
(2015) 07 JH CK 0055
In the Jharkhand High Court
Case No : Writ Petition (S) No. 873 of 2008

Nagendra Prasad Yadav

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 420, 467, 468

Citation : (2015) 07 JH CK 0055

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : S.N. Pathak, Senior Advocate, for the Appellant; Mohan Kumar Dubey, JC to AG, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pramath Patnaik, J.—In the aforesaid writ application the petitioner has inter alia prayed for issuance of writ in the nature of certiorari for quashing the order dated 30.10.07 vide Annexure-4 passed by the respondent No. 4, Commandant, Jharkhand Armed Police-8, wherein the petitioner has been dismissed from services and for issuance of writ in the nature of mandamus commanding the respondents to re-instate the petitioner in service with all back wages and other consequential benefits as per law.

2. Bereft of unnecessary details the facts mentioned in the writ application is that in pursuance to selection by selection board, the petitioner was appointed as a constable on 05.08.2005 vide Annexure-1 to the writ application. After serving the department for more than one and half years, on 05.01.07 a show cause notice was issued to the petitioner wherein charges were framed as to why the petitioner be not terminated from services as per Annexure-2 to the writ application. After receipt of the show cause notice, the petitioner replied to charges framed against him by filing his 1st show cause reply as per Annexure-3 to the writ application. Since the 1st show cause reply submitted by the petitioner was not found satisfactory, departmental proceeding was initiated

against the petitioner in departmental proceeding No. 31/07. During course of inquiry, the inquiry officer recommended for dismissal of the petitioner.

Disciplinary Authority after recommendation of the Inquiry Officer dismissed the petitioner from services vide order dated 30.10.07 which is annexed at Annexure-4 to the writ application.

3. It has been stated in the writ application that the petitioner filled up the form for appointment for the post of constable in Jharkhand in the year 2004, whereas the criminal case against the petitioner of Rohatas bearing No. 99/05 which is confirmed by the Superintendent of Police, Rohatas dated 11.10.2006 vide memo No. 4570 at Annexure-5 to the writ application. And charges of giving false information is falsified by the letter of Superintendent of Police, Rohatas annexed at Annexure-5 to the writ application. That the other charges regarding criminal allegation, it has alleged that the petitioner has got the appointment in Rohatas District by furnishing forged certificate of Home Guard on verification the certificate was found false. Since there are two opinion regarding genuineness of the said certificate- one says that certificate is genuine and other gives negative picture and the photo copy of the certificate has been annexed at Annexure-6 to the writ application. Since the veracity or genuineness of the certificate is pending for consideration before the court, no conclusive inference can be drawn.

It would be apposite to mention here that the petitioner made an application for acceptance of his resignation before the Superintendent of Police, Rohatas and then joined his fresh appointment in Jharkhand, Ranchi in anticipation of acceptance of his resignation as it is evident from the Annexure-7 to the writ application.

4. Being aggrieved by the order of dismissal, the petitioner preferred appeal before the appellate authority, which is stated to be pending before the authority till the filing of the writ application and a photocopy of appeal is annexed at Annexure-8 to the writ application.

5. Per contra, a counter-affidavit has been filed on behalf of the respondent Nos. 3 and 4 controverting the averments made in the writ application. In the counter-affidavit, it has been stated that the petitioner managed to join as constable on 20.11.1999 in Rohatas District on the basis of fake certificate of Home Guard, for which a criminal case was instituted against him in Rohatas Town Police Station, bearing No. 99/05 dated 19.05.2005 under sections 467/468/420 of the Indian Penal Code. After investigation, charge-sheet No. 193/06 dated 13.10.2006 was also submitted against the petitioner. But, the petitioner has not yet filed any show-cause reply and the departmental proceeding in Rohatas District is still pending against him.

6. The petitioner was fully aware of his weaknesses, so in the year 2004 he deliberately applied for the appointment on the same post in the Jharkhand Armed Police (for short JAP)-8. The petitioner qualified in the tests and his name came under zone of appointment. After medical examination, the petitioner

joined on 6.8.2005 as a Constable in JAP-8 with certain conditions laid down in Force Order No. 329 dated 6.8.2005. At the time of joining he also filled the verification roll prepared in Police Manual Form No. 101 on 6.8.2005, but he purposefully did not disclose any information about above cited criminal case pending against him and about previous employment in column 7 and 11 of the verification roll. At the time of joining, he was also an absconder of Rohatas Town P.S. Case No. 99/05 as is evident from the Annexure A series to the counter-affidavit.

7. It has further been submitted in the counter-affidavit that at the time of joining the petitioner filled the verification roll prepared in P.M. Form No. 101 Annexed at Annexure A/3 and put his signature. In column 7 and 11 of the verification roll, the petitioner had to give information about the pending criminal case against him and previous employment respectively, but he simply wrote "Nahi" in both the columns. Thus, he deceived and acted contrary to the rules at the time of joining. Verification roll filled by the petitioner was sent to the district concerned. After verification, the answering respondents came to know about the pending criminal case and previous employment of the petitioner. Thereafter, the departmental proceeding was initiated against the petitioner for concealment of truth.

The reply of the petitioner examined thoroughly and found unsatisfactory and therefore, departmental proceeding was initiated against the petitioner. It has further been stated in the counter-affidavit that the petitioner was an absconder of Rohatas Town P.S. Case No. 99/05. He surrendered before the Judicial Magistrate, Rohatas and was sent to jail and the petitioner was released on bail on 18.11.2006. The petitioner did not give any information to the answering respondents about his judicial custody. On the other hand, while he was in jail, he sent several applications for extension of leave on the ground of Jaundice. On 2.1.2007, he joined the duty and submitted an application narrating the cooked story of Jaundice. In support of his cooked story, he also attached a bunch of 18 photo copies of different documents all related to the treatment of Jaundice, pathological tests, cash memos of medicine both in different dates as evident from the Annexure B to the counter-affidavit.

It has further been submitted in the counter-affidavit that at the time of joining in the Rohatas District, the petitioner had furnished the certificate of Home Guard, bearing H.G. No. 10350. According to Enrolment Register of Palamau Home Guard Office, it is clearly evident that H.G. No. 10350 belongs to one H.G. Ramanuj Tiwary of Meral Police Station, annexed at Annexure C to the counter-affidavit. It has further been submitted in the counter-affidavit that the petitioner was giving opportunity to submit his final show cause, but he has not submitted for the reasons best known to him, a photo copy of the final show-cause notice dated 3.10.2007 is annexed at Annexure-D to the counter-affidavit.

8. So far as the filing of the appeal is concerned, it has been submitted in the counter-affidavit that the appellate authority namely Deputy Inspector General of

Police, JAP, Ranchi vide his Office Memo No. 669 dated 27.3.2008, communicated that application of appeal of the petitioner has not been received in his office as annexed at Annexure-E to the counter-affidavit.

With the aforesaid submissions the prayer has been made in the counter-affidavit for dismissal of the writ application in limine. During pendency of the writ application an interlocutory application filed by the petitioner for quashing of the order dated 20.08.2008 passed by the appellate authority vide Annexure-1 to the Interlocutory Application.

9. Heard Mr. S.N. Pathak learned senior counsel for the petitioner and Mr. Mohan Kumar Dubey, learned J.C. II to A.G. for the respondents.

10. Learned senior counsel appearing on behalf of the petitioner during course of arguments has vehemently submitted that the impugned order passed by the disciplinary authority as well as by the appellate authority is illegal, arbitrary and against the provisions of law. Consequently, learned senior counsel submitted that the information supplied has vitiated the entire departmental proceeding causing prejudice as well as rendering the impugned order of punishment nugatory.

11. Learned senior counsel for the petitioner submitted that before infliction of major punishment the show cause ought to have been given whereby the principal of natural justice have been given a clear go by. Learned senior counsel further submitted that at the time of filling up of the form, there is no proceeding against the petitioner and the disciplinary authority has gone beyond the scope and subject matter of the charge which has caused grave miscarriage of justice.

12. In support of his contention, learned senior counsel for petitioner has referred the decision rendered in LPA No. 257 of 2013 in Harkhen Kumar Singh Vs. State of Jharkhand and Others(2015) 2 AJR 200 : (2015) 146 FLR 122 : (2015) 2 JLJR 65 wherein this Court relying on decision in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., AIR 1994 SC 1074 : (1993) 6 JT 1 : (1994) 1 LLJ 162 : (1993) 3 SCALE 952 : (1993) 4 SCC 727 : (1993) 2 SCR 576 Supp : (1993) 3 SLJ 193 , has been pleased to hold that non furnishing of show-cause notice before imposing compulsory retirement has caused prejudice to petitioner and also amounts to breach of principal of natural justice, accordingly the LPA has been allowed.

Learned senior counsel has further referred to decision rendered by the Hon''ble Apex Court in Commr. of Police and Others Vs. Sandeep Kumar, (2011) 129 FLR 491 : (2011) 3 JT 484 : (2011) 3 SCALE 606 : (2011) 4 SCC 644 : (2011) 2 SCC(Cri) 426 : (2011) 1 SCC(L&S) 734 : (2011) 3 SCR 964 : (2011) AIRSCW 499 : (2011) 4 Supreme 262 wherein the Hon''ble Apex Court has been pleased to opine which is extracted below:

"11. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter.

When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

12. In this connection, we may refer to the character "Jean Valjean" in Victor Hugo's novel "Les Miserables", in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life.

13. The modern approach should be to reform a person instead of branding him as a criminal all his life."

Learned senior counsel has further referred to decision rendered by Hon'ble Apex Court in Ram Kumar Vs. State of U.P. and Others, AIR 2011 SC 2903 : (2011) 6 CTC 440 : (2011) 131 FLR 17 : (2011) 9 JT 200 : (2011) 9 SCALE 75 : (2011) 10 SCR 506 : (2011) AIRSCW 4807 : (2011) 6 Supreme 23 wherein the Hon'ble Apex Court has been pleased to allow the petition with direction to take the appointee back in service within a period of two months with back wages for the period he has remained out of service.

13. To the impassioned submission of the learned senior counsel for the petitioner learned counsel for the respondents has strenuously urged that the petitioner is guilty for deliberate concealment of information about the criminal cases pending against him and also about the provisions made in columns 7 and 11 of the verification roll. Since the time of joining he was an absconder of Rohatas P.S. Case No. 99/05 because of the non disclosure of relevant information or deliberate concealment of truth, the departmental proceeding was initiated against him. The petitioner is also guilty of non disclosure of the fact that he was in judicial custody.

14. After giving my anxious consideration to the documents on record, and to the rivalised submissions of the learned counsel for the parties, the impugned order of punishment at Annexure-4 to the writ application and the order of appellate authority dated 20.08.2008 do not call for any interference due to the following reasons:--

"(i) That the charges which have been levelled against the petitioner appear to be very grave and the explanation submitted by the petitioner does not appear to be satisfactory. Since the petitioner is guilty of concealment of information about his previous criminal case, it amounts to grave misconduct. Particularly in a disciplined service like police.

(ii) In the instant case although the learned senior counsel of the petitioner has tried to justify that the inquiry report has not been supplied before infliction of punishment, but he failed to demonstrate as to what prejudice has been caused

for non supply of the inquiry report thereby vitiating the disciplinary proceeding.

(iii) Taking into consideration the gravity of charges and the findings of Enquiry Officer the major punishment inflicted vide Annexure-4 being affirmed by the appellate authority does not appear to be harsh or excessive or disproportionate so as to be hit by the principle of doctrine of proportionality.

(iv) As a logical sequitur of the facts as stated above in the foregoing paragraphs, the impugned order of punishment of dismissal vide Annexure-4 to the writ application dated 30.10.07 and the order of the appellate authority dated 20.08.2008 confirming the order of the disciplinary authority do not warrant any interference of this court."

15. Accordingly, the writ petition is dismissed.