

(2008) 07 JH CK 0081
In the Jharkhand High Court

Shankar Nath @ Shankar Labh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Citation : (2008) 56 BLJR 2939 : (2008) 3 JCR 520

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—The petitioner has prayed for quashing the order of his dismissal dated 10.2.2003 passed against him by the respondent No. 8 and has also prayed for his reinstatement in service with all consequential benefits.

2. The petitioner was appointed as a constable in the police force on the recommendation of the then Director General of Police, Bihar, Patna as a special case for appointment on consideration of the exemplary courage showed by him in assisting the Special Police Task Force which was constituted for curbing criminal activities of criminals within the district of Palamau. His appointment was made by order dated 26.3.1997 Issued from the office of Director General-cum-Inspector General of Police, Bihar, Patna. While granting him appointment on special consideration, the fact that the petitioner's height was two inches less than the prescribed standard of height, was overlooked and Ignored and since the petitioner was having a good knowledge in computer operation, he was posted on his appointment as a computer operator in the police force and deputed to work in the office of Inspector General of Police, Chotanagpur Region, Ranchi. Since the date of his appointment, the petitioner continued to render his services and after bifurcation of erstwhile State of Bihar, he was given Jharkhand cadre on the same post in the Ranchi District Police Force.

After having served for more than five years, he was served with a show cause notice on 12.6.2002 issued by the Senior Superintendent of Police, Ranchi. It was stated in the show cause notice that since the Government of Bihar had declared that the appointment of constables made on special grounds, being

contrary to the rules applicable for appointment such appointments were declared illegal by the State of Bihar and the petitioner was called upon to show cause as to why his services should not be terminated. The reply to the show cause notice filed by the petitioner was not accepted and consequently the petitioner filed a writ application before this Court vide W.P. (S) No. 3853 of 2002. While disposing of the writ application on 11.7.2002, this Court had issued a direction to the respondent in the following terms:

In the facts and circumstances, competent authority of the State of Jharkhand is directed not to implement the letter No. 1046 dated 7.3.2002 mechanically. Competent authority may give notice to petitioner and call for records from the State of Bihar and then to take any decision in accordance with law. Competent authority of State of Jharkhand should act in respect of show cause notice given to the petitioner vide memo No. 2762 dated 12.6.2002 in the light of observation aforesaid.

3. The petitioner's contention is that in spite of above orders of this Court, the respondents did not call for the records from the State of Bihar which would otherwise have established that the petitioner's appointment was made after observance of all the rules of the police manual. Instead, the petitioner was directed by the Senior Superintendent of Police, Ranchi by notice dated 4.1.2003 to file his fresh show cause replies. The replies submitted by the petitioner on 8.1.2003 was rejected by the Senior Superintendent of Police, Ranchi and by the impugned order dated 10.2.2003, the Senior Superintendent of Police, Ranchi terminated the services of petitioner.

4. The petitioner has assailed the impugned order of termination of his services on the following grounds:

(a) That the show cause notice and the impugned order of termination was passed against him pursuant to the directions/communications of the Government of Bihar and the Director General-cum-Inspector General of Police, Bihar, Patna declaring therein that the Government of Bihar had termed the appointment of the petitioner as Illegal. After the bifurcation of erstwhile State of Bihar under the provisions of Bihar Reorganisation Act. 2000 and on cadre division, the petitioner was recognised as a Government servant under the police force of the State of Jharkhand. The State of Bihar therefore, ceased to have any authority or control or supervision with respect to the public servants posted in the territorial jurisdiction of the State of Jharkhand and could not therefore, have issued any directions which could have the affect of termination of the petitioner's service.

(b) That before terminating the petitioner's service, no reasonable opportunity was given to him to defend his case nor was any departmental proceeding initiated on the basis of any charges against him.

(c) That the plea that the petitioner's appointment was not made in accordance with the rules or procedure, cannot be applied against the petitioner since the

petitioner's appointment was made according to the administrative orders of the Director General of Police on special grounds and the rules framed for appointment on special/compassionate grounds even without strict adherence to the general procedure for recruitment.

(d) That the petitioner had served continuously for more than seven years and his dismissal from service is totally against the principles of natural Justice and equity since even the State of Jharkhand, by relaxing its rules, has made appointments of more than 36 constables on special/ compassionate grounds considering their exemplary courage shown in occasions of crisis and all such persons were appointed as constables even without strict adherence to the prescribed rules or procedure.

(e) That on considering the cases of other constables, similarly situated like the petitioner, the orders of their termination from services was quashed by this Court in the several writ applications filed by them and they were reinstated in service and the petitioner also deserves the same benefit.

5. The writ petition has been contested by the respondents. In the counter affidavit, it is admitted that the petitioner was appointed as constable and posted in the Ranchi District Police Force vide Order No. 841/1997 under special circumstances, in compliance with the recommendation of the then Director General-cum-Inspector General of Police, Bihar, Patna, vide Memo No. 1820 dated 26.3.1997 of the Assistance Inspector General of Police (Personnel), Bihar, Patna. It is contended that during the tenure of Shri S.K. Saxena as the Director General-cum-Inspector General of Police, Bihar, Patna, several persons were appointed in the post of constables in several districts of the State of undivided Bihar. It was subsequently detected that such appointments were made by way of irregular appointments and without following the norms and procedures of appointment. Consequently, by a circular issued from the Home (Special) Department, Government of Bihar, Patna vide letter No. 10590 dated 4.9.2000, addressed to the Director General-cum-Inspector General of Police, Bihar a direction was issued to cancel those Irregular and illegal appointments. The order of cancellation was communicated by the Inspector General of Police (Administration), Bihar, Patna vide his letter dated 7.3.2002, to the Director General- cum-Inspector General of Police, Jharkhand. Ranchi, with a request to take appropriate and suitable steps in respect of the illegally appointed constables at his level. Pursuant to the above stated letter, the Deputy Director General of Police (Human Rights), Jharkhand, Ranchi directed all concerned Superintendents of Police under the State of Jharkhand to take suitable steps in accordance with law against such illegally appointed persons. In compliance thereto, the petitioner was called upon to show cause against his Irregular and illegal appointment. Instead of submitting his show cause replies, the petitioner produced an order of the High Court dated 11.7.2002 passed in W.P.(S) No. 3853 of 2002 demanding that in terms of that order, the relevant documents should first be called for from the State of Bihar. Since the petitioner's appointment was

made originally by the order of the Senior Superintendent of Police, Ranchi in the Ranchi District Force, there was no paper or document required to be called for from the State of Bihar. Though the petitioner filed his show cause replies subsequently, reiterating the same grounds as he had taken earlier, the same was rejected on the ground that his appointment in the post of constable was irregular and Illegal and not in accordance with the mandatory rules as contained in the police manuals.

6. I have heard the learned Counsel for the parties and considered the facts and material on record. Admittedly, the petitioner has been holding a permanent post and has been allowed to continue in service since the date of his appointment in 1997. The respondent No. 8 while Issuing the impugned order of termination of the petitioner's service, has acted merely on the basis of information received from the State of Bihar through his superior in office and has accepted the same mechanically to conclude that the appointment of the petitioner was illegal and contrary to the legal procedures and provisions. The petitioner was not served with any memorandum of charge nor was any inquiry held in accordance with the prescribed procedures. The respondent No. 8 has not taken into consideration the undenied fact that even though the State of Bihar had made rules prescribing the procedure for appointment of constables in the police force, but at the same time It had relaxed the rules in order to grant appointments on special/compassionate grounds to deserving persons and a similar concession in the rules has been granted even by the State of Jharkhand in the matter of appointment of constables in its police force. On the face of it, the impugned notice which has been issued communicating the conclusion that the petitioner's appointment, was illegal and therefore, his services were terminated, amounts to imposing a punishment on the petitioner without holding any inquiry in accordance with the mandatory provisions of the Constitution. The impugned notice is thus, wholly illegal, invalid and violative of the principles of natural justice.

7. In the case of Uptron India Limited Vs. Shammi Bhan and Another, , it has been held by the Apex Court that the conferment of "permanent" status on an employee guarantees security of tenure of service. Such permanent services cannot be terminated abruptly and arbitrarily. A permanent employee is, thus, entitled to continue in service till completion of his tenure, unless he is dismissed or removed from the service after holding an enquiry on the charges framed against him and after giving him a reasonable opportunity of being heard.

It has been pointed out by the learned Counsel for the petitioner that quite a few other constables posted in the police force in the State of Jharkhand and whose services were terminated on the ground that their initial appointment made under the recommendations of the then Director General-cum-Inspector General of Police, Bihar was illegal, have been reinstated in service after the orders of their termination were quashed by the Patna High Court as well as by the Jharkhand High Court and on the ground of equity, the petitioner also deserves

the same benefit. Learned consul has referred in this context to the Judgments of this Court passed in W.P. (S) No. 2802 of 2004 in the case of Dhirendra Kumar Singh and the Judgment in the case of Arun Kumar Singh passed in W.P. (S) No. 3504 of 2004 and also the Judgment in the case of Awadh Prasad passed in W.P. (S) No. 3741 of 2002.

8. In view of the law laid down by the Hon''ble Supreme Court in the case of Uptron India Limited (supra), the impugned order of termination of the services of the petitioner is not Justified and Is hereby quashed and accordingly, respondents are directed to reinstate the petitioner forthwith and grant him all consequential benefits except the salary for the period during which the petitioner remained out of service. The petitioner shall further be entitled to notional benefits of increments and pay revision, if any, from the date of his joining the service.