

Md. Phuleman Vs State Of Jharkhand

Court: Jharkhand High Court

Date of Decision: Jan. 27, 2025

Acts Referred: Motor Vehicles Act, 1988 " Section 213, 213(5)(b)

Jharkhand Motor Vehicle Inspector Cadre (Appointment Promotion and Other Service Conditions) Rules, 2010 " Rule 16(gha)

Hon'ble Judges: M.S. Ramachandra Rao, CJ; Deepak Roshan, J

Bench: Division Bench

Advocate: Manoj Tandon, Shray Mishra, Shashank Shekhar

Final Decision: Dismissed

Judgement

M. S. Ramachandra Rao, CJ. (Oral)

1. In this writ petition, the petitioners who are Motor Vehicle Inspectors have questioned Rule 16(gha) of the Jharkhand Motor Vehicle, Inspector,

Cadre, (Appointment Promotion, and, Other, Service Conditions) Rules, 2010 by which the post of Motor Vehicle Inspector and Senior Motor

Vehicle Inspector were declared as "non-gazetted" posts.

The said provision mentions that persons who are promoted to the Post of Motor Vehicle Inspectors and Senior Motor Vehicle Inspectors would not

be "gazetted officers".

2. Counsel for the petitioners contended that this provision is contrary to Section 213 of the Motor Vehicles Act, 1988. The said provision in so far as it

is relevant is as under:

"(1) The State Government may, for the purpose of carrying into effect the provisions of this Act, establish a Motor Vehicles Department and appoint as officers

thereof such persons as it thinks fit.

(2) Every such officer shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

(3) The State Government may make rules to regulate the discharge by officers of the Motor Vehicles Department of their functions and in particular and without

prejudice to the generality of the foregoing power to prescribe the uniform to be worn by them, the authorities to which they shall be subordinate, the duties to be

performed by them, the powers (including the powers exercisable by police officers under this Act) to be exercised by them, and the conditions governing the

exercise of such powers

(4) The Central Government may, having regard to the objects of the Act, by notification in the Official Gazette, prescribe the minimum qualifications which the

said officers or any class thereof shall possess for being appointed as such.

(5) In addition to the powers that may be conferred on any officer of the Motor Vehicles Department under sub-section (3), such officer as may be empowered by

the State Government in this behalf shall also have the power to-

(a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and the rules made thereunder are being observed;

(b) with such assistance, if any, as he thinks fit, enter, inspect and search any premises which is in the occupation of a person who, he has reason to believe, has

committed an offence under this Act or in which a motor vehicle in respect of which such offence has been committed is kept:

Provided that,-

(i) any such search without a warrant shall be made only by an officer of the rank of a Gazetted Officer;

(ii) where the offence is punishable with fine only the search shall not be made after sunset and before sunrise;

(iii) where the search is made without a warrant, the Gazetted Officer concerned shall record in writing the grounds for not obtaining a warrant and report to his

immediate superior that such search has been made;

(c) examine any person and require the production of any register or other document maintained in pursuance of this Act, and take on the spot or otherwise

statements of any person which he may consider necessary for carrying out the purposes of this Act;

(d) seize or take copies of any registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason

to believe has been committed;

(e) launch prosecutions in respect of any offence under this Act and to take a bond for ensuring the attendance of the offender before any Court;

(f) exercise such other powers as may be prescribed:

Provided that no person shall be compelled under this sub-section to answer any question or make any statement tending to incriminate himself.

(6) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be, apply to any search or seizure under this section as they apply to

any search or seizure under the authority of any warrant issued under section 94 of the Code.

Corresponding Law.- Section 213 corresponds to section 133-A of the Motor Vehicles Act, 1939.

Objects and Reasons.- Clause 214 empower the State Government to establish a Motor Vehicles Department and appoint officers for the purpose of carrying into

effect the provisions of the Act and the powers exercisable by such officers. It also empowers the Central Government to prescribe qualification for such officers.

3. A reading of the above Section of the Motor Vehicles Act, 1988 indicates that Motor Vehicle Officers such as the petitioners though treated as

public servants within the meaning of the Indian Penal Code and conferred certain powers for carrying into effect the provisions of the said law, are

also conferred under Sub-Section 5(b) the power to take assistance and then enter, inspect and search any premises, which is in the occupation of the

person who he has reason to believe, has committed an offence under the Motor Vehicles Act, 1988 or in which a motor vehicle in respect of which

such offence has been committed is kept.

The first proviso to the said Sub-Section 5(b) of Section 213 mandates that any search without a warrant shall be made only by an officer of the rank

of gazetted officer.

An interpretation is sought to be placed on this by the counsel for the petitioners contending that since the search is to be done by an officer of the

rank of a gazetted officer and since power to make a search is conferred on the petitioners, they ought to be deemed to be gazetted officers.

4. We are unable to agree with the said submission for the reason that even though such Motor Vehicle Officers are conferred the power to search

without warrant they are bound to take with them for assistance an officer of the rank of a gazetted officer.

The petitioners cannot, on the ground that they have to take the assistance of an officer of the rank of a gazetted officer for making a search without

a warrant, claim to be themselves gazetted officers, as that would be doing violence to the provision contained in Section 213(5)(b). This contention is,

therefore, rejected.

5. The next contention raised by the counsel for the petitioners is on the basis of Rule 254 of the Jharkhand Motor Vehicles Rules, 2001 which

empower any officer of the motor vehicle department of above the rank of an Assistant Inspector of Motor Vehicles to exercise powers under

various provisions of the Motor Vehicles Act, 1988 including Section 213 subject to the restrictions imposed therein.

6. Counsel for the petitioners contends that since the Assistant Inspector of Motor Vehicles who is sub-ordinate in rank to the petitioners is also

empowered to exercise the power under Section 213 of the Motor Vehicles Act, 1988, the petitioners holding a higher rank than the Assistant

Inspector of Motor Vehicles have to be treated as gazetted officers.

7. We do not understand the said provision to empower Assistant Inspector of Motor Vehicles to exercise the power of search without warrant under

Section 213 without taking the assistance of a gazetted officer because the express language of the Rule 254 confers the power under Section 213 on

the Assistant Inspector of Motor Vehicles, "subject to the restrictions imposed therein".

Therefore, even the Assistant Inspector of Motor Vehicles has to take the assistance of a gazette officer as per the first proviso to Section 213(5)(b).

We have already held that even the petitioners who are holding a higher rank than the Assistant Inspector of Motor Vehicles have to take the

assistance of a gazetted officer while doing a search without warrant.

Therefore, this contention also does not come to the assistance of the petitioners.

8. Lastly, it is contended on the basis of Rule 256 of the Jharkhand Motor Vehicles Rule, 2001 that because the uniform being worn by the petitioners

and other officers of the department is similar, the petitioners should be treated as gazetted officers.

9. This contention cannot be countenanced because the uniform worn by an officer does not determine his status as a gazette officer.

10. We are therefore satisfied that there is no merit in the writ petition and it is accordingly, dismissed.

11. Pending I.A, if any, stands disposed of.

12. No cost.