
State Of West Bengal & Others Vs Ratan Ghosh

WP.ST No. 1605 Of 2008

Court: Calcutta High Court (Appellete Side)

Date of Decision: Aug. 17, 2023

Acts Referred:

Constitution Of India, 1950 " Article 311, 311(2)#West Bengal Services (Appointment, Probation and Confirmation) Rules, 1979 " Rule 2(3), 4, 5, 5(4)#Indian Penal Code, 1860 " Section 307, 325, 326, 447#Police Act, 1861 " Section 2A, 46(3)(c)

Hon'ble Judges: Debangsu Basak, J; Md. Shabbar Rashidi, J

Bench: Division Bench

Advocate: Tapan Kr. Mukherjee, Somnath Naskar, Sarwar Jahan, Dipankar Mandal, Abdul Aziz Mondal

Final Decision: Disposed Of

Judgement

Debangsu Basak, J

1. State of West Bengal has assailed the order dated July 18, 2008 passed by the West Bengal Administrative Tribunal in OA 3393 of 2007.

2. By the impugned order, the Tribunal has quashed the order of discharge of the private respondent and directed the respondent authority to reinstate

him within a period of six weeks from the date of communication of the order.

3. In this writ petition, the Coordinate Bench had passed an order dated November 24, 2008 in which, it was observed that, in the event the respondent

was reinstated pursuant to the order of the Tribunal, the same will abide by the result of the application and no right or equity will be credited in favour

of the respondent.

4. Learned Senior Advocate appearing for the petitioner has submitted that, the respondent was selected to the post of Constable. While the

respondent was undergoing training at Barakpore Police Training Collage, a confidential report had been submitted to the Superintendent of Police,

DIB, Nadia on May 15, 2007 stating that the respondent was charge-sheeted under Ranaghat Police Station Case No. 286/04 dated September 4,

2004 under Sections 447/325/326/307 of the Indian Penal Code, 1860.

5. Learned Senior Advocate appearing for the petitioner has submitted that, the respondent was discharged from service on the basis of the

confidential report. He has drawn the attention of the Court to the notification dated January 7, 1992 issued under the provisions of the Police Act,

1861. He has contended that, the order of discharge of the respondent had been passed in terms of the notification dated January 7, 1992. He has

contended that, by virtue of the provisions of the West Bengal Services (Appointment Probation and Confirmation) rules, 1994 the respondent was in

probation at the material point of time when he was discharged. Since the respondent was not confirmed or had been appointed before the order of

discharge, the respondent was not entitled to the protection under Article 311(2) of the Constitution of India. In support of such contention he has

relied upon 2016 Volume 8 Supreme Court Cases 471 (Avtar Singh vs. Union of India and Others) and 2022 SCC OnLine SC 1300 (Satish Chandra

Yadav Vs. Union of India and Others).

6. Learned Senior Advocate appearing for the petitioner has submitted that, the fact that the respondent is working, is not an impediment to the High

Court granting relief to the petitioner. In respect of such contention he has relied upon 2009 Volume 1 Supreme Court Cases 122 (Union of India and

Others vs. Ram Kumar Thakur), 2006 Volume 5 Supreme Court Cases 127 (Nagar Mahapalika vs. State of U.P.) and 2005 Volume 10 Supreme

Court Cases 383 (Nagesh Datta Shetti Vs. State of Karnataka).

7. Learned advocate appearing for the respondent submitted that, the respondent belongs to the Other Backward Class (OBC) category. The

respondent had been selected for appointment to the post of Constable of West Bengal Police and accordingly appointment was offered with effect

from January 19, 2007. The respondent had reported to the Police Training College, Barackpore on January 21, 2007. Prior thereto, the respondent

had filled a prescribed form for PVR in which against Clause No. 13 he answered the question "Have you ever been arrested or convicted by a

Court of Law in any offence?" by writing "No". Since the respondent had never been arrested by the Police and never been convicted by any

Court of Law such declaration was correct.

8. Learned advocate appearing for the respondent has submitted that, while the respondent was undergoing training he was discharged by an order

dated May 24, 2007 on the plea of the respondent being charge-sheeted in the police case. He has contended that, prior to such discharge no

notice/hearing/show cause was given to the respondent. The respondent had challenged such discharge notice in OA 3393 of 2007. During the

pendency of the original application before the Tribunal, the respondent had been acquitted in the criminal case by a judgement dated April 29, 2008.

9. Learned advocate appearing for the respondent has submitted that, during the pendency of the writ petition, the authority had allowed the

respondent to resume his duty from December 11, 2009. The respondent had been promoted to the post of Assistant Sub-Inspector which he joined on

July 28, 2023.

10. Learned advocate appearing for the respondent has submitted that, the respondent did not suppress any fact from the authorities. The respondent

is presently aged about 40 years 7 months and if he is rendered jobless at this age after serving for a period of 13 years the respondent will be

severely prejudiced.

11. Referring to Avtar Singh (supra) and Satish Chandra Yadav (supra) cited on behalf of the petitioner the learned advocate appearing for the

respondent has submitted that, the allegation of suppression was never raised against the respondent. Therefore the ratio laid down therein is attracted

to the facts and circumstances of the present case.

12. The respondent had participated in the selection process for the post of constable of West Bengal police. By a writing dated January 15, 2007, the

Superintendent of Police, Nadia had informed the respondent that he was provisionally selected for appointment as constable and was required to

report to the reserve office on January 17, 2007. The respondent had reported pursuant to the writing dated January 15, 2007. The respondent had

been paid salary for the months of February to April 2007.

13. By a writing dated May 24, 2007, the respondent had been informed that since he was involved in a criminal case where he was charge-sheeted,

he was unsuitable for the post of constable under training. The respondent had been discharged from police service as per West Bengal (Home

Department) Police Notification No. 225-PL/PI/8C-11/87-Pt IV dated January 7, 1992 with effect from May 24, 2007.

14. The respondent had assailed the discharge memo dated May 24, 2007 before the West Bengal Administrative Tribunal in OA No. 3393 of 2007.

By the impugned order dated July 18, 2008, the Tribunal had set aside the discharge memo dated May 24, 2007 on the ground that it violated

provisions of Article 311 of the Constitution of India.

15. On January 15, 2007, when the respondent had been appointed provisionally to the post of Constable and asked to report on January 17, 2007, the

respondent was governed by the provisions of the West Bengal Services (Appointment, Probation and Confirmation) Rules, 1979. The Rules of 1979

had come into effect from June 1, 1979. The Rules of 1979 had application in cases of appointment on entry into Government service. The service of

the respondent did not come within the exemptions specified in Rule 2 (3) of the Rules of 1979. Rule 4 of the Rules of 1979 has specified that all

appointments on entry into Government service shall initially be made on temporary basis. Rule 5 of the Rules of 1979 has specified that, a

Government employee shall be deemed to be on probation on completion of continuous temporary service for 2 years after his initial appointment in a

post of service or cadre and that he shall be confirmed and made permanent on satisfactory completion of the period of probation. The period of

probation shall be one year and that no formal declaration shall be necessary in respect of appointment on probation. Under Rule 5(4) on completion of

the period of probation the appointing authority shall either issue formal declaration making the probationer permanent or take such action as may be

considered necessary in terms of the provisions of Part A of Chapter I of the Services (Training and Examination) Rules.

16. By virtue of the contents of the writing dated January 15, 2007, where it has been stated that the respondent was provisionally selected and by

virtue of the Rules of 1979, it has to be held that, the respondent was still in probation when he was discharged from the services on May 24, 2007.

17. The writing dated May 24, 2007 has referred to notification dated January 7, 1992. The notification dated January 7, 1992 was issued in exercise

of powers conferred under Section 2A read with Clause (c) of Sub-Section (3) of Section 46 of the Police Act, 1861. It has provided for an

eventuality of being discharged from service of a Constable. Relevant clause of the notification dated January 7, 1992 is as follows: "A" (10) Discharge

A Constable, by undergoing training in the Police Training College or undergoing probation in the district/unit may at any time be discharged by the

Principal, Police Training College or by the Superintendent/Commandant as the case may be. If he is considered by them to be unsuitable for the post

but the order of discharge shall not be given effect to till it has been submitted to and confirmed by the higher authority.

The order of discharge shall initiated the ground for the discharge but no formal proceedings such as the prescribed for the removal or dismissal of the

Government servants shall be necessary

No appeal shall lie against the order of discharge

18. The respondent had been appointed provisionally. He had been on probation by virtue of the Rules of 1979. He had been discharged under clause

10 of the notification dated January 7, 1992.

19. Ram Kumar Thakur (supra) has held that, an appeal has to be entertained and heard on merits even if there was no interim relief granted in favour

of the appellant and the order impugned was implemented.

20. Nagesh Datta Shetti (supra) has held that, an appeal has to be decided on merits despite the Tribunal acting on the basis of the order of the

learned Single Judge from which the appeal was preferred.

21. Nagar Mahapalika (supra) has held that, even if the employer complying with the direction of the labour court, challenge to which was pending

before the High Court, then, the High Court ought to have disposed of the writ petition on merits and not on the assumption that in view of the

reinstatement granted by the interim order, it would be inappropriate to discontinue the same.

22. The ratio of the three decisions noted above appears to be that, despite, the writ court not granting any interim relief to the writ petitioner and

despite the writ petitioner complying with the direction passed by the Tribunal, nonetheless, the writ petition has to be considered and decided on

merits, in the given facts and circumstances of the case. In the present case, the writ petition had been filed assailing the impugned order of the

Tribunal. The coordinate bench by the order dated November 24, 2008 had directed that, should the respondent was reinstated, the same would not

create any equity in favour of the respondent. In the facts and circumstances of the present case, the issues with regard to the dismissal of the

respondent have to be decided notwithstanding there being no stay of the impugned order and the respondent being allowed to resume his duties and

being promoted subsequently.

23. Avtar Singh (supra) has observed that, the idea of verification of character and antecedents is that a person suitable for the post in question is

appointed. An incumbent should not have antecedents of such a nature which may adjudge him unsuitable for the post. Information given to the

employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true

and there should be no suppression or false mention of required information.

24. Satish Chandra Yadav (supra) has considered various authorities including Avtar Singh (supra) and authorities subsequent thereto on the subject of

suppression of material fact and pendency of criminal case at the time of appointment. It has held as follows: "90. In such circumstances, we undertook some exercise to shortlist the broad principles of law which should be made applicable to the litigations

of the present nature. The principles are as follows:

a) Each case should be scrutinised thoroughly by the public employer concerned, through its designated officials-more so, in the case of recruitment

for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to

society's security. [See Raj Kumar (supra)]

b) Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to

consider the antecedents, and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a

candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate

concerned is suitable and fit for appointment to the post.

c) The suppression of material information and making a false statement in the verification Form relating to arrest, prosecution, conviction etc., has a

clear bearing on the character, conduct and antecedents of the employee. If it is found that the employee had suppressed or given false information in

regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service.

d) The generalisations about the youth, career prospects and age of the candidates leading to condonation of the offenders' conduct, should not enter

the judicial verdict and should be avoided.

e) The Court should inquire whether the Authority concerned whose action is being challenged acted mala fide.

f) Is there any element of bias in the decision of the Authority?

g) Whether the procedure of inquiry adopted by the Authority concerned was fair and reasonable?

25. In *Satish Chandra Yadav (supra)* the incumbent concerned had been required to fill up a verification form at the time of his recruitment. In

response to the question whether any case was pending against him, the incumbent had answered in the negative. Such factual scenario does not

obtain in the facts and circumstances of the present case. Nothing has been placed on record to suggest, let alone establish that, the respondent herein

suppressed the pendency of the criminal case as against him during the selection process.

26. The circular dated August 4, 1977 of the State Government, Home Department had guided the process for verification of character and

antecedents of the candidates for appointment under the State Government. Clause (ii) thereof has laid down that, a candidate with a record of past

criminal activities may be declared unsuitable for employment under the State Government or in any State Government undertaking/organisation but no

candidate shall be considered unsuitable for employment under the State Government or in any State Government undertaking/organisation by reason

only of the fact that he is or was a member of or is or was associated or connected with the activities of any political party, group or organisation prior

to his appointment.

27. An amount of discretion has been left with the appointing authority for evaluating the character and antecedents based upon the criminal case

pending as against the incumbent. Record of past criminal activities may allow the appointing authority, to consider a candidate unsuitable for

employment.

28. In the facts of the present case, the fulcrum of the discharge of the respondent from service as contained in the memo dated May 24, 2007 is the

pendency of the criminal case where the respondent had been charge-sheeted. The respondent had been acquitted from such criminal case

subsequent to the discharge memo dated May 24, 2007 and during the pendency of the original application before the Tribunal.

29. The Tribunal had proceeded to quash the discharge memo dated May 24, 2007 on the basis of violation of Article 311 (2) of the Constitution of

India. The respondent being on probation at the time of his appointment, the rigours of Article 311 (2) of the Constitution were not attracted in respect

of him.

30. The respondent had been granted promotion by a writing dated July 27, 2023 to the post of Assistant sub-Inspector of police. The promotion had

been made provisionally subject to the condition that the incumbent did not face any departmental proceedings, criminal case or proceeding before the

vigilance commission or are not presently under any currency of punishment.

31. The grant of promotion during the pendency of the present proceedings, to the respondent, would not vest the respondent, with any equity or right

in view of the nature of promotion granted to the respondent by the writing dated July 27, 2023.

32. The respondent is about 40 years of age presently and his plight, having served for about a decade in the police particularly in view of his

subsequent acquittal from the criminal case requires consideration. In the peculiar facts and circumstances of the present case, since it has not been

alleged as against the respondent that, he suppressed any material fact during the selection process and since, antecedent and character verification,

permits the appointing authority to ignore a criminal case if, in the opinion of the appointing authority, the same does not affect the suitability of the

incumbent, and since adjudging the suitability of an incumbent is in the domain of the appointing authority it would be appropriate that, the respondent

be permitted to apply for reconsideration of the order of discharge dated May 24, 2007 with the appointing authority within a period of a fortnight from

date. In the event, the appointing authority receives such an application for reconsideration, then, the appointing authority will proceed to decide the

same, in accordance with law, taking into account the subsequent facts also. In the event, no such application is made then, the order of discharge

dated May 24, 2007 shall revive.

33. With the aforesaid observations, WPST 1605 of 2008 is disposed of without any orders to costs.

34. I agree.