
(2020) 02 JH CK 0053

Jharkhand High Court

Case No: Writ Petition (S) No. 1041 Of 2014

Hansu Kumar

APPELLANT

Vs

State Of Jharkhand
And Ors

RESPONDENT

Date of Decision: Feb. 28, 2020

Acts Referred:

- Police Act, 1861 - Section 8
- Police Manual - Rule 808
- Police Regulations, Bengal, 1943 - Rule 840

Hon'ble Judges: Sanjay Kumar Dwivedi, J

Bench: Single Bench

Advocate: Gaurav Abhishek, Diwakar Jha

Final Decision: Allowed/Disposed Of

Judgement

Heard Mr. Gaurav Abhishek, learned counsel for the petitioner and Mr. Diwakar Jha, learned counsel for the respondent-State.

The petitioner has preferred this writ petition for quashing the order dated 31.12.2012, whereby, the service of the petitioner has been terminated. The

appellate order dated 23.11.2013 is also under challenge in this writ petition, whereby, the order of the disciplinary authority has been confirmed.

The brief facts of the present case are that the petitioner was appointed by the respondent-authorities pursuant to Advertisement No. 3 of 2007 and

was declared successful in the first merit list and, thereafter, he was appointed in the police department on 05.06.2009 and allotted Police No. 458 to

the petitioner. After joining the service, the petitioner was sent for training and thereafter he was posted in Bokaro. The petitioner started his work

with full satisfaction of his superiors. Thereafter, a charge-sheet was issued against the petitioner on 06.01.2011 to the effect that he has not disclosed

the fact that he was earlier appointed in Jharkhand Armed Police-3, Govindpur, Dhanbad and was declared absconder. Pursuant to which the

petitioner was suspended and charge-sheet was issued. The petitioner filed reply to the charge-sheet, wherein, it was stated that he was appointed in

Jharkhand Armed Police-3, Govindpur, Dhanbad, but due to some personal reason, he had given his resignation from the aforesaid post on 06.04.2009.

The said resignation letter is annexed at Annexure-3 to this writ petition. The Enquiry Officer submitted his report and found the petitioner guilty and,

thereafter, the services of the petitioner was terminated vide order dated 31.12.2012.

Mr. Gaurav Abhishek, learned counsel for the petitioner submits that the petitioner has already tendered his resignation on 06.04.2009 and

subsequently he has been appointed in the district of Bokaro on 05.06.2009. He further submits that the petitioner has also filed reply to the charge-

sheet, but the same has not been considered by the respondents in its right perspective. He refers to Rule 808 of the Police Manual.

For the sake of convenience, Rule 808 of the Police Manual is quoted herein below:

“808. Resignations.- All resignations by Police officers shall be in writing, signed by persons making the application. They are required

to give two months notice to be relieved under Section 8 of Police Act but higher authority may relieve them earlier. A resignation once

offered cannot be legally withdrawn but some time should be given to those who offer resignation and the authorities should not be in hurry

to accept it. For counting of previous service in case of reemployment, see Rule 730(b).“

By way of referring the said Rule 808, learned counsel for the petitioner submits that a resignation once offered cannot be legally withdrawn and there

is requirement of giving two months notice to relieve. He further submits that as the petitioner has already tendered his resignation, in that impression

he joined the new post. He further submits that on the similar state of charge, one Pramod Kumar Singh was also proceeded with the same charge

and the enquiry of the petitioner as well as Pramod Kumar Singh was held simultaneously by the same Enquiry Officer, but the resignation of the said

Pramod Kumar Singh was accepted, whereas, resignation of this petitioner was not accepted. He refers the order passed by this Court dated

04.09.2019 in W.P. (S) No. 1045 of 2014. He further submits that one Vikram Das was also facing same charge and he has been taken back in the

service with minor punishment vide order dated 30.11.2011. The said order with regard to Vikram Das has been brought on record by way of filing

the supplementary affidavit on behalf of the petitioner. Vikram Das has been inflicted with minor punishment of withholding of six increments. He

further submits that there is no parity on punishment with regard to the petitioner and Pramod Kumar Singh and Vikram Das. He refers to the

judgment rendered by the Hon'ble Supreme Court in the case of Chairman-cum-Managing Director, Coal India Limited and another vs. Mukul Kumar

Choudhuri and Others, reported in (2009) 15 SCC 620.

Paragraph 20 of the said judgment is quoted herein below:

“20. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer

have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure,

magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.”

Learned counsel for the petitioner further submits that Rule 808 of the Police Manual is similar with Rule 840 of the Police Regulations of Bengal. He

further submits that this Rule was considered by the Division Bench of the Calcutta High Court in the case of Sankha Biswas vs. State of West

Bengal & Others, reported in 2015 SCC Online Cal 1915.

Paragraph 10 of the said judgment is quoted herein below:

“10. Thus, the regulation indicates that a resignation once tendered by a police officer has to be mandatorily accepted. There is no

question of refusing the same. The only leeway given to the police authorities is that the police officer who submits his resignation may be

directed to continue to work for two months which is the notice period. His application for resignation cannot be refused on the ground that

a departmental enquiry pending against him could lead to his dismissal or prosecution. It cannot be rejected because the employee is

undergoing the punishment awarded to him. The resignation cannot be declined on the ground that a criminal case is pending against the

officer. There is no power vested in the authorities at all under Regulation 840 to refuse a resignation once it is submitted. The police

authorities have only been empowered to accept the same immediately and not insist on the completion of the notice period if the reasons for

resignation are satisfactory. They can insist upon the presence of the officer during the notice period, if an enquiry is pending against him

which may lead to his dismissal or prosecution.”

Per contra, learned counsel for the respondent-State submits that there is no illegality in the impugned orders. The petitioner has suppressed the fact

and that is why he has been terminated from the service. He further submits that after providing every opportunity of hearing to the petitioner, the

Enquiry Officer has submitted his report. Considering all these aspects of the matter, the disciplinary authority has passed the impugned order dated

31.12.2012 and the appellate authority has also confirmed the same vide order dated 23.11.2013.

Having heard learned counsel for the parties and considering the judgments relied upon by the learned counsel for the petitioner, this Court finds that

the impugned orders need to be interfered with on the ground of parity of punishment. Similarly situated employees have been given lighter

punishment, whereas, the service of the petitioner has been terminated. In view of Rule 808 of the Police Manual, resignation letter can be withheld

for two months only. Rule 808 further says that there shall be no withdrawal of the resignation letter. The case of the petitioner is fully covered with

Sankha Biswas case (supra). Considering the case of Chairman-cum-Managing Director, Coal India Limited (supra) and also the order passed by this

Court dated 04.09.2019 passed in W.P.(S) No. 1045 of 2014, the impugned orders dated 31.12.2012 and 23.11.2013 are quashed. The matter is

remitted back to the disciplinary authority to pass an order afresh, in accordance with law.

Accordingly, this writ petition stands allowed and disposed of.