
(2015) 03 JH CK 0082

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5259 of 2010

Pawan Kumar Mandal

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : (2015) 4 AJR 742 : (2015) 2 JLJR 440

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : Manoj Tandon, for the Appellant; Manoj Kumar Choubey, J.C. to S.C. III, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Pramath Patnaik, J.

1. In the accompanied writ application, the petitioner has, inter alia, prayed for quashing/setting aside the order passed by respondent No. 2-Deputy Commissioner, Dumka as contained in Memo No. 442/Go. dated 25.02.2010 whereby the services of the petitioner as "Dalpati" has been terminated.

2. The factual matrix, bereft of unnecessary details, in a nutshell is that the petitioner was initially appointed as "Dalpati" of village - Gopikander in Gopikander block in the district of Dumka on 30.11.1996 and the said appointment of the petitioner was confirmed/approved in terms of Rule 4(ii) of the Gram Raksha Dal Rules, 1949 by order dated 03.11.1997, under Annexure 1 to the writ application. It is stated that by Memo No. 1982 dated 06.11.2009 (Annexure 2) a show cause notice was issued to the petitioner, alleging manipulation made by the petitioner in respect of his date of birth, to which the petitioner replied on 04.12.2009 vide Annexure 3 to the writ application. Thereafter, vide Memo No. 442/Go dated 25.02.2010, under Annexure 4 to the writ application, the petitioner's services has been terminated.

3. Being aggrieved by the impugned order of termination, the petitioner has approached this Court under Article 226 of the Constitution of India for redressal of his grievance.

4. Heard Mr. Manoj Tandon, learned counsel for the petitioner and Mr. Manoj Kumar Choubey, J.C. to S.C. Ill for the respondents-State.

5. In course of argument, learned counsel for the petitioner has referred to Rule 6 (Gha) of Gram Raksha Dal Rules, 2001 (earlier known as Gram Raksha Dal Rules, 1949) and submitted that as per the said Rule, on the date of appointment of Dalpati, the age of selected Dalpati should be within age group of 21 to 30 years. It has been submitted that the date of birth of the petitioner is 07.08.1975 as per which the petitioner was aged about 21 years, 04 months and 22 days in view of his appointment dated 30.11.1996. Learned counsel for the petitioner further submitted that findings on the basis of which the services of the petitioner has been terminated is totally perverse and hence, the impugned order of termination vide Annexure 4 deserves to be quashed. Learned counsel for the petitioner further referred Rule 19 of the Gram Raksha Dal Rules, 2001, which deals with the procedure of termination of services of "Dalpati". It is submitted that as per Rule 6(1) of the said Rules, the Selection Committee, under the Chairmanship of District Panchayat Raj Officer, is the competent authority to appoint "Dalpati" and Rule 19(2) of the said Rules envisages that the "Dalpati" can be terminated by the same authority i.e. District Panchayat Raj Officer. But in the instant case, on perusal of Annexure 4, it is crystal clear that termination order has been issued by the Deputy Commissioner, who is not the competent authority, therefore, Rule 19(2) of the Rules has been given complete go by rendering the impugned order at Annexure 4 illegal and non est in the eye of law. Learned counsel for the petitioner has further submitted that though the so-called enquiry was made on 23.09.2009 but the show cause notice was issued to the petitioner on 06.11.2009. Therefore, there has been procedural irregularity in conclusion of the disciplinary proceeding. Learned counsel for the petitioner further submitted that termination vide Annexure 4 suffers from gross violation of principles of natural justice as the second show cause notice was not issued prior to termination order and impugned order of termination has been issued by the authority not competent to pass the order of termination as per Rule 19(2) of the Rules. It has further been submitted that the impugned order of termination under Annexure 4 has been passed in violation of Article 311(2) of the Constitution of India.

6. Per contra, learned counsel for the respondents has filed counter affidavit repelling the averments made in the writ application. Learned counsel for the respondents has submitted that for the matter of tampering of date of birth, educational qualification and training made in the office record of District Panchayat Raj Officer, Dumka an enquiry was conducted under the Chairmanship of Additional Collector, Dumka and pursuant thereto enquiry report was submitted by the Committee vide letter dated 23.09.2009. It has further been

submitted that in the record, the date of birth has been shown as 8.07.1970 in the draft published seniority list of Dalpati for the year 2009 whereas in the final published list, the date of birth was shown as 05.07.1970 but by making overwriting in Form III, his date of birth was made as 08.07.1975 and in Form I as 05.07.1975 whereas in the original appointment record, his date of birth is 05.07.1970. However, by producing his matriculation certificate petitioner has claimed his date of birth as 08.07.1975 and the said matter of tampering of office record was made with the connivance of one office staff, namely, Sri Choubey. It has further been stated in the counter affidavit that on the basis of enquiry report, the petitioner was issued show cause notice by the Deputy Commissioner, Dumka vide Memo dated 06.11.2009 and the petitioner was personally heard on 11.12.2009. It has been further submitted that if it is presumed that the date of birth of the petitioner is 08.07.1975 then his appointment on the post of Dalpati becomes illegal, therefore, services of the petitioner has been terminated by Deputy Commissioner, Dumka vide order dated 25.02.2010, under Annexure A to the counter affidavit.

7. It has further been submitted that in pursuance to order dated 14.11.2014 passed by this Court, the respondents have filed Counter affidavit annexing photocopy of the letter of Block Development Officer, Gopikandar dated 27.01.1997, minutes of report of Gram Panchayat Executive Committee, matriculation certificate issued by Bihar Vidyalaya Pariksha Samittee and approval order dated 03.11.1997, which has been annexed as Annexure B series. It has been submitted that petitioner with malafide and oblique intention on 23.06.2009 submitted an application along with matriculation certificate claiming his date of birth as 08.07.1975, as per Annexure C series to the counter affidavit. It has further been contended that after hearing and examining the papers, it was held that the petitioner was involved in manipulating and tampering the office record of Dalpati appointment of District Panchayat Raj Officer, Dumka. If it is presumed that the claim of the writ petitioner that the date of birth is 08.07.1975 and his date of appointment by the Executive Committee is 30.11.1990, then it is quite evident that the writ petitioner was appointed as Dalpati before attaining 21 years of age. Therefore, the appointment automatically becomes illegal.

8. Learned counsel for the petitioner by referring rejoinder to the counter affidavit filed by the respondents has submitted that so-called enquiry report, as referred to in the counter affidavit, was never supplied to the petitioner causing gross prejudices. It has been further submitted in the rejoinder affidavit that assuming for the sake of argument that 08.07.1970 is the date of birth, as stated in the so-called enquiry report dated 23.09.2009, the age of petitioner as on 30.11.1996, i.e. the date of appointment, would be 26 years 4 months and 22 days, therefore, in between 21 to 30 years and therefore, the appointment of the petitioner cannot be said to be illegal. It has further been submitted that there are four dates said to be date of birth of the petitioner, namely, 08.07.1970; 05.07.1970; 08.07.1975 and 05.07.1975 and if any of the four dates are taken

to be correct, the age of the petitioner is in between 21 years to 30 years as on the date of appointment. Learned counsel for the petitioner by referring rejoinder has submitted that the enquiry report dated 23.06.2009 was never supplied to the petitioner and the inquiry was conducted behind the back of the petitioner, which is apparent from the fact that this inquiry report is dated 23.09.2009 and the show cause itself was asked from the petitioner is dated 06.11.2009 i.e. after more than 1 1/2 months from the date of enquiry report. Therefore, the so-called enquiry has been conducted in perfunctory manner and the entire disciplinary proceeding has been vitiated due to procedural irregularity and non-compliance of the principles of natural justice being violative of Article 311(2) of the Constitution of India.

9. After giving my anxious consideration to the facts available on record and rivalised submissions, the impugned order of termination dated 25.02.2010 at Annexure 4 is not legally sustainable for the following reasons:

(i). That the impugned order of termination under Annexure 4 has been passed without following the principles of natural justice as disclosed from the counter affidavit, the so-called enquiry was held on 23.09.2009 but the copy of the enquiry report was never supplied to the petitioner thereby vitiating the proceeding and causing prejudice to the petitioner.

(ii). The show cause notice was issued to the petitioner on 6.11.2009 and the petitioner was not afforded with the reasonable opportunity nor was supplied with the imputation of charge to defend his case. Therefore, there has been gross procedural irregularity from the very inception of initiation of show cause notice to the culmination of the proceeding.

(iii). As per Rule 6 (Gha), the District Panchayat Raj Officer is the appointing authority and as per Rule 19(2), the same officer, i.e. District Panchayat Raj Officer is competent authority to terminate the petitioner from service that too after following the procedure prescribed in Rule 19. But in the instant case, the Deputy Commissioner, Dumka in violation of Rule 19(2) of the said Rules passed the impugned order of termination, which is non est in the eye of law.

(iv). Furthermore, the petitioner, who has rendered about 13 years of services, was entitled to be afforded with the adequate opportunity to defend his case in the proceeding. But in the instant case, neither any second show cause was issued to the petitioner nor copy of enquiry report, the basis for initiation of proceeding, was supplied to the petitioner. The principles of audi alteram partem is sine qua non of a disciplinary proceeding but the same has been given a complete go by. Moreover, the impugned order of termination dated 25.02.2010 under Annexure 4 is hit by infraction of Article 311(2) of the Constitution of India.

10. On cumulative effects of the aforesaid facts and reasons, the impugned order at Annexure 4 issued vide Memo No. 442/Go dated 25.02.2010 is hereby quashed and the respondents are directed to reinstate the petitioner in service forthwith and the petitioner will be entitled to the benefit of continuity in service.

11. With the aforesaid observations and directions, this writ petition is disposed of. However, disposal of this writ petition shall not preclude the respondents to proceed departmentally against the petitioner, if so advised, strictly in accordance with rules/regulations/Government circulars etc. by adhering to the principles of natural justice.