

(1997) 11 GAU CK 0008
In the Gauhati High Court
Case No : Writ Appeal No. 127 of 1995

Union of India (UOI) and Others

APPELLANT

Vs

Mahendra Chowdhury

RESPONDENT

Date of Decision : 20-11-1997

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1998) 1 GLT 326

Hon'ble Judges : M. Ramakrishna, C.J;B. Biswas, J

Bench : Division Bench

Advocate : R.P. Kakati, C.G.S.C, for the Appellant; A.S. Choudhury, for the Respondent

Judgement

M. Ramakrishna, C.J.—Shri Mahendra Chowdhury, the Respondent herein, was the Petitioner in Civil Rule No. 3943/91 challenging the correctness and legality of the verbal order of Appellant No. 2 seeking to terminate the services of the writ Petitioner as a Constable (TLR). The learned Single Judge by order made on 25th April, 1994, after hearing learned Counsel on both sides, allowed the writ petition with a writ of mandamus directing the Appellants to allow the writ Petitioner to continue in service.

2. Aggrieved by this order, the Appellants have preferred this appeal.

3. We have heard Mr. R.P. Kakati, learned Counsel for the Appellants as well as Mr. A.S. Choudhury, learned Counsel appearing for the Respondent-writ Petitioner.

4. Mr. Kakati, learned Standing counsel for the Union of India has taken us through the order of the learned Single Judge under appeal, the grounds taken in the appeal as well as other documentary evidence. He argued that as there was no order of appointment in writing, the question of any right arising in favour of the writ Petitioner that could be considered by the Court did not arise at all. However, the learned Single Judge no agreeing with the stand taken by the Union of India, recorded the findings which were contrary to the stand taken by the

Union of India. Therefore, according to him, the conclusion reached by the learned Single Judge is not correct. It was pointed out that at the physical fitness examination it was found that measurement of the chest of the writ Petitioner was deficient and that he was not selected. This aspect of the matter has not been properly considered by the learned Single Judge.

5. Lastly, Mr. Kakati contended that as there was no order of termination in writing, the question of challenging such order did not arise. Learned Single Judge ought to have seen this specific stand taken by the Union of India while arriving at the conclusion in favour of the writ Petitioner-Respondent.

6. Mr. Choudhury, learned Counsel appearing for the Respondent-writ Petitioner wants us to sustain the order of the learned Single Judge saying that the same is justified.

7. In order to appreciate the legal contention urged for the Appellants, we have perused Annexure-3 to the writ petition. It appears therefrom that the Commandant, Recruiting Officer, by an order made on 21st June, 1991 issued the following order:

You are hereby directed to report alongwith the following documents to the Comdt-128 Bn. CRPF, PO Amerigog, Khanapara, Guwahati-23 on 26.6.91.

- (a) All education certificates in original.
- (b) An original certificate in support of your date of birth.
- (c) Scheduled Caste/Scheduled Tribe certificate.
- (d) Pre-verification certificate duly signed by a Gazetted Officer and countersigned by the District Magistrate or Sub-Divisional Magistrate or other superior Officers (Blank Form enclosed).
- (e) Mess advance Rs. 400/- and personal expenses as per your requirement.
- (f) Light bedding and personal clothes.

Encl.(1) Sd/- S.M. Sharma, Commandant, Recruiting Officer.

8. By a perusal of the nature of the order passed and the conditions incorporated in the order, it is undoubtedly clear that the Commandant having selected the writ Petitioner-Respondent, issued an order of appointment to him as Constable (TLR) in CRPF. Looking at the condition in the order it cannot be construed to be only a direction, directing the Petitioner to report before the Commandant, as contended by the learned Counsel for the Appellants, in other words the stand taken by the Union of India is that this Annexure-3 should not be construed to be an order of appointment. On the other hand, looking at the circumstances under which this order has been issued after selection of the Respondent, the Commandant having issued the order on 21st June, 1991, learned Single Judge held that it was an order of appointment calling upon the writ Petitioner to report for duty on 26th June, 1991. This conclusion of the learned Single Judge does

not call for interference, in other words that order deserves to be held correct.

9. Considering the chest measurement of the writ Petitioner as referred in the counter affidavit presented on behalf of the Appellants herein filed in the writ petition, it is found that the chest measurement of the writ Petitioner was found to be 75 CMs (unexpanded) and 80 CMs expanded. According to the Union of India, as disclosed in the counter affidavit, this measurement does not fulfil the prescribed standard and he was found to be overaged and, therefore, he was not eligible for appointment to the post of Constable in CRPF and, as such, he was asked to leave Headquarter of the CRPF. Learned Single Judge considering the facts and circumstances and the stand taken in the counter affidavit observed as follows:

The case of the opposite party is that no letter of appointment was issued to the Petitioner but Annexure-3 will show that the question of medical examination of the Petitioner at that stage does not arise inasmuch as he was asked to report with the documents mentioned therein. He was medically examined earlier and the question of his chest measurement at that stage does not arise.

Learned Single Judge further observed as follows:

Be that as it may, it appears that the service of the Petitioner was terminated in a most arbitrary, capricious and whimsical manner. A person cannot be thrown out from the service according to pleasure of the authority, it must be done for some reason and this reason must be communicated/made known to a person as the authority is taking away the livelihood of the Petitioner and that was not done in the instant case.

10. These observations are made by the learned Single Judge basing upon certain facts. Considering these observations at the outset we were not satisfied with the stand taken by the Appellants that the writ Petitioner-Respondent was not appointed as stated above. It is clear from Annexure-3 to the writ petition that it was an order of appointment and in response to the said appointment, the writ Petitioner reported for duty.

11. It is a declared concept of law that once a citizen has been offered a post and the citizen is working by virtue of an order of appointment, the provisions of Article 311 of the Constitution come to his rescue. Such being the case, it is not possible to take a different view from the view expressed by the learned Single Judge. If at all the Appellants wanted to take action to terminate the services of the writ Petitioner-Respondent, they could have followed the procedure known to law. This having not been done in the instant case, we are of the view that the conclusion reached by the learned Single Judge was perfectly correct which does not call for interference.

In the result, the appeal fails and is dismissed.