
(2020) 09 JH CK 0003

In the Jharkhand High Court

Case No : Writ Petition(S) No. 4417 of 2009

Vinita Singh And Ors

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 01-09-2020

Acts Referred:

Citation : (2020) 09 JH CK 0003

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Ritu Kumar, Devesh Krishna

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties through V.C.
2. The instant application has been preferred by the original-petitioner-Rajesh Kumar Singh, for quashing and setting aside the order passed by the Deputy Inspector General of Police (Budget), Jharkhand, Ranchi communicated by letter No. 4095 dated 11.08.2009 (Annexure-19) whereby the departmental appeal preferred by the original-petitioner has been rejected. It has also been prayed for quashing of the Memo No. 93 dated 31.10.2008 (Annexur-16) and office order as contained in Memo No. 7352 dated 01.11.2008 (Annexure-17) issued by the Superintendent of Police, (Vigilance) Bureau, Jharkhand, Ranchi, whereby the original-petitioner has been dismissed from service w.e.f. 31.10.2008.
3. After the death of the original-petitioner the name of his widow and other legal heirs were substituted pursuant to the order dated 08.02.2017 passed in the instant case.
4. The instant case has a chequered history. The original- petitioner was appointed as Constable by office Order No. 23/90 dated 27.01.1990. After his appointment the original- petitioner was sent for Constable and Traffic Police Training at Traffic Training School, Jamshedpur. Thereafter, in the year, 1993, he

was declared successful in departmental examination held in the year, 1993 and was also issued a certificate. After 12 years of his service, the original-petitioner was sent for PTC/ACP training in which also he was declared successful.

All of sudden, in the year, 1997 the Government of Bihar has taken a decision by Office Order as contained in Memo No. 140 dated 25.02.1997 to terminate the services of eight persons whose appointment was said to be illegal and accordingly, the then Superintendent of Police of the respective districts were directed to ensure that those eight persons are terminated. After creation of the State of Jharkhand, the Jharkhand Government vide Memo No.1389 dated 23.10.2003 also directed the concerned Superintendent of Police of different districts giving the names of nine persons saying that they have been illegally appointed by one Sri Vijay Pratap Singh, the then Inspector General of Police, just prior to his superannuation and as such, the appointment of those nine persons are illegal and the respective Superintendent of Police were directed to ask for a show cause from them.

The original-petitioner being aggrieved by the said memo filed a writ application being W.P.(S) No. 5300 of 2003, which has been disposed of directing the respondent not to terminate the services of the original-petitioner in a routine manner and it has also been directed to take any action after giving proper show cause mentioning the reasons for the proposed termination. Thereafter, the original-petitioner was issued show-cause notice dated 14.11.2003 to which he replied. Thereafter, he was issued another show-cause notice dated 01.03.2004. Subsequently, the original-petitioner was once again issued show-cause notice as contained in Memo No. 1519/GS dated 22.09.2006 directing him to file a reply as to why his services be not terminated on the same set of charges i.e. his appointment is illegal as he was appointed by Sri Vijay Pratap Singh, who was not competent to appoint him. The original-petitioner filed its reply to show-cause on 01.10.2006, denying the allegations leveled against him stating therein that he was appointed in accordance with law and as per the provisions of Police Manual. However, the show-cause reply was not considered and the petitioner was terminated vide order as contained in Memo No. 1590 dated 09.10.2006 issued by the Inspector General of Police. Pursuant to that, the Superintendent of Police (Vigilance) Bureau issued a departmental order informing the original-petitioner that he has been terminated w.e.f. 11.10.2006.

The original-petitioner immediately preferred an appeal against the order of termination dated 09.10.2006 before the appellate Authority and when no action was taken, he preferred writ application before this Court being W.P.(S) No. 371 of 2008, praying therein for quashing the order of termination.

The said writ application was disposed of vide order dated 03.03.2008, directing the Superintendent of Police (Vigilance), Ranchi to dispose of the appeal pending before him. Pursuant to the said order, the original-petitioner immediately filed representation before the Superintendent of Police (Vigilance) Jharkhand, Ranchi, but no action was taken in pursuance to the order dated 03.03.2008. Thereafter,

the original-petitioner filed a contempt application being Cont. (Civil) Case No. 512 of 2008 before this Court for non-compliance of the order. However, during pendency of this contempt application, the original-petitioner received a letter of reinstatement as contained in Memo No. 1926 dated 27.09.2008.

Thereafter, the original-petitioner was issued a show-cause notice dated 29.09.2008 issued by the Superintendent of Police, Vigilance Bureau, Ranchi whereby, he was directed to submit his reply to the show-cause notice so that departmental proceeding could be initiated against him. He was also served with a charge-sheet as contained in Memo No. 6937 dated 29.09.2008. In pursuance to the said show-cause notice and charge-sheet dated 29.09.2008, the original-petitioner immediately filed his detailed reply denying all allegations leveled against him. Thereafter, a departmental proceeding was conducted and the original-petitioner was terminated vide order as contained in Memo No. 93 dated 31.10.2008.

Thereafter, the original-petitioner filed a departmental appeal on 10.11.2008, and during pendency of the departmental appeal, the original-petitioner also filed a writ application being W.P.(S) No. 327 of 2009, however, the said writ application was dismissed as withdrawn by order dated 29.01.2009 passed by this Court.

5. Learned counsel for the petitioner submits that the order of termination and order of appeal are totally arbitrary, mala-fide and without jurisdiction and as such, are liable to be set aside on the sole ground that it has been passed in most mechanical manner and without considering the points raised by the petitioner and the observations made by this Court. Learned counsel further contended that even the appellate authority in great haste did not consider the merits of the case and the points raised by the original-petitioner. She further contended that the appellate authority gravely erred in holding that the original-petitioner was not appointed in accordance with law on the ground that the Sargent Major was not the competent authority to take a decision with regard to medical test. She finally concluded her argument by submitting that though the original-petitioner has filed several writ applications and during pendency of this writ application he expired and now his legal heirs including his widow is before this court, as such, their case may be considered sympathetically.

6. Per contra, learned counsel for the State submits that the instant application is fit to be dismissed because for the same set of reliefs, the original-petitioner had earlier filed a writ application before this Court and ultimately withdrew the same; as such, the petitioner is not entitled to raise the grounds which has already been raised and decided in the earlier case. He further contended that the original-petitioner- Rajesh Kumar Singh was appointed as constable by the then Inspector General of Police by violating the established rules of Police Manual and his termination is in accordance with Rules after following the due procedure as per the direction of this Court. He further submits that an illegal appointment cannot continue to sustain due to passage of time.

7. Having heard learned counsel for the parties and after going through the materials available on record, it transpires that the contention of the respondent-counsel that the instant writ application is hit by the principle of res judicata is not sustainable in the eyes of law because the order passed in W.P.(S) No. 327 of 2009 was dismissed as withdrawn and the case was not decided on merit. However, I am in agreement with the other submissions of the learned counsel for the State that the appointment of the original-petitioner was not in accordance with law and the rules of Police Manual. There was no open advertisement and the original-petitioner was appointed by the Inspector General of Police, though, the appointing authority for constable is Superintendent of Police. An illegal appointment cannot be legalized by passage of time. In this regard reference may be made to the Judgment passed by the Hon'ble Apex Court in the case of State of Orissa versus Mamata Mohanty reported in (2011) 3 SCC 436 where in para-37 & 38, the law has been laid down as under:

" 37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (Vide Upen Chandra Gogoi v. State of Assam¹⁶, Mangal Prasad Tamoli v. Narvadeshwar Mishra¹⁷ and Ritesh Tewari v. State of U.P.¹⁸).

38. The concept of adverse possession of lien on post or holding over are not applicable in service jurisprudence. Therefore, continuation of a person wrongly appointed on post does not create any right in his favour. [Vide M.S. Patil (Dr.) v. Gulbarga University¹⁹.] Eligibility lacking"

8. The issue is now no more res integra that if the original appointment was not made by following due process of selection as envisaged by the relevant rules, the appointment itself is illegal. Even the Director General of Police has no discretionary power to make any appointment on the post of constable. There is nothing like absolute power vested in any authority to appoint any person. When the law provides procedure for appointment to a public post then the appointment is to be made by following the said procedure.

From the record it clearly transpires that there was no open advertisement and no due process of selection was followed as envisaged in the relevant Rules. It also transpires that the said Sri Vijay Pratap Singh made several appointments like the petitioner just on the verge on his retirement without having any power to appoint the constables and in complete violation of the relevant rules of the Police Manual.

9. In view of the aforesaid facts and circumstances of the case and the discussions made hereinabove, the original- petitioner was not entitled for any relief as prayed for in the instant writ application; as a result, the instant writ application is dismissed.