

(2009) 08 JH CK 0002

Jharkhand High Court

Case No: L.P.A. No. 296 of 2006

Ranjay Kumar Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Aug. 5, 2009

Hon'ble Judges: M.Y. Eqbal, J; Jaya Roy, J

Bench: Division Bench

Advocate: S.N. Pathak, for the Appellant; Rajendra Krishna, Senior Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

M.Y. Eqbal, J.

This Letters Patent Appeal is directed against the judgment dated 6.8.2007 passed in W.P.S. No. 3940 of 2007 whereby the learned Single Judge dismissed the writ application and refused to interfere with the Hazaribagh District Order No. 1320/2007 dated 12.6.2007 cancelling appointment of the appellant on the post of Constable.

2. The case of the appellant is that pursuant to the advertisement No. 1/2004 published in the newspaper for appointment of constable, the appellant applied for the same and was allotted Roll No. 72. After fulfilling the criteria and educational qualification, appellant appeared in the test and was declared successful. It is stated that the Chairman of the Selection Board after following the entire process issued letter of appointment dated 3.4.2007. The appellant joined the post constable on 10.4.2007. However, after a month, a show cause notice was issued to the appellant vide letter dated 26.5.2007 by the Superintendent of Police, Hazaribagh asking him to show cause as to why his appointment may not be cancelled because of overwriting and interpolation in the master-chart. The appellant said to have filed detailed reply denying and disputing the allegations made in the show cause and stating that he was appointed after being declared successful in the interview and physical test. The reply so filed by the appellant was not accepted and he was

dismissed from service vide order dated 12.6.2007.

3. Learned Counsel appearing for the appellant assailed the impugned order of dismissal of the appellant from the service and also the impugned judgment passed by learned Single Judge. Learned Counsel submitted that the learned Single Judge has not considered the fact that it was only after holding inquiry with regard to the genuineness of the appointment and after the decision rendered by a Division bench of this Court in the case of Krishnaji and Ors. v. The State of Jharkhand and Ors. 2006 (4) J.L.J.R. 702 the appellant was asked to join the service vide letter dated 10.4.2007. According to the learned Counsel, the dismissal of the appellant from service on the basis of the said inquiry report is wholly illegal and without jurisdiction.

4. Mr. R. Krishna, learned Senior Standing Counsel, on the other hand, submitted that it was only on the basis of interpolation found in the master-chart, the appointment of some persons have been cancelled after holding inquiry.

5. As noticed above, the appellant was dismissed from service on the basis of inquiry conducted by Inspector General of Police and on the basis of his detailed report vide memo No. 994/C dated 31.10.2005. A copy of dismissal/discharge order has been annexed as annexure-7 to the writ petition. It appears that against the order of cancellation of appointment of other candidate on the basis of said inquiry report dated 31.10.2005, several writ petitions were filed in the year 2006 challenging the said cancellation of appointment. Those writ petitions were finally heard by a Division bench of the court (as reported in 2006 (4) J.L.J.R. 702). At this juncture. I would like to refer para-4 of the decision from which it is evident that appointment of some of the candidates were cancelled on the basis of inquiry report dated 31.10.2005. Para-4 of the said judgment is quoted herein below.

4. Inspector General of Police (Personnel), Jharkhand, Ranchi has filed counter-affidavit on behalf of Director General of Police detailing the events relating to passing of the impugned order. It is stated that in the light of the alleged irregularities in the recruitment of Constables for the Hazaribagh Range, Police Headquarters, Jharkhand, Ranchi vide its Memo No. 696/P dated 11.6.2006 requested the Secretary, Home, Government of Jharkhand to cancel the recruitment process and issue fresh advertisement for the recruitment of Constables. The Government was also informed that the Inspector General of Police, North Chhotanagpur Zone, Bokaro has been entrusted with the inquiry into the irregularities committed during the recruitment process and for fixing the responsibility. Inspector General of Police, North Chhotanagpur Zone, Bokaro has conducted the detailed inquiry and submitted his detailed report vide Memo No. 994/C dated 31.10.2005 wherein various irregularities have been pointed out and the responsibility has also been fixed. It has been stated that recruitment process was badly vitiated by the large scale bungling/irregularities at the behest of Shri C.P. Kiran, the then Superintendent of Police, Chatra-cum-Chairman, Constable

Recruitment Committee-3 Based upon the report of the Inspector General of Police, Home Department vide its Notification No. 106 dated 16.1.2006 and letter No. 107 dated 16.1.2006 cancelled the select list and ordered for selection process afresh of those candidates found successful in running event pursuant to the advertisement No. 1/04.

6. The Division Bench of this Court after considering the entire facts of the case and the manner in which the appointments were made as also inquiry held as under:

11. There is nothing in the report of the Inquiry Officer or material on record to the affect that the written test conducted is vitiated in any manner. Therefore, the irregularities that have come to light are either in the recording of the physical standards of the candidates or their date of birth and Home Guard/Sports Certificate. Inquiry Officer has identified all such persons numbering 932 in whose favour such manipulations have been made. The total number of candidates in all the districts being much large, the identified candidates constitutes only a small proportion of the total candidates. In view of the dictum of the judgment of the Apex Court noticed above, we are of the opinion that doctrine of proportionality envisaged by the Apex Court in the above referred judgment is attracted in the facts and circumstances of this case. Such of the candidates who have successfully qualified and secured place in the final merit/select list without indulging in any misconduct or being beneficiary of any manipulation cannot and should not suffer. We therefore, allow these writ petitions with the following directions:

(a) order impugned dated 10.12.2005 and notification No. 106 dated 16.1.2006 cancelling the selection of the candidates for the post of Constables for districts of Hazaribagh Koderma, Chatra and Giridih initiated pursuant to the advertisement notice No. 01/04 are hereby quashed Memo No. 43/P dated 16.1.2006 for fresh physical and educational test is also quashed.

(b) respondents are directed to make appointment according to select/merit list of successful candidates declared successful in the four districts of the State, namely, Hazaribagh. Koderma, Chatra and Giridih against the advertised vacancies excluding 932 candidates identified by the Inquiry Officer and found to be beneficiaries of mal-practices during the selection. Let the appointments of such candidates be made within two months.

(c) respondents are further directed to complete the inquiry/departmental proceedings against Shri C.P. Kiran, the then Superintendent of Police, Chatra-cum-Chairman, Constable Recruitment Committee-3 or any other officer involved in malpractice in the recruitment of constables, within a period of three months if not already concluded and take appropriate action in accordance with rules depending upon the outcome of the inquiry.

7. The aforesaid judgment was delivered on 10.11.2006. It was only after the aforesaid judgment, since the appellant was not identified to be in the category of

932 persons, he was allowed to join the post of constable vide letter dated 10.4.2007 Pursuant to the aforesaid letter, the appellant submitted his joining and he was allowed to join on the post of constable. Surprisingly, the appellant was again dismissed from service on the basis of same inquiry report dated 31.10.2005 which is evident from the impugned order of dismissal. All these facts have not been considered by the learned Single Judge and the writ petition was dismissed in limine.

8. Besides the above, several writ petitions were filed being W.P.S. No. 4351 of 2007, W.P.S. No. 5906 of 2007 and W.P.S. No. 6041 of 2007 by other persons and those writ petitions were allowed and cancellation of appointments were quashed by a Bench of this Court.

9. Considering the entire facts of the case discussed herein above, the impugned order of dismissal of the appellant from service cannot be sustained in law.

10. For the reasons aforesaid, this appeal is allowed and the impugned judgment passed by the learned Single judge as also the impugned order of dismissal of the appellant from service is set aside. We further direct the respondents to allow the appellant to join the post of constable, but it is made clear that the appellant shall not be entitled to any backwages from the date of dismissal till the date of reinstatement.