
(2015) 07 JH CK 0025
In the Jharkhand High Court
Case No : W.P. (S) No. 5852 of 2009

Ramadhin Pandey and Others	Vs	APPELLANT
State of Jharkhand and Others		RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

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

Citation : (2015) 3 JLJR 469

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Mahesh Tewari, Rahul Dev and Bhaskar Trivedi, for the Appellant;
Rakhi Rani, for the Respondent

Final Decision : Allowed

Judgement

Pramath Patnaik, J.—In the accompanied writ application, the petitioners have inter alia prayed for quashing the letter dated 15.7.2009 (Annexure-3) passed by the respondent No. 4, District Commandant, Homeguard, at Dhanbad whereby the services of the petitioners have been terminated and further prayer is for direction to the respondents for reinstate them in their former services. The factual matrix of the case in a nutshell is that the petitioners were appointed as Constables of the Homeguard on different dates between the year 1979 to 1989 and have rendered their services without any blemishes. In pursuance to the command the petitioners were deputed to the office of the Manager, B.S.N.L., Purana Bazar, for the security of the office vide Command dated 8.5.2009, they reported in that office and started discharging their duty in accordance with the requirement of the Manager, B.S.N.L., as evident from Annexure-1 to the writ application. In course of duties, it appears from the impugned order that due to death of one businessman namely, Bihari Lal Choudhary allegations have been made for dereliction of duty and the services of the petitioners have been terminated vide order dated 15.7.2009 as evident from Annexure-3 to the writ application. Being aggrieved by the impugned order (Annexure-3), the

petitioners submitted representation vide Annexure-4 to the writ application, ventilations (sic) their grievances.

2. Left with no alternative, efficacious and speedy remedy, the petitioners have filed this writ application invoking extraordinary jurisdiction under Article 226 of the Constitution of India for redressal of their grievances.

3. Per contra a counter-affidavit has been filed by the respondents repelling the contentions made in the writ application. In the counter-affidavit, it has been submitted that the petitioners were deputed with BSNL Office, Purana Bazar on 24.6.2009 and at around 10:30 P.M. one Behari Lal Choudhary was murdered by the miscreants in front of BSNL Office and the family members of Behari Lal Choudhary kept on shouting but the petitioners did not take any preventive measures, nor did they come out from BSNL premises, showing gross negligence in their duty and also their cowardice behavior. It has been further stated that Sergeant Major enquired from the petitioners on aforesaid issues but they were giving false excuses and accordingly, Sergeant Major gave a report to the respondents dated 26.6.2009 and the respondent recommended to respondent No. 2 for removing the petitioners from services and thereafter respondent No. 4 passed DO No. 387/09 dated 14.7.2009. On the recommendation of the respondent No. 4, the respondent No. 2 removed the petitioners from enrollment, in accordance with Section 9(b) and (c) of the Jharkhand Home Guards Act, 2005. Accordingly, prayer has been made in the counter-affidavit for dismissal of writ application.

4. Learned counsel for the petitioners has argued that the impugned order is not legally sustainable because adequate opportunity to the petitioners prior to termination has not been afforded rendering the impugned order unsustainable in the eye of law, since the impugned order smacks of stigma the principles of natural justice ought to have been followed prior to inflicting major punishment like dismissal from services. That apart the petitioners have been subjected to excessive or disproportionate, punishment, keeping in view the gravity of the charges. The impugned order of punishment would prick the conscience of the Court. Accordingly, the impugned order under Annexure-3 being legally unsustainable, is liable to be quashed.

5. On the contrary, learned counsel for the respondent has referred to the provision of Section 9(b) and (c) of Jharkhand Home Guards Act, 2005 reads as follows for better appreciation:--

Section 9(b). Without sufficient excuse neglects or refuses to obey any lawful order or direction given to him for the performance of his duties or fails to discharge his function as a member of the Home Guards while on duty, or

(c) deserts his duty, or

In accordance with aforesaid provision, the services of the petitioners have been terminated and there is no illegality of the order passed by the respondents

which appears to be justified in view of the gross negligence and dereliction of duty on the part of the petitioners.

6. Heard Mr. Tewari, learned counsel for the petitioners, Mrs. Rakhi Rani, J.C. to Sr. S.C.-II and Mr. B.K. Pathak, learned counsel for the respondent No. 5, B.S.N.L. Perused the documents on record.

7. After giving my anxious consideration to the pleadings and to the rival submissions the impugned order of punishment Annexure-3 so far as the petitioners are concerned is not legally sustainable due to the following facts and reasons:--

(i) Admittedly, no departmental proceeding has been initiated while imposing the major punishment of termination. Therefore, on that score, the impugned order of termination under Annexure-3 is not sustainable.

(ii) During course of argument, learned counsel for the petitioners has brought to notice of this Court order passed in W.P.(S) No. 504 of 2010 wherein this Court vide order dated 17.2.2010 has been pleased to stay the operation of the termination order dated 15.7.2009. The impugned order of termination also arises from the same termination order. Hence, on the doctrine of priority of treatment, the petitioner ought to be extended with the benefit of continuity in service or reinstatement in services.

(iii) On perusal of the impugned order Annexure-3 it appears no opportunity of show-cause or inquiry having been conducted prior to termination of service resulting the gross violation of principles of natural justice. Moreover, the order passed is stigmatic. Accordingly, impugned order under Annexure-3 is not legally sustainable being violative of Article 311(2) of Constitution of India.

8. On cumulative effect of the facts, reasons and as logical sequitur to the discussion made in the foregoing paragraphs the impugned order of termination vide Annexure-3 to the writ petition is hereby quashed and the respondents are directed to reinstate the petitioners in services forthwith. However, the respondents are at liberty to initiate proceeding afresh, if so legally advised in strict adherence to the principles of natural justice and in consonance with the relevant provisions of Jharkhand Home Guards Act, 2005. With the aforesaid direction, the writ petition is allowed and disposed of.