

(2003) 07 JH CK 0072

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4356 of 2002

Sumant Kumar and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 JCR 759

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Delip Jerath, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Heard Mr. Delip Jerath learned counsel for the petitioners. No. one appears on the behalf of the State-respondent.

2. The petitioners have prayed for quashing the order dated 26.2.2002 as contained in Annexure 9 series, whereby and whereunder the respondent No. 3, (Deputy Inspector General of Police, South Chhota-nagpur Range, Ranchi-cum-Deputy Inspector General Incharge Railways) has passed an order dismissing the petitioners from their services. Mr. Jerath has pointed out that all the petitioners were appointed by Annexures 1 series on the post of Constables. However, by reason of the impugned order, the services of the petitioners were terminated. According to the petitioners, after having been appointed, they Joined as Constables in Railway Police, whereafter their service books were opened. Subsequently, they underwent training for 1-1/2 years and passed respective training whereafter they were serving the department as trained constables. Seven years thereafter i.e. on 5.2.1999 a notice was served asking them to attend an inquiry in relation to a charge which appears to have been initiated on the basis of Departmental Proceeding No. 5 of 1998. From a perusal of the aforementioned notices it appears that the petitioners were directed to present themselves in the concerned Office and were also told that if they had not

received the charge-sheets, then they should obtain the same upon appearance and file their respective explanations. The petitioners have stated that having obtained the charge-sheets, they filed their respective explanations and on perusal of one of the explanations, i.e. Annexure 5, it appears that the charge against the petitioners was that they had been appointed in the year 1992 without getting the approval of the competent authority and that the selection board which had been constituted was so constituted without obtaining approval of the Police Headquarters and therefore they were guilty of having got themselves appointed without following the rules.

3. An enquiry was held and the Inspector, Railway Police submitted his report which is contained in Annexure 6, wherein he expressed his inability to give any finding on account of the fact that the Officers who had appointed the petitioners, were senior to him.

4. The aforementioned report was filed before the respondent No. 3, who thereafter initiated notices against the petitioners, whereafter the petitioners submitted their respective replies. The petitioners have stated at paragraph 5(1) that the Deputy Inspector General of Railway Police also submitted his report to the Government on 16.9.1998 as contained in Annexure 8 wherein he stated that the appointment of the petitioners had been made by the Deputy Inspector General of Railway Police and the petitioners having served on their respective posts for such a long period of time, should not have been terminated for alleged non-compliance of some technical rules. This opinion is at paragraph 4 of Annexure 8. After the aforementioned report was submitted on 16.9.1998 the respondent No. 3 instead of calling for the opinion of the Deputy Inspector General of Railway Police, which incidentally was submitted after obtaining approval of the Director General of Police, as is apparent from the last paragraph of the said Annexure A, passed the impugned order dated 26.2.2002 terminating the services of the petitioners.

5. Upon perusal of the counter-affidavit, it is apparent that in various paragraphs it has been stated that the appointments were in violation of the rules contained in the Bihar Police Manual and at paragraph 3 it has been mentioned that the petitioners got themselves appointed in the year 1992 without permission of the authorized senior officer and that the Board which was constituted was done so without taking approval of the Police Headquarters.

6. It is not in dispute that the petitioners were appointed in the year 1992 and the impugned orders have been passed in the year 2002. In other words, each of the petitioners had rendered almost ten years of service without there being any other complaints against them as has been stated by Mr. Delip Jerath. It has further been stated by Mr. Delip Jerath that right up to the date when the impugned orders were passed, the petitioners were in service and that they were never put under suspension nor were there any breaks in service.

7. In a similar case, another police constable, whose services had also been

terminated on the ground that the appointment was not in accordance with rules (namely, Balram Mahato), had preferred W.P. (S) No. 2087 of 2002 and by an order dated 3.2.2003 this Court observed that there was no justification to terminate the services after so many years, merely on the ground that the rules as provided under the Police Manual had not been followed. Accordingly, that writ application was allowed and the impugned order was quashed. That order was followed in two other similar matters, namely, W.P. (S) No. 3023 of 2002 and W.P. (S) No. 3042 of 2002. The aforementioned three orders have been brought on record by the petitioners vide Annexures 11 series appended to the rejoinder to the counter-affidavit (between running pages 146 to 148 of the instant writ application).

8. This Court is also in respectful agreement with the orders passed in the aforementioned cases by Hon"ble Mr. Justice M.Y. Eqbal and is also of the opinion that an appointment made ten years ago should not have been allowed to be frustrated merely on the ground that there was non-observance of some technical rules in the Police Manual and that too when such an extreme step was also not recommended by an Officer senior in rank to the respondent No. 3 as is evident from the last line of Annexure 8.

9. For the reasons stated above, this writ application must also succeed and it is accordingly allowed to do so. The impugned orders are quashed. Writ application is allowed. No order as to costs.