
(1990) 09 PAT CK 0023
In the Patna High Court
Case No : C.W.J.C. No. 5897 of 1989

Sakhichand Yadav

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-09-1990

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1991) 1 BLJR 257 : (1991) 1 PLJR 67

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Judgement

G.C. Bharuka, J.—The present writ application has been filed by the sole petitioner inter alia, for quashing of the order dated 18.7.1986 passed by the Superintendent of Police Gumla, whereby his services as Constable has been terminated on the ground that, he does not hold the minimum educational qualification for being retained as a Constable. The petitioner was appointed as a Constable by the Superintendent of Police, Gumla on 10.12.1984 in accordance with the list prepared by the Selection Board as per the provisions contained in Rule 61(B) of the Police Manual. It may be stated here that petitioner had passed Middle School.

2. It seems that in the year, 1986 the petitioner was sent for training to Constable Training School, Nath Nagar with other constables and during the course of training, the Principal of the School held an opinion that 17 Constables were deficient in their educational physical qualifications. Out of 17 persons, 4 Constables were from Gumla. Those are Baldeo Kumar, Dinesh Rai, Sukh Narayan Tiwary and the petitioner. In pursuance of the said report of the Principal, the respondent, Superintendent of Police held some conversation on telephone with the Deputy Inspector General of Police Ranchi and thereafter by his order dated 18.7.1986 (Annexure "3") communicated to the petitioner and other three aforesaid Constables that for want of requisite educational qualification their services are terminated with immediate effect. Aggrieved by

the said order of termination the petitioner filed his representation before Inspector General of Police, Bihar, Patna. It seems that acting on the representation, the Inspector General directed the Regional Inspector General, Ranchi to conduct a fresh literary test, and accordingly all the four Constables including the petitioner were directed to appear before the Regional Inspector General to participate in the test with all the documents which had been produced by them before the Selection Board. By communication dated 29.6.1987, which is Annexure-6, the Respondent, D.I.G. Ranchi communicated to the Assistant of D.I.G. Patna that all the four constables have been found fit in the literary test and necessary decision may be taken for their appointment since in his region there is no vacancy.

3. By Memo No. 320, dated 27.7.1987 (Annexure-7) the Assistant to D.I.G. Bihar Patna send a reply inter alia, stating therein that since the matter of all the four Constables including the petitioner was pending consideration, it was incumbent to keep the post vacant in the region, and accordingly it was requested that the services of all the four Constables including the petitioner should be absorbed in various districts of Ranchi region itself. Annexure-8 is an order passed by the Deputy Inspector General of Police (Administration) Bihar dated 16.12.1988 which showed that as per the instruction issued by the Director General, out of four Constables, two namely, Baijnath Yadav and Lallan Prasad have been reappointed, since they were found fit in the literacy test. The petitioner again filed representation dated 25.3.1989 which is Annexure-8/A to the writ application before the Director of Police, Directorate, Bihar, Patna but it appears nobody bothered to attend to this representation.

4. The present writ application was admitted on 4.9.1989 and an interim order was passed by a Bench of this Court in these terms:

In view of the order as contained in Annexure-7, dated 27.7.1987 and the order as contained in Annexure-8 dated 16.12.1988, when four persons were re-examined and found successful why only two were re-appointed and not the petitioner and one more is not known.

For the reasons aforementioned, we direct the respondents to forthwith give appointment to the petitioner as given to other two persons vide Annexure-8.

It has been stated at the bar that in spits of this positive direction issued by this Court, the petitioner has not been appointed so far. It will be open to the petitioner to take appropriate steps for non-compliance of order passed by this Court in a separate proceeding, if so advised.

5. Coming to the facts of the present case, it is not disputed that the petitioner was appointed in accordance with the Rules 661 and 653 of the Bihar Police Manual. It is well settled that once a person is appointed in accordance with law, he acquires a substantive right on the post and his services cannot be terminated except on the grounds and in accordance with the procedure laid down in law, as also without compliance with the principles of natural justice. Though, counter-

affidavits have been filed on behalf of the respondents and I had heard Mr. J.P Shukla, G.P.I. appearing for the respondents at great length, but he could not show me any provision according to which it can be said that the appointment of the petitioner was ab initio void for want of any requisite educational qualification, Rule 666 prescribing the educational qualification on a bare reading, appears to be only regulatory, and it is always open for the Selection Board to relax it while selecting appropriate candidates and once such a discretion is exercised, the law does not authorise any other authority to interfere with the said decision and hold the selections to be bad at any subsequent stage. In my opinion, the entire process adopted any reasoning given in the present case which lead to the termination of the petitioner as per the order contained in Annexure-3 is contrary to law and wholly arbitrary, I may also indicate here that the State has completely failed to justify its action of reappointing two Constables out of four discharged Constables on identical grounds and this amounts to hostile discrimination and violation of Article 14 of the Constitution.

6. For all these reasons stated above, I quash the order as contained in Annexure 3 and direct that the petitioner should be reinstated as per his initial appointment. He will be deemed to be in continuous service since the date of his original appointment and entitled to his back salaries till date. The petition, is accordingly, allowed. On the facts of the case, I award a cost of Rs. 500 against the respondents, which should be paid by the respondents immediately after the petitioner is reappointed on his post.