
(2017) 01 JH CK 0020

In the Jharkhand High Court

Case No : Writ Petition (S) No. 396 of 2016 with W.P.(S) No.719 of 2016

Santosh Kumar Singh(Police No.788)

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 05-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 AIRJharR 732 : (2017) 2 JCR 376

Hon'ble Judges : Mr. Pramath Patnaik, J.

Bench : Single Bench

Advocate : Mr. Suresh Kumar, Advocate, for the Petitioner; J.C to A.G, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Pramath Patnaik, J.—In both the accompanied writ petitions, the petitioners have inter alia prayed for quashing the order of removal passed by the Commandant, J.A.P.-6, Jamshedpur vide Memo no. 2348 dated 2.11.2006 (Annexure 3) and for quashing the order passed by the DIG(Training)-cum-Principal, PTC, Hazaribagh vide Memo Nos. 605 and 606 both dated 11.04.2007 (Annexure-6/1 and 5) confirming the order of disciplinary authority and further for reinstatement of petitioners with all consequential benefits.

2. The factual matrix, bereft of unnecessary details, in a nutshell is that pursuant to appointment of the petitioners as constable in Latehar district, they were deputed to J.A.P. 6, Jamshedpur-cum-Training Centre along with other 117 constables. It has been averred that during course of training, both the petitioners submitted their applications on 20.10.2006 (Annexure 1 in both cases) for grant of leave for six days i.e. from 25.10.2006 to 30.10.2006 for doing Chhath Puja, which was duly forwarded by the Instructor (Jamadar). It has further been submitted that due to "Bandh" called by the terrorists on 30.10.2006, the vehicles were not plying on the road for communication, therefore, the petitioners were constrained to join the training centre on

31.10.2006. In proof of "Bandh", the petitioners have annexed the photocopy of relevant extract of news item as Annexure 2 to the writ petitions. But, to the utter surprise and consternation, the services of the petitioners were terminated on 02.11.2006 even without asking show cause and by a non-speaking order without complying the principles of natural justice, vide order no. 21/06 as contained in Memo no.2348 dated 2.11.2006 (Annexure 3 in both cases) by respondent no. 5- the Commandant, J.A.P. 6, Jamshedpur. It has been submitted that against the order of dismissal, the petitioners have filed appeal before the Deputy Inspector General of Police-cum-Principal P.T.C., Hazaribagh. Since no order was passed by the appellate authority, the petitioner [W.P.(S) no.396 of 2016] approached this Court by filing W.P.(S) Nos. 2165 of 2007, which was disposed of on 03.12.2007 with a direction to the appellate authority to dispose of the appeal of the petitioner by a reasoned order in accordance with law within a period of eight weeks from the date of receipt/production of copy of this order and the petitioner[W.P.(S) no.719 of 2016] approached this Court by filing W.P. (S) no.1541 of 2007, but after some argument, learned counsel for the petitioner sought permission to withdraw the aforesaid case for pursuing the memorial filed by the petitioner before the Director General of Police, Jharkhand, Ranchi. Thereafter, the petitioners filed appeal before the Deputy Inspector General of Police-cum-Principal P.T.C., Hazaribagh annexing order passed in W.P.(S) Nos. 2165 of 2007 and 1541 of 2007. However, the appellate authority vide Annexures-6/1 and 5 vide Memo Nos. 605 and 606 dated 11.04.2007 has been pleased to reject the appeal of the petitioners on the ground that since the petitioners remained absent for six days from the training centre and have been declared absconder, hence, as per Rule 668 (ka) of the Police Manual, they have been dismissed from services. Thereafter, the petitioner filed Memorial before the Director General of Police, Jharkhand, Ranchi (respondent No. 2) enumerating all the points, but that has not been entertained.

3. Being aggrieved by the order of termination dated 2348 dated 2.11.2006 and appellate order dated 11.04.2007, the petitioners have knocked the door of this Court under Article 226 of the Constitution of India.

4. Learned counsel for the petitioners have assailed the impugned orders of termination and orders of appellate authority on the following grounds:

(a). That the orders have been passed without adhering to the principles of natural justice.

(b). The impugned order of removal/termination has been passed without jurisdiction since the petitioners were appointed as constable by the Superintendent of Police, Latehar, but, the order of dismissal has been passed by the Commandant, J.A.P 6, Jamshedpur, who has no jurisdiction at all to pass the order of removal. Therefore, the impugned order of removal is without jurisdiction.

(c). The impugned order of termination is grossly excessive and shockingly

disproportionate to the gravity of charges.

(d). The impugned order has been passed in gross violation of Rule 668 and Rule 828 of the Police Manual rendering the impugned order unsustainable in the eye of law.

5. Per contra, respondents have filed the counter affidavit controverting the averments made in the writ application. It has been submitted in the counter affidavit that the respondents in exercise of powers conferred under Rule 668 (ka) of the Police Manual has rightly terminated the petitioners from services for remaining absent unauthorisedly for six days and for negligence in duty entrusted to them. Moreover, there is no provision of appeal against order under Rule 668 (Ka) of the Police Manual. Countering the impassioned submissions made by learned counsel for the petitioners, the learned counsel for the respondents submitted that since the petitioners were undergoing training and during probation/training no full fledged enquiry is envisaged under Police Manual. It has further been submitted that since petitioners remained absent unauthorisedly for a period of six days, the respondents-authorities invoking Rule 668 (Ka) of the Police Manual has rightly dispensed with the services of the petitioners, which is a termination simpliciter and not a stigmatic or a punitive order , therefore, Article 311 (2) of the Constitution of India is not attracted in the case at hand.

6. Learned counsel for the respondents further relied upon Rule 668(a) of the Police Manual. For ready reference, Rule 668 of the Police Manual reads as under:

"668. Removal or reversion of officers appointed, directed or promoted on probation.- The following rules shall govern first appointments and the promotion of police and ministerial officers as detailed in Appendix 41--

(a) All officers shall in the first instance be appointed or promoted on probation. Where the period of probation is not otherwise provided for in the rules it shall be for a period of two years in the case of executive officers and one year in the case of ministerial officers. The authority authorised to make such appointment or promotion, may at any time during such probationary period, and without the formalities laid down in rule 828, remove an executive officer directly appointed or revert such an officer promoted who has not fulfilled the conditions of his appointment or who has shown himself unfit for such appointment or promotion. Similarly, probationary period may also be extended without any show cause. No appeal shall lie in such cases."

7. After having heard learned counsels for both the parties at length and going through the materials available on record, the impugned order of termination as contained in Memo no. 2348 dated 2.11.2006 and appellate order dated 11.04.2007 deserve to be quashed and set aside for the following facts, reasons and judicial pronouncements:

(i). In the instant case although the petitioners were probationer but the

petitioners are entitled to certain protection and their services could not be terminated without complying the principles of natural justice.

(ii). Although the impugned order appears to be innocuous as a termination simpliciter but the respondents have terminated the petitioners for unauthorized absent of six days, which is a stigmatic and punitive order. Therefore, the impugned order of termination is not sustainable in the eye of law without adhering to the principles of natural justice and Article 311 (2) of the Constitution of India.

(iii). From perusal of provisions as contained in Rule 668(a) of the Police Manual, it appears that the same relates to the period of probation, which will be for two years subject to extension.

(iv). It appears from Annexure 1 in both cases (leave application), that the petitioners applied for leave for six days from 25.10.2006 to 30.10.2006, for attending "Chhath Puja" as stated by the petitioners in both the writ petitions, but due to "Jharkhand Bandh" they could join their duty on the following day, but, surprisingly the services of the petitioners have been terminated just after couple of days that too without initiating any departmental proceeding or issuing any show cause notice exercising powers conferred under Rule 668 (a) of the Police Manual. It is pertinent to note here that the relevant Rule does not provide that services of the petitioner can be taken away without following the principles of natural justice.

(v). That the contention of the respondents that since the petitioners were on probation during the relevant period, they have rightly been removed, is without force in view of the decision rendered by the Hon'ble Apex Court in the case of Anoop Jaiswal v. Government of India and Anr. reported in AIR 1984 SC 636, relevant paragraph thereof reads as under:

"13. In the instant case, the period of probation had not yet been over. The impugned order of discharge was passed in the middle of the probationary period. An explanation was called for from the appellant regarding the alleged act of indiscipline, namely, arriving late at the Gymnasium and acting as one of the ring leaders on the occasion and his explanation was obtained. Similar explanations were called for from other probationers and enquiries were made behind the back of the appellant. Only the case of the appellant was dealt with severely in the end. The cases of other probationers who were also considered to be ring leaders were not seriously taken note of. Even though the order of discharge may be non-committal, it can not stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director which is the basis or foundation for the order should be read along with the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of

discharge should fall to the ground as the appellant has not been afforded a reasonable opportunity to defend himself as provided in Article 311 (2) of the Constitution".

(v). Further in the case of V.P. Ahuja v. State of Punjab and Others as reported in (2000) 3 SCC 239 , it has been held that if the order is stigmatic or punitive the rules of principles of natural justice ought to have been followed by the respondents authority. Relevant paragraph of the said judgment reads as under:

"A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice".

(vi).It is admitted fact that before dispensing with the services of the petitioners, no show cause notice was issued to the petitioners thereby visiting him with civil consequences, therefore, the impugned order of termination dated 2.11.2006 is not sustainable in law and the impugned appellate order dated 11.04.2007 being punitive and stigmatic without complying the provisions of Article 311 (2) of the Constitution of India is equally vulnerable and liable to be set aside.

8. In view of the above-narrated facts, reasons and judicial pronouncements and in view of the judgment passed by this Court in W.P.(S) no.1192 of 2009[Pravin Ram v. State of Jharkhand and Ors.], pronounced on 01.05.2015, the impugned order of termination dated 2.11.2006 (Annexure 3 in both cases) and appellate order dated 11.04.2007 (Annexures- 6/1 & 5) are hereby quashed/set set aside. Both the writ petitions are, thus, disposed of. However, disposal of these writ petitions will not preclude the respondent authorities to take a fresh decision after following the principles of natural justice.