
(2008) 11 JH CK 0059
In the Jharkhand High Court

Sonu Thapa

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-11-2008

Acts Referred:

Citation : (2009) 120 FLR 534

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Challenge in this writ application has been made against the order passed by the Commandant, Jharkhand Armed Police-I, Ranchi (Respondent No. 4) vide Force Order No. 1025/2004 dated 7.10.2004 (Annexure-2), whereby and whereunder the petitioner was dismissed from service and also for quashing the order passed by the Deputy Inspector General of Police, Jharkhand Armed Police (Respondent No. 3) vide Memo No. 57/JAP dated 12.1.2005, whereby the appeal preferred by the petitioner against the order of his dismissal, was rejected.

2. Facts of the petitioner's case in brief is that he was appointed on compassionate grounds as "Bal Constable" under the Jharkhand Armed Police-I on 6.11.2000.

3. After allowing him to continue in service for about four years thereafter, the petitioner was served with the order (Annexure-2), whereby he was informed that his services were terminated on the ground that he was found to be an accused in a criminal case vide Ratu P.S. Case No. 134 of 2004.

4. Against the order of his dismissal, petitioner filed an appeal before the respondent No. 3 but his appeal was rejected by the impugned order of the respondent No. 3.

5. Though, the criminal prosecution was initiated against the petitioner in the

aforementioned case, but the same ended in the petitioner's acquittal from the charges. Thereafter, the petitioner filed a fresh representation before the Commandant, JAP-I, Ranchi (Respondent No. 4), praying for his reinstatement in service, on the ground of his acquittal from the charges in the criminal proceeding, but the same has not been disposed of in spite of repeated reminders made by the petitioner.

6. A counter-affidavit has been filed on behalf of the respondents. The stand taken by the respondents is that the petitioner was appointed on the post of "Bal Constable" under the provisions of a Circular (Annexure-A) issued by the Director General of Police, Bihar, Patna. The said appointment was made on compassionate ground since the petitioner's father who was employed as a constable had died in harness. On the date of his appointment, the petitioner though was a minor, the object of granting such appointment to the dependent minors of the deceased constable under the Armed Forces was that they should not be left uncared for and they should get all facilities of education and discipline so that on attaining the age of majority and if found suitable, they could be eligible for being appointed as a regular constable in the Armed Forces. It is further stated that the petitioner's engagement as "Bal Constable" was purely on temporary basis subject to automatic termination of his service on his attaining the age of majority. Under the same Circular, it was further qualified by the Rules framed by the Department that a probationers could be discharged if he is proved to be of bad character or is unlikely to be an efficient military policeman. The petitioner was found to have been involved in a criminal offence and was cited as an accused in a criminal case which was registered at the police station and he was remanded to custody. Consequently, the petitioner was found unqualified for his continuance as Bal Constable and his appointment was cancelled by the impugned order.

7. Learned Counsel for the respondents would explain that the petitioner's appointment was purely on temporary basis and his services could be terminated even without prior notice. Learned Counsel further explains that even if, eventually, the criminal proceeding has ended in acquittal exonerating the petitioner from the charges framed against him, the same could not be a ground for reinstatement of the petitioner since, the order of acquittal in the criminal proceeding was passed by the criminal court much after the petitioner had attained the age of his majority. On his so attaining the age of majority, his appointment as "Bal Constable" stood automatically terminated under the Rules.

8. From the rival submissions made by the learned Counsel for the parties, the facts which emerge are,

i. That the petitioner was appointed as Bal Constable under the Rules of the respondent JAP, against which he was entitled to receive half of the salary of regular constable. Such appointment was made on compassionate ground on consideration of the fact that the petitioner's father who was employed as a constable under the JAP, had died in harness.

ii. Though, petitioner was appointed as "Bal Constable", but no service was taken from him save and except the minor errand job of collecting office files in the office of the Superintendent of Police which the discipline of appointment required the petitioner to attend school regularly.

iii. The petitioner was made an accused of a criminal offence and a case was registered against him and he was remanded to judicial custody.

iv. Trial in the criminal proceeding continued and ultimately on conclusion, he was acquitted from the charges.

v. By the time when the judgment of acquittal was passed by the criminal court, the petitioner had already attained the age of his majority.

9. It is apparent from the facts that the petitioner's appointment was entirely on temporary basis made on compassionate grounds. The fact that he was made accused for the criminal offence and he was remanded to judicial custody, did constitute sufficient grounds to suggest prima facie that he was involved in the act of indiscipline, inviting thereby a sufficient ground for termination of his engagement and the authority concerned had sufficient grounds to exercise his powers of discharging the petitioner under Rule 14 of the Rules. There was no material on the date of passing of the impugned order or on the date when the appeal against the order of his dismissal was rejected by the superior authority for consideration of the petitioner's claim for his reinstatement or make re-appointment. The judgment of acquittal in the criminal proceeding came to be passed at the time when the petitioner had already attained the age of his majority. The terms of engagement/appointment clearly stipulates that his appointment was purely on temporary basis and liable to be automatically terminated on his attaining the age of 19 years.

10. In the light of the above facts and circumstances, the mere fact that the petitioner was not served with any show-cause notice before termination of his appointment, does not constitute any illegality in the impugned order of his termination from service and furthermore, acquittal in the criminal proceeding in itself, could not give a ground to the petitioner to be reinstated in service on the same post of Bal Constable, since he has already attained the age of majority.

11. In the light of the above discussions, I do not find any merit in this application, which is accordingly dismissed.