
(2016) 08 JH CK 0133

In the Jharkhand High Court

Case No : W.P (S) Nos. 1562, 867, 882, 891, 893, 902, 908, 988, 996, 1031, 1553, 1565, 1848, 3340, 3383, 3349, with 3381 of 2014

Rizwan Ahmad

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 12-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 JBCJ 164 : (2017) 1 JCR 376

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : M/s. Dr. S. N. Pathak (Sr. Advocate), Diwakar Upadhyay & Satish Kumar, Advocates, for the Petitioner (In W.P.S. Nos. 867, 882, 884, 891, 893, 902, 908, 988, 996 & 1031 of 2014); Mr. Rajiv Ranjan, Advocate, for the Petitioner (In W.P.S. No.1848 of 2014); M

Final Decision : Disposed Off

Judgement

Pramath Patnaik, J.—These batch of writ petitions, on the similitude of the issue, have been preferred by the petitioners, who have, inter alia, prayed for issuance of appropriate writ in the nature of certiorari for quashing the revised result of different posts pursuant to the advertisement dated 08.08.2009 and for issuance of appropriate writ in the nature of certiorari for quashing the orders passed by the respondents pertaining to removal from their services in purported exercise of power under Rule 668 (a) of the Jharkhand Police Manual and further prayer for issuance of appropriate writ in the nature of mandamus commanding upon the respondents to reinstate the petitioner after quashing the order of removal along with the consequential service benefits.

2. Sans details, the factual exposition, as delineated in the aforesaid writ applications is that the advertisement has been published in the local newspaper inviting applications from eligible candidates bearing Advertisement No. 01/2008 for appointment of Sub-Inspector/Sergeant and Company Commander. Clause 7

of the Advertisement stipulates that the candidates opting for Sub-Inspector/Sergeant and Company Commander has to indicate their preference. Clause 9 lays down the physical eligibility criteria for the posts, whereby for the post of S.I. and Company Commandant, the physical eligibility criteria was the same while the physical eligibility criteria for Sergeant was more rigorous. Clause 13 of the Advertisement stipulates that inter se seniority of two candidates having scored same marks shall be decided on the basis of their performance in written examination. The petitioners have been issued admit card in which their preference have been mentioned for the post of Sub-Inspector, Company Commander and Sergeant. Petitioners as per their preference and on the basis of their performances were selected and appointed in different category pursuant to the Advertisement. In pursuance to selection, the petitioners have been offered the appointments in different posts. It has been stipulated in the appointment letter that the petitioners will be sent for training for one year, which may be extended or curtailed. It has further been submitted that the petitioners shall be on probation for two years and if their services are found unsatisfactory, they would be removed. It has further been submitted in the letter of appointment that if the petitioners were found engaged in any misconduct, their services can be terminated without any show cause notice and similarly, if they have furnished any wrong or misleading information, then also, their services shall be terminated. After the appointment of the petitioners on different posts, an enquiry has been conducted in relation to selection of the petitioners on the ground that the erstwhile Chairman of the Selection Committee, headed by the Director General of Police, had made selections on the basis of preference and not on merit. Thereafter, a decision has been taken to rectify the earlier select list and to revise the result. In view of the revision of the result, a direction has been issued to remove the petitioners from their services under different categories under Rule 668 of the Police Manual and to ensure compliance of the same. After publication of the revised result and decision to remove the petitioners, a show cause notice was served on the petitioners. The petitioners have been removed from their services in purported exercise of power under Rule 668 (Ka) of the Police Manual. In pursuance to the decision of the State Government, a Committee was constituted, headed by the Director General of Police to go into the entire aspect of the matter and come to the finding of any illegality or irregularity committed in the preparation of the merit list and also come out with a revised merit list. Since the Committee found certain lacuna in the preparation of the previous merit list by virtue of the revised merit list, 42 candidates including petitioners have been recommended to be removed from services and in their places, 43 persons including the respondents have been recommended to be appointed. The said recommendation has been carried out and the services of 42 such appointees have been terminated and consequently 43 persons have been appointed as per the revised merit list.

Being aggrieved and dissatisfied with the impugned order of termination, left with no other efficacious, alternative and speedy remedy, the petitioners have

preferred these writ applications invoking the extraordinary jurisdiction under article 226 of the Constitution of India for redressal of their grievances.

3. Per contra, a counter affidavit has been filed on behalf of the respondents, controverting the averments made in the writ applications.

In the counter affidavit, it has been inter alia, stated that as per the Advertisement dated 08.08.2009, many candidates applied for the posts of Sub-Inspector, Company Commander and Sergeants. The eligible candidates appeared in the written and physical test. Accordingly, a merit list was prepared. Some of the candidates, who were not successful in the said selection, approached this Court in W.P. (S) No. 5609 of 2012 and batch of cases, alleging certain illegality and irregularity in the selection process and the merit list was not prepared in a proper manner due to lack of fairness, transparency and credibility. It was alleged in the said writ applications that the less meritorious persons have been given appointments while persons with higher marks have been left out. During pendency of the said writ applications, the State Government constituted a Committee headed by the Director General of Police to go into the entire aspect of the matter and come to the finding of any illegality and irregularity committed in the preparation of the merit list and also come out with a revised merit list. The Committee found certain lacuna in the preparation of the previous merit list. The enquiry was only regarding the selection process adopted by the authorities. The Report submitted by the Committee, which was duly approved by the Director General of Police, Jharkhand, pointed out certain irregularities, whereby it came to light that the selection had been done solely on the basis of preference given to the respective candidates. The Director General of Police, Jharkhand, in view of the report, recommended to the Government a fresh selection list based upon the merit-cum-preference. Thereafter, the Home Department, Government of Jharkhand vide letter dated 25.10.2013 has informed the Director General of Police, Jharkhand, about the State Government's decision regarding the said selection process. In the letter dated 25.10.2013, it has been observed that the selections were made by overlooking the set rules and procedures and selections were made on the basis of preference and not on the basis of merit. Selection Boards meeting had not been convened before publishing the final result and therefore, fresh selection was to be made on the basis of proper selection process. A revised merit list has been prepared by the fresh selection Board vide its meeting dated 23.12.2013, the following points were decided

(a) Candidate to be selected on the basis of merit-cum-preference.

(b) candidates should be appointed on the post as per the marks obtained by them in the selection list subject to passing of the physical test.

(c) Candidates who have not given their preference in their application form but find place in the merit list, also to be included in the merit list and appointed as per the marks obtained by them.

(d) Candidates securing equal marks than the candidates who have secured more marks in the written test, shall be placed above the others in the merit list.

As per the above conditions of the preparation of the merit list, some candidates were appointed erroneously in different categories. Therefore, vide impugned order, the candidates, who had been selected on the basis of the erroneous selection process, in the revised merit list, they were not within the zone of consideration and after being given show cause notice and their replies being not found satisfactory, their services were terminated in terms of Rule 668 (ka) of the Police Manual.

4. In view of the observations made by this Court in the order dated 11.12.2015, State counsel was asked to file a supplementary counter affidavit, stating therein, the position of the vacancies available and in response thereto, supplementary counter affidavit has been filed by the State, stating therein, that there was no vacancy for the said period.

5. On the conspectus of the pleadings of the respective parties, broadly the following issues emerge for consideration and adjudication by this Court : -

(i) Whether the action on the part of the respondents in terminating the services of the petitioners invoking Rule 668 (a) of the Jharkhand Police Manual is justified?

(ii) Whether by giving show cause notice to the petitioners and after consideration of the reply to the show cause before infliction of punishment of termination from services, the respondents have complied the principles of natural justice ?

(iii) Whether the respondents are well within its power to rectify the bona fide error committed during the process of selection at any stage after such error has been brought to their notice in view of the ratio laid down by the Hon"ble Supreme Court in the case of *Vikas Pratap Singh & Ors. v. State of Chhattisgarh & Others*, as decided on 09.07.2013 ?

(iv) Whether the action of the respondents in taking shelter of Rule 668 (a) of the Jharkhand Police Manual while issuing the order of termination which provides that in case when the persons have not fulfilled their conditions of appointment, can be terminated without following the formality as laid down in Rule 828?

(v) Whether the provisions of Rule 668 (a) of the Jharkhand Police Manual is attractable for terminating the services of the petitioners with stigma and without any proceeding?

(vi) Whether merit-cum-preference is the mode of selection, then the private respondents, who have not applied for the different posts can be appointed in the posts, without the option being exercised? and

(vii) Whether the private respondents by not exercising the preference, have

waived and relinquished their rights for consideration?

6. Learned senior counsel appearing for the petitioners in W.P.(S) Nos. 867 of 2014, 882 of 2014, 884 of 2014, 891 of 2014, 893 of 2014, 902 of 2014, 908 of 2014, 988 of 2014, 996 of 2014 and W.P.(S) No. 1031 of 2014 has submitted that the services of the petitioners have been terminated under Rule 668 (a) of the Police Manual on the ground of being appointed illegally. This provision of the Police Manual is not attracted, as such, the termination is not legally sustainable. In this respect, learned senior counsel for the petitioners has referred to and relied upon the decision rendered in the case of *Lakhan Singh Munda v. State of Jharkhand & Anr.*, reported in 2010 (1) JLJR 316 and in the case of *Cosmas Bhengra and Reena Kumari v. State of Jharkhand & Ors.*, reported in 2005 (3) JCR 271 (Jhr). The second submission of the learned senior counsel for the petitioners is that the confirmation of permanent status on an employee guarantees security of tenure of services and such permanent services cannot be terminated abruptly and arbitrarily by giving a simple notice. In this respect, he has referred to the decision in the case of *Uptron India Ltd. v. Shammi Bhan & Anr.*, reported in (1998) 6 SCC 538, in the case of *Basudeo Tiwary v. Sido Kanhu University and others*, reported in (1998) 8 SCC 194, as well as in the case of *DTC v. D.T.C. Mazdoor Congress & Ors.*, reported in (1991) 1 (Supp) SCC 600. The third submission of the learned senior counsel is that once the respondents-authorities have taken recourse of re-evaluation of enquiry into the alleged irregularities and that too ex parte and on the basis of the enquiry, they came to the conclusion that the appointment was illegal, the order of termination of services of the petitioners become stigmatic and, as such, the termination order is illegal. In this respect, he has referred to the decisions rendered in the case of *State Bank of India and ors. v. Palak Modi and another*, reported in (2013) 3 SCC 607, *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences Calcutta & Ors.*, (1999) 3 SCC 60, in the case of *Union of India and others v. Mahaveer C. Singhvi*, reported in (2010) 8 SCC 220 Para 45, in the case of *V. P. Ahuja v. State of Punjab and others*, reported in (2000) 3 SCC 239. The next submission of the learned senior counsel is that though the power of Review of the order of DGP by another DGP does not lie, neither there was order of this Hon"ble Court but of their own, the respondents-authorities have reviewed the order. The next submission of the learned senior counsel is that the Rules and mode of appointment cannot be changed midway. In this respect, learned Senior counsel for the petitioners has referred to the decisions reported in (2001) 10 SCC 51, (1990) 1 SCC 411 and as well as the decisions rendered in the case of *Vikas Pratap Singh & Ors. v. State of Chhattisgarh & Ors.*, reported in (2013) 14 SCC 494 as well as the decision in the case of *Amlam Jyoti Borooah v. State of Assam & Ors.*, reported in (2009) 3 SCC 227, thereby the learned senior counsel has further submitted that the petitioners did not commit any wrong neither they are responsible for any act on the part of the respondents, as huge amount has been spent upon them and their training, it will amount huge loss to the State Exchequer, if they are not taken back in service and as there are vacancies, their

cases should be considered in the light of the fact that since the case of one of the petitioners, Vinod Kujur (W.P. (S) No. 998 of 2014) disposed of on 03.12.2015, stands on the same footing, has been taken back in service, the petitioners are entitled to the same relief, as has been extended to Vinod Kujur.

7. Learned counsel appearing for the petitioners in W.P.(S) Nos. 1553 of 2014, 1562 of 2014 , 1565 of 2014, 1676 of 2014 and W.P.(S) No. 1567 of 2014 submits that there has to be a harmonious interpretation of the clauses of the Advertisement to arrive at just finding. Clause 13 of the Advertisement cannot be read in isolation vis-a-vis Clause No. 7, because advertisement is an offer. Learned counsel for the petitioner submits that once an option is not exercised, it results in relinquishment of rights. Learned counsel for the petitioner submits that the order of removal passed under Rule 668 (a) is not at all sustainable in the eyes of law, particularly when the petitioners have fulfilled all the conditions of appointment as per the advertisement and has been declared successful and even completed the training successfully, the action of the respondents in terminating the services of the petitioners is arbitrary, illegal and bad in the eyes of law. Learned counsel for the petitioner further submits that the order of removal, passed by the respondents without adhering to the mandate of Articles 14 and 16 of the Constitution of India is not legally sustainable. Learned counsel for the petitioner further submits that the respondents-authorities have altered the criteria for selection in the midway or after the selection process has commenced, which is also not permissible. Learned counsel for the petitioner further submits that the show cause notice, which has been issued by the respondents is a mere formality eye-wash, ruse and subterfuge but the action on the part of the respondents is in complete violation of Articles 14 and 16 of the Constitution of India.

8. Learned senior counsel appearing for the petitioners in W.P (S) Nos.3340 of 2014, 3349 of 2014, 3378 of 2014, 3381 of 2014 and W.P. (S) No. 3383 of 2014 submits that the order of termination of services of the petitioners under Rule 668 (a) of the Police Manual is not legally sustainable since the same has been passed without adhering to the mandate of Articles 14 and 16 of the Constitution of India. Learned senior counsel for the petitioners further submits that the order is not at all sustainable in view of the decision of the Hon"ble Apex Court rendered in the case of Union of India and others v. Mahaveer C. Singhvi, reported in (2010) 8 SCC 220. Learned senior counsel for the petitioners has further submitted that the criteria of selection has been altered in the middle which is not permissible in the eyes of law.

9. Learned senior counsel for the petitioner in W.P.S. No. 1848 of 2014 submits that in absence of any detailed enquiry report, which proves misconduct and indiscipline, no order under Rule 668 (Ka) of the Police Manual could have been passed. Learned senior counsel for the petitioners further submits that the petitioners have been terminated from their services in a summary manner without following the provisions of law being violative of Articles 14 and 16 of the

Constitution of India.

10. A battery of lawyers have appeared on behalf of the intervenors. Learned counsel for the intervenors submit that the intervenors having secured more marks than the writ petitioners, are more suitable candidates for being appointed in accordance with the terms and conditions of the advertisement and the rules and regulations. Learned counsel for the intervenors have pointed out that in clause 12 of the appointment letters of the writ petitioners, it has been specifically mentioned that their appointment would depend upon the outcome of the writ petition. It has been vociferously submitted by the intervenors that during the pendency of the writ petition, pursuant to an enquiry, which was directed towards the entire selection process, revised merit list was prepared and the writ petitioners were ousted from the merit list. Learned counsels for the intervenors submit that if the writ applications stand allowed, the cases of the intervenors ought to be considered for appointment along with the writ petitioners on the ground of equity and for preventing discrimination.

11. Learned Senior Standing Counsel-I appearing for the Respondent-State has reiterated the submissions made in the counter affidavit. The learned counsel for the State assiduously submits that the action of the respondents in terminating the services of the petitioners after preparation of the revised merit list, is justified since the petitioners' name did not find place, because of securing less marks, compared to the private respondents, the action of the respondents cannot be faulted on the ground that the issuance of show cause, is a mere formality, an eye-wash or a camouflage or ruse, because without adhering to Rule 828 of the Police Manual, the respondents could not have invoked Rule 668 (a) of the Jharkhand Police Manual. Since in the instant case, the respondents have prepared a revised merit list by rectifying the error committed during the process of selection, therefore, the action of the respondents cannot be construed to be an arbitrary exercise of power being violative of Articles 14 and 16 of the Constitution of India. Learned counsel for the respondent-State submits that the action of the respondents is fortified by the decisions of the Hon'ble Apex Court rendered in the case of *Vikas Pratap Singh & Ors. v. State of Chhattisgarh & Ors.*, reported in (2013) 14 SCC 494 and the action of the respondents is squarely covered by the said decision.

12. In order to delve into the issues, as stated, herein above, the issues no. 3 and 4 are taken up together since other issues are interlinked and intertwined to each other. There is no gainsaying of the fact that a bona fide mistake can be rectified and during pendency of the series of batch of writ petitions being W.P. (S) No. 5609 of 2012 & analogous cases, a Committee headed by the Director General of Police was constituted to go into the question of illegality and irregularity in the preparation of the merit list and accordingly, a revised selection list has been prepared by the fresh selection Board vide its meeting dated 23.12.2013 wherein, the petitioners' did not come within the zone of consideration and they have been excluded from the revised merit list.

13. It is a fact that indisputably, the petitioners having been appointed, have undergone the training and no fraud or misrepresentation have been committed on the part of the petitioners in the process of selection and if any illegality committed, the same could not have been attributed to the petitioners nor any blame could be apportioned to the petitioners. It has been contended at the bar that some of the petitioners have left their earlier service and joined the post with the fond hope of bright career but their legitimate expectations have been belied and their hopes have been shattered by the order of termination. Moreover, the appointment of the petitioners on the basis of a properly conducted enquiry cannot be said to have been obtained on the basis of any fraud or misrepresentation on their part and the ouster of the petitioners from services after having successfully completed their training and serving the respondents-State for a considerable period, would certainly cause undue hardship and ruin their career and would cause irretrievable loss in terms of life and livelihood, but, at the same time, it is also settled law that if the irregularities in the revised selection is rectified and deserving meritorious candidates are included in the revised select list, then no illegality can be said to have set crept in the process of revised selection on the ground of equity and justice. The cases of the petitioners needs reconsideration for their reinstatement in services in view of the fact that the petitioners are the bona fide appointees on the basis of selection. Therefore, without tinkering with the revised merit list, where the name of the meritorious candidates have found place and who have in the meantime, have joined their respective posts, their appointment cannot be disturbed, but, so far as the present petitioners are concerned, it can be stated with certitude that as per the advertisement, they have exercised their options for being appointed to the post of their choices and on the basis of merit-cum-preference^ they were appointed in their different posts, may be during process of selection, there was some illegality or irregularity but the petitioners did not have any role in the process of selection, as no fraud or misrepresentation has been caused by the petitioners.

In this context, it would be apposite to refer to the judgment of the Hon''ble Apex Court rendered in the case of *Vikas Pratap Singh & Ors. v. State of Chhattisgarh & Ors.*, reported in (2013) 14 SCC 494, wherein, in paragraphs 26 and 27, the Hon''ble Apex Court has been pleased to inter alia, hold as under : -

"28. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent-State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.

29. Accordingly, we direct the respondent-State to appoint the appellants in the revised merit list placing them at the bottom of the said list. The candidates who have crossed the minimum statutory age for appointment shall be accommodated with suitable age relaxation."

14. So far as the intervenors are concerned, admittedly, though their names could not find place in the revised merit list but it has been stated at the bar that they have secured more marks than the petitioners but the case of the petitioners stands on better footing on the ground that after initial selection, they were appointed and subsequently they underwent the training, whereas, the intervenors were not appointed on the earlier occasions. Although the appointment of the present petitioners were challenged in a batch of writ petitions, but since the present petitioners have continued in the post for a considerable length of service, having left their previous assignments with the fond hope to have a greener pasture or better prospects, the petitioners stand in a slightly better footing, compared to intervenors. With a view to give justice to all the candidates, this Court vide order dated-11.12.2015, specifically directed the State Government to file a supplementary counter affidavit, indicating the vacancy position but the supplementary counter affidavit filed by State, disclosed that there was no vacancy during the said period. In the absence of any clear-cut vacancies, existing or anticipated vacancies, this Court is not in a position to direct the respondents to consider the case of the intervenors for appointment in the respective different posts. However, if in future, any selection is made to the posts in question, the respondents would be obligated to consider the case of the intervenors in relaxing the upper age limit in appropriate case in accordance with law.

15. In view of the reasons stated in the foregoing paragraphs and as the view of this Court gets fortified by the judgment of the Hon^{ble} Apex Court rendered in the case of Vikas Pratap Singh (supra) and as a logical sequitor to the aforesaid reasoning, the impugned order of termination of services of the petitioners are hereby quashed and set aside and the respondents are directed to pass orders for reinstatement of the petitioners in services against existing/anticipated or future vacancies, treating it to be fresh appointments and on their reinstatement, they shall be placed at the bottom of the seniority list of the revised merit list. The whole exercise be completed expeditiously, preferably within a period of four weeks from the date of receipt/production of a copy of this order.

16. With the aforesaid direction, these writ petitions stand allowed.

17. Consequently, all Interlocutory applications filed in these writ applications stand disposed of.