
(2014) 03 JH CK 0011
In the Jharkhand High Court
Case No : L.P.A. No. 24 of 2009

Sonu Thapa

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 28-03-2014

Acts Referred:

Arms Act, 1959 — Section 25(1b)a, 26, 35

Citation : (2014) 2 AJR 517 : (2014) 3 JLJR 402

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Ritu Kumar and Samavesh Bhanj Deo, Advocate for the Appellant;
Shivani Verma, J.C. to A.G, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

1. Aggrieved by judgment and order dated 28.11.2008 passed in W.P.(S) No. 4271 of 2006 whereby and wherein the writ petition preferred by the appellant has been dismissed, the present Letters Patent Appeal has been filed. The brief facts of the case are that, after the father of the appellant died in harness, vide memo. No. 6351 of 2000 dated 06.11.2000, the appellant was appointed as Child Constable on compassionate ground. The appellant was implicated in a criminal case being Ratu P.S. Case No. 134 of 2004 registered on 16.09.2004 for the offences under Sections 25(1b)a/26/35 of the Arms Act and he was taken into judicial custody. Vide memo. dated 07.10.2004, the appellant was dismissed from service without affording an opportunity of hearing to him. The appellant preferred the statutory appeal which was also dismissed by order dated 12.01.2005. In the meantime, by judgment and order dated 29.08.2005 in G.R. Case No. 2776 of 2004, the appellant was acquitted from the criminal charges levelled against him. Thereafter, the appellant submitted a representation dated 28.09.2005 for retaining him on the post of Child Constable. The appellant submitted representation to the Director General of Police, Jharkhand also however, no order was passed by the respondents and therefore, the appellant

approached this Court by filing W.P.(S) No. 4271 of 2006 which has been dismissed by the impugned order dated 28.11.2008.

2. We have heard the learned counsel appearing for the parties and perused the documents on record.

3. The learned counsel appearing for the appellant has submitted that, the appellant was dismissed from the post of Child Constable on 07.10.2004 on the ground that he was implicated in a criminal case and the appellant since been acquitted of the criminal charge by the learned trial court, the appellant should have been reinstated on the post of Child Constable. It is submitted that in terms of the Government Circular dated 11.08.1988, the appellant would be entitled for appointment on the post of Constable on attaining the age of 19 years subject to fulfilling the criteria laid down therein and since the appellant has been dismissed from the post of Child Constable because of institution of a false case against him, he would be deprived of the benefit under Government Resolution dated 11.08.1988.

4. As against the above, the learned counsel appearing for the respondents has contended that the appointment of the appellant as Child Constable was temporary and conditional. Since the appellant was found implicated in a criminal case, he was rightly dismissed from the post of Child constable. It is further submitted that, the benefit under the Government Circular dated 11.08.1988 is also conditional and one of the conditions being the Child Constable regularly attending the school and passing the examinations till one attains the age of 19 years. It is further submitted that acquittal in the criminal case cannot be the sole ground for reinstating the delinquent in the Government service and it is well settled that a criminal proceeding as well as the departmental proceeding can continue simultaneously and except in exceptional cases the outcome of the criminal proceeding does not affect the decision in the departmental proceeding.

5. Having appreciated the contentions advanced by the counsel appearing for the parties and having perused the documents on record, we find that the appointment of the appellant on Child Constable was temporary and conditional. The appellant was required to attend class regularly and pass the examinations however, the appellant got himself implicated in a criminal case and he remained in judicial custody. Thus, after 16.09.2004, he neither attended the school nor presented himself in the office. The order dated 29.08.2005 in the criminal case discloses that out of five prosecution witnesses P.W. Nos. 1, 2, 3 and 5 were declared hostile and P.W. 4 though not declared hostile, has stated in his evidence that he did not know anything about the occurrence. In these facts, the learned trial court acquitted the appellant from the criminal charges and therefore, it cannot be said that the order of acquittal by the criminal court was recorded on the merits of the case and it was not a honourable acquittal. We find merit in the contention of the counsel for the respondents that acquittal of the appellant in the criminal case would not affect the decision taken by the department dismissing the appellant from the post of Child Constable.

Accordingly, we do not find any ground for interfering with the order of dismissal dated 07.10.2004 and the appellate order dated 12.01.2005.

6. The learned counsel for the appellant next submitted that since the appellant was falsely implicated in a criminal case, the order of dismissal from service of the appellant would come in way of the appellant for applying for regular appointment on the post of Constable. It has been brought to the notice of the Court that by the Government Notification dated 12.11.2001, the age for appointment on the post of Constable for the candidates belonging to SC/ST category has been raised to 40 years. We find that the criminal court has also recorded that at the time when the appellant was named in the criminal case, he was a juvenile. His father had died in harness. It is to be noted that in young age people commit indiscretions and approach should be to condone such indiscretions rather than branding them as criminals for rest of their lives (Commr. of Police and Others Vs. Sandeep Kumar, . We find that in view of the acquittal of the appellant from the criminal charges, it cannot be assumed that appellant was actually involved in the occurrence in which the First Information Report being Ratu P.S. Case No. 134 of 2004 was lodged.

7. In view of the aforesaid facts, we are of the opinion that it would serve the ends of justice if the present LPA is disposed of with the observation/direction to the respondents that the order of termination of the appellant as "Child Constable" shall not be an impediment for the appellant to apply for regular appointment as and when vacancies are notified/advertised and neither the registration of criminal case against the appellant being Ratu P.S. Case No. 134 of 2004 dated 16.09.2004 nor the order of dismissal dated 07.10.2004 whereby the appellant was dismissed from the post of Child Constable would be taken as a ground for rejecting the candidature of the appellant for appointment on the post of Constable or any other post. This Letters Patent Appeal is disposed of in the aforesaid terms.