5. Looking to paragraph No. 18 of the counter-affidavit, it appears that the respondents have to get some allotment for the monetary benefits, to be paid to the petitioner.

6. I, therefore, direct the respondents to make payment of the amount, as stated

in paragraph No. 18 of the counter-affidavit, within a period of four weeks from the date of receipt of a copy of the order of this Court. This writ petition is, accordingly, disposed of, in view of the aforesaid directions/observations.