

(2001) 03 RAJ CK 0056
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1015 of 1991

Sita Ram Khichi and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Rajasthan Police (Incitement of Disaffection) Ordinance, 1979 — Section 3, 4

Citation : (2002) 1 RLW 110 : (2001) 4 WLC 751

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : Sanjay Pareek, for the Appellant; Virendra Lodha, for the Respondent

Final Decision : Allowed

Judgement

Verma, J.

(1). The petitioner was initially appointed on the post of Constable on 4.11.1953. He was promoted as Head Constable in the year 1966 and then as Asstt. Sub Inspector in the year 1975. He was terminated vide order dated 2.7.1979 by the Supdt. of Police Kola.

(2). It is the case of petitioner that there was police agitation in the year 1979, although the petitioner had not taken any part in the agitation, treating the petitioner to be involved In the agitation, a case was registered against the petitioner u/s 3/4 of Rajasthan Police (Incitement of Disaffection) Ordinance, 1979 the order dated 2.7.1979 (Annex. 1) came to be passed dismissing the petitioner from service. The order 2.7.1979 came to be passed while exercising the powers under Article 311(2) of the Constitution of India and after being satisfied that it was not expedient to hold any enquiry. The petitioner filed the appeal.

(3). A large number of police personnel i.e. Constables, Head Constables, Asstt. Sub Inspectors and Sub Inspectors were removed from service in the similar

identical manner as the petitioner. It is stated that number of writ petitions were filed. The Single Bench of this Court had accepted the writ petitions filed by police personnel, but the Division Bench reversed the order of learned Single Bench vide order dated 19.9.85 with the directions to such police personnel to file appeal before the appellate authority.

(4). In the so called police agitation 56 persons were arrested in Kota, name of such persons is mentioned in the Schedule. 11 persons were dismissed and 8 persons suspended. The Constables involved in the agitation had even approached the Apex Court. The Apex Court directed Dy. Inspector General of Police to consider the case of persons with the expectation that the appellate authority will look into the material with an open mind for coming to his decision. It was also observed that if the appellate authority decides to restore the dismissed persons he shall also decide as to how for the job period the persons would be compensated and as to how the benefit of condonation of break in service for purpose of promotion and other retiral benefits shall be given. The length of service, past performance and the record maintained in respect of each of the incumbents are relevant aspects to be taken Into consideration in holding either way viz. whether the officer-is to be restored to service or what the quantum of compensation should be.

(5). The appeals of 31 persons resulted into reinstatement in service with some penalties, three persons sought voluntary retirement and only two persons have been dismissed on the basis of previous record. The petitioner has also filed the appeal, which was dismissed vide order dated 30.3.88, holding therein that the petitioner had not approached Supreme Court, therefore, he had no right to file appeal. The petitioner challenged the order before High Court by filing the writ petition No. 2841/88, which came to be decided vide order dated 28.4.89 with the direction to appellate authority to decide the appeal of petitioner as well in accordance with the directions given by Hon"ble Apex Court. The copy of the appeal has been attached with the writ petition as Annexure-2. It is the submission of petitioner that in the hearing given to petitioner, the Inspector General of Police, Reorganisation had asked about the date of birth of petitioner and date of appointment and also whether he was arrested during police agitation, which were suitably replied. It Is also the submission of petitioner that at the time of hearing, the service record of the petitioner was not available, However, the appeal was dismissed vide order dated 31.3.90. It is the submission of petitioner that the appeals were heard and decided by different officers. Certain officers reinstated the persons, whereas certain officers maintained the punishment.

(6). The petitioner submits that he had received 18 certificates and rewards. He was promoted as Sub Inspector in the year 1975 and had the record of petitioner been properly gone into by Appellate Authority, he would have been given similar treatment which had been given to persons as mentioned in para No. 11 of reply as the case of petitioner is on better footing than the case of Rajendra Prasad

Tripathi, who joined the service only in 1976. The appeal of the petitioner has been dismissed only because the case was registered against the petitioner. The petitioner relies on the judgment in case of Sangara Singh v. State of Punjab (1).

(7). The petitioner has also filed the additional affidavit in court to the effect that he had been acquitted from the court in the case pending for the offence u/s 3/4 of Rajasthan Police (Incitement of Disaffection) Ordinance, 1979 vide order dated 29.4.92. The copy of which has been placed on record. The trial court had acquitted the petitioner holding that the prosecution had failed to prove the case against me petitioner of participating in the agitation. It is also stated in the additional affidavit to the effect that Ram Ratan Gautam, ASI, who was similarly removed from service and had filed the writ petition, had been reinstated by cancelling the order of removal vide order dated 24.9.96 (Ann. 9). Similar is that case of one Krishan Murary, whose appeal was earlier rejected on 31.3.90 by the authority but his representation has been accepted vide order dated 31.12.94 (Ann. 10) and he has been reinstated. The petitioner has given some other examples of R.P. Tiwari, Narendra Kumar Rajvivek, Megh Nath Mishra and Sansar Chaurasia etc. and stated that he is being discriminated.

(8). The petitioner has also filed another additional affidavit to the effect that number of appeals were heard by Mr. R.K. Huda, Inspector General of Police (Re organisation) Jaipur and were allowed. The Dy. Inspector General of Police, Jaipur Range, Jaipur had ordered for reimplementation of Narendra Kumar Yadav and Khalik Ahmad Khan. He states that he was removed from service only because of registration of the case and such 80 persons have taken back in service, and therefore, prays that he be given similar treatment. The petitioner has also stated in the affidavit that he is ready to forgo 50% back wages and his entire service maybe counted toward pension, gratuity and other retiral benefits, as the petitioner has already attained the age of superannuation.

(9). The petitioner has also relied on the judgment of this court dated 25.7.2000 in case of Jagat Singh v. State of Rajasthan (2), wherein the order of appellate authority was set aside and the direction was given to respondent to decide the representation once again.

(10). For the reasons and discussions made above, in my opinion, the present writ petition must succeed. The petitioner was removed from service without holding any enquiry. It was the specific plea of the petitioner that he had not taken any part in the agitation. The petitioner has been acquitted by the Court in the year 1992, copy of which judgment is on record. The litigation reached right upto Supreme Court and the cases were decided by appellate authority. Certain police officials have been taken back in service. Nothing has been brought on record in the reply to writ petition to show that the service record of the petitioner was not good or undesirable. The petitioner had received commendable certificates and rewards. The petitioner had been promoted two times. Of course the petitioner had been removed from service without holding any enquiry.

(11). In case of Rajendra Prasad Tripathi (supra) it has been mentioned that he received 9 appreciation letters and there was nothing bad in his record. In case of Narendra Kumar Yadav, it was observed that he had been acquitted from the court and that he was not given any opportunity of hearing before the order of removal from service was passed. He has been reinstated in service. Similarly was the case of Megh Nath Sharma. The Appellate Authority in order dated 21.3.90 has not at all considered the past service period of petitioner, appreciation letters or the material against or in favour of the petitioner and has only confirmed the order of removal.

(12). For the reasons mentioned above, specially in view of the fact that the petitioner has already attained the age of superannuation, I am of the opinion that the order of removal from service of petitioner cannot be sustained in the eyes of law. The order of removal from service of petitioner is set aside with all benefits. Although the petitioner cannot be taken back in service, but he shall be entitled to all deemed service benefits which might have accrued to him, had the order of removal from service not been passed. The petitioner shall be paid 50% of back wages till the date of superannuation. The petitioner shall be paid all pensionary benefits. The monetary benefits and pensionary benefits shall be given to petitioner within a period of three months from the date of receipt of certified copy of this order.

(13). With the above observations, the writ petition is allowed. No costs.