

(1984) 01 PAT CK 0036

In the Patna High Court

Case No : C.W.J.C. No. 2975 of 1979 and No. 1098 of 1980

Mohd. Zafrul Mannan "ZAFAR" and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 13-01-1984

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1985) 33 BLJR 527 : (1984) PLJR 265

Hon'ble Judges : U. Sinha, J; Satya Brata Sanyal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satya Brata Sanyal, J.—The two writ petitions are being disposed of together, because one of the questions involved in both these writ petitions is whether the promotion of the petitioners to the rank of Sub-Inspector of Police was made irregularly and whether their reversion is in accordance with law, The decision of this point will completely dispose of C. W. J. C. No. 1098 of 1980, which is the only point involved in the said writ petition. In C. W. J. C. No. 2979 of 1979, there is, however, an additional point to be decided is as to what is the date of absorption of the petitioner in the rank of writer Constable. The judgment will therefore, govern both the writ petitions.

2. In C.W.J.C. No. 2975 of 1979, the petitioner seeks quashing of annexure-7, which has been issued on 5-9-1969 said to be a wrong entry as to when he became a Writer Constable. He also wants quashing of annexure-14 dated 21-9-1979 by which the Inspector-General of Police cancelled his confirmation as Assistant Sub-Inspector of Police, as well as annexure-15, the order implementing the direction of the Inspector-General of Police.

3. In C. W. J. C. No. 1098 of 1980, the petitioner seeks quashing of annexure-2, which is annexure-14 in C.W.J.C. No. 2975 of 1976, by which the Tirhut Range Order No. 241/78 confirming the petitioner as Assistant Sub* Inspector of Police

was. cancelled with a further direction to revert him from temporary post of Sub-Inspector to unconfirmed Assistant Sub-Inspector. The petitioner further challenges the consequential order of reversion vide snnexure-3 and annexure-4. It is further contended that the rejection of his representation on 11-3-1980 by annexure-8 is also bad.

4. In both the writ petitions, it is stated that the annexures, referred to above, are arbitrary, unconstitutional and violative of the principles of natural justice inasmuch as inspite of the petitioners working as Sub-Inspector, they were reverted to the post of Assistant Sub-Inspector of Police without giving any opportunity to show cause; the action is thus violative of Article 311 of the Constitution of India, if not, at least the principles of natural justice since the said orders have visited the petitioners with civil consequences. I would like to dispose of this point first. Both these writ petitioners were promoted vide annexures-13 and 1 of the respective writ petitions by the Superintendent of Police, Bhojpur. The said orders clearly state that their promotion was purely temporary and they may be reverted at any time and this order was passed on 27-10-J 978. On 21-9-1979 by annexures-14 and 2, respectively, of the two writ petitions, they were intimated that Tirhut Range Order No 241/78 regarding their confirmation as Assistant Sub Inspector of Police is cancelled and all persons promoted to officiate as. Sub Inspector of Police should be reverted to the rank of Assistant Sub-Inspector of Police and no promotion should be given to them till the order is revised. Consequent upon the said signal, the confirmation of the petitioners as Assistant Sub-Inspector was cancelled and they were reverted from the post of Sub-Inspector to that of unconfirmed Assistant Sub-Inspector. This is the bone of contention in both the writ petitions.

5. On behalf of the respondents, the contention raised is that not only the very nature of the order of promotion justifies the order of reversion, but the very promotion, by the Superintendent of Police is unauthorised, illegal and without jurisdiction in view of the provisions contained in the Bihar Police Manual. 1978, Vol. I (hereinafter referred to as "the Manual"), learned Counsel submits that the alleged promotion at least was only a working arrangement by the Superintendent of Police and the petitioners have no right to the post in view of the provisions contained in the Manual and, therefore, they were not entitled to any notice whatsoever for their reversion.

6. According to |the contention of the learned lawyers, Rules 653,659, 660, 661,/729 of the Manual are relevant for the matter in dispute.

7. Rule 653 envisages that in July of a year the Inspector-General will intimate each Deputy Inspector-General, the number of vacancies allotted to each district and the number to be filled by direct recruitment and by promotion of Assistant Sub-Inspector. He will also intimate what limitations, if any, are to be observed as to any particular Section of the community in the matter of appointment. It further requires 50 per cent of the vacancies to be filled by selection from the rank of Assistant Sub-Inspector in accordance with Rule 6 59 (a) of Manual, The

latter rule further requires that those who will fill up the 20 per cent of vacancies must have done a minimum of five years service except those who are exceptionally meritorious. Rule 659 (b) envisages that on receipt of the information, referred to above, the Deputy Inspector-General will intimate the number of vacancies allotted to each district and call for nominations, to reach him on a date to be fixed. By a direct order, the names of the nominees shall be published 14 days before the nominations are forwarded by the district authorities. The Range Deputy Inspector-General's Board shall make selection from those mentioned from districts and shall send names for consideration to Central Selection Board. The Central Selection Board, if necessary, shall interview the candidates to prepare the list of selected candidates of promotion with 22 per cent, in excess to fill up casual vacancies. Assistant Sub-inspectors promoted shall be on probation for twelve months from the date promoting them. Rule 6 confers power only on the Deputy Inspector-General to promote a constable to the rank of Assistant Sub-Inspector. The power even for the said promotion is not vested in the Superintendent of Police.

8. Rules 653 to 660 of the Manual set out the modalities for the appointment of the Assistant Sub-Inspectors as well as their promotions to the rank of Sub-Inspectors and the qualifications which they are required to possess for such promotion. These rules nowhere contemplate and/or confer any power upon the Superintendent of Police to give promotion to the Assistant Sub-Inspector of Police. The entire provisions of the Manual, referred to above, clearly lay down the concept as to how the promotion to the post of Assistant Sub-inspector from the rank of constable and the post of Sub-Inspector from that of the Assistant Sub-Inspector will be made. This being the position in law, in my opinion, the Superintendent of Police did not have any jurisdiction to give promotion to the petitioner to the rank of Sub-Inspector. Further, the orders of promotion contained in annexures 13 and 1, respectively, clearly show that the said promotions were subject to reversion at any time on hearing from the higher authorities. The petitioners, therefore, had notice of the reversion in the very letters of their ad hoc promotions.

9. Our attention has been drawn by the learned Counsel for the petitioners to rule 729 of the Manual in this context. It is submitted that the Superintendent of Police is competent to promote an Assistant Sub-Inspector to the rank of Sub-Inspector. According to the learned Counsel, therefore, there was no lack of power in the Superintendent of Police in promoting these petitioners. This rule only lays down that the Superintendents are competent to promote an Assistant Sub-Inspector in a short leave vacancy to officiate in rank of Sub-Inspector not exceeding four months. This arrangement by the Superintendents also needs an order from the Deputy Inspector-General confirming the said arrangement. In my opinion, Rule 729(3) empowers the Superintendents to give officiating promotion only for a duration of four months to the maximum and that too, has to be confirmed by the Deputy Inspector-General. There is no averment and/or material placed before us to show that the petitioners impugned promotions

were even confirmed by the Deputy Inspector-General. It further appears that they have continued to the arrangement for more than four months when the order reverting them vide annexures 14 and 15 of C. W. J. C. No. 2975 of 1975 and annexures 2 and 3 of C. W. J. C. No. 1098 of 1980 were passed. It is now well settled by the decision reported in the case of Bijoy Kumar Bharti and Ors. v. State of Bihar and Ors. 1983 B.L.J.R. 536 where this Court has held that when an order is passed either appointing or promoting a person in irregular and impermissible manner, the said person shall have no right to the said post nor shall have the person a right to claim that he is entitled to a prior notice before the appointment and/or promotion when this. is cancelled. In this case, the ratio of the Full Bench decision is applicable with full force. The petitioners were promoted by the Superintendent of Police without obtaining an order from the Deputy Inspector General as is required under the law. The Superintendent of Police allowed the petitioners to continue on the promoted post for more than four months for which he has no power. The promotions, as indicated earlier, have to be made only when the Inspector-General in the month of July will intimate the Deputy Inspector-General the number of vacancies allotted to each district and will further indicate in his said letter the limitations for such appointments. 50 per cent of the vacancies allotted to a district can only be filled up by selection from the rank of Assistant Sub-Inspectors. It has not been shown that any of these conditions were fulfilled before the petitioners were promoted by the Superintendent of Police. The promotions of the petitioners, therefore, is wholly beyond the scope of the provisions contained in the Manual. I, therefore, find no merit in the point raised by the learned Counsel for the petitioners that the reversion of the petitioners is unauthorised, illegal and without jurisdiction This completely disposes of C.W.J.C. No. 1098 of 1980.

10. The other grievance of the petitioner in C. W. J. C No. 2975 of 1979 is that his date of absorption as Writer Constable has been wrongly given vide annexure-7. In the said letter, dated 4-9-1979, it is said that the petitioner was selected to undergo training in Assistant Sub-Inspectors" course at Police Training College, Hazaribagh vide District Order 232/59, his departure for Police Training College, Hazaribagh, was soon in the afternoon of 20th January, 1959. Therefore, his seniority in the cadre of the Writer Constable has not been rightly fixed as 20-1-1959, The petitioner has objection to this date i e. the 20th January, 1959, as according to him, his position should have been indicated on the basis that he was absorbed as Writer Constable in 1-8-1955. According to learned Counsel for petitioner, if he is allowed the 1st of August, 1956, as the date of absorption as Writer Constable, he will rank senior to many of the persons, who had superseded and thus it adversely affected the scope of his future promotion. The petitioner, in support of his submission, relies upon annexure 2 of writ petition. On 20th August, 1956, (annexure-2), it appears that the Superintendent of Police, Darbhanga, vide District Order No. 1638/56 transferred the petitioner to District Police with effect from 1st, August, 1956 "in existing vacancy as temporary constable." The Superintendent of Police in the

said District Order further states that the District Police is in great need of matriculate constables for literate duties to meet the requirements, hence the petitioner is transferred to the District Police. The learned Counsel contends that since the petitioner's transfer was for the purpose of rendering literate duty in the District Police, in law, therefore, he was absorbed as Writer Constable from the said date. Annexure-2 is the sheet anchor of the submission of the learned Counsel for the petitioner on this point. On behalf of the State, however, it was contended that there is nothing like absorption to the rank of Writer Constable nor a constable's mere rendering of literate duty makes him a Writer Constable. According to the State counsel, a person becomes Writer Constable by operation of the provisions of Rule 661 (a).

11. Rule 661 (a) sets out two kinds of constables, namely, (i) Writer Constables, and (ii) Ordinary Constables. It further lays down that those constables who are at least matriculates and have qualified at the competitive examination for promotion to the rank of Assistant Sub-Inspector as per Rule 685 shall be known as Writer Constables. How a competitive examination will be held is envisaged by Rule, 685 of the Manual. No sooner a constable passes the qualifying examination a District Order will be entered in the service book of the respective constable by the Superintendent of Police. This has not been provided, under Rule 685 (a) (viii). It is, therefore, crystal clear that the date which is entered in the service book of a constable by the Superintendent of Police passing the qualifying examination as indicated in the Rule 985, only when the constable comes to be known as Writer Constable. There is nothing like absorption as contended by the learned Counsel for the petitioner. In the instant case, as indicated by annexure 7, by District Order No. 232/52 the departure of the petitioner for Police Training College, Hazaribagh, was in the afternoon of the 20th January, 1959. This very annexure further shows that the petitioner was selected to undergo training vide District Order No. 231 of 1959. i.e., sometime in the year 1959. A constable is sent for training in Assistant Sub-Inspectors' course only when he qualifies in the competitive examination. In absence of any material placed before us as to when he qualified at the competitive test as envisaged under Rule 685, it is difficult to hold that he suffered in any manner, because his selection took place in the year 1959 itself, I am, therefore, of the opinion that the contention of the learned Counsel that 1st. of August, 1956, should be allotted in annexure 2 is wholly misconceived. The said letter of the Superintendent of Police does not show that he was at that time qualified at the competitive examination. It is not the case of the petitioner that the concerned Superintendent of Police failed to discharge his duty as required under Rule 65 (a) (viii) by giving a wrong date of his passing the qualifying examination. As stated earlier, the main thrust of the argument of the learned Counsel for the petitioner is that as he was rendering literate duty as a constable and that he was also a matriculate when he entered the service, he should be held to be a Writer Constable. Annexure 2 also shows the fact that the need of his literate duties was felt by the Superintendent of Police, Darbhanga, who transferred him

to District Police. Unfortunately for the petitioner, that does not confer upon him anything muchless the rank of a Writer Constable. The rank of a Writer Constable is obtained by operation of law and not on an act of a superior officer. The petitioner has also not disclosed that by virtue of his being given a wrong date of being Writer Constable, he has been superseded by X, Y, Z. His allegation in this regard is absolutely vague.

12. I am, therefore, of the view that the contention of the petitioner in C. W. J. C. No. 2975 of 1972 that he should have been given I-b-1956 as the date of his becoming a Writer Constable and that allotting him the 20th January, 1959 as the date of a Writer Constable is illegal, unauthorised and without jurisdiction. On the contrary, from the letters placed before us, the allotment of January, 1959 as the date of petitioner's becoming a Writer Constable seems to be legal and justified.

13. In the result, both the writ petitions fail and are hereby dismissed with costs. Hearing fee Rs. 150/- in each case.