

(2009) 11 JH CK 0014
Jharkhand High Court
Case No: None

Lakhan Singh Munda

APPELLANT

Vs

State of Jharkhand and
Superintendent of Police

RESPONDENT

Date of Decision: Nov. 6, 2009

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Final Decision: Allowed

Judgement

D.G.R. Patnaik, J.

Heard the learned Counsel for the petitioner and learned Counsel for the Respondents.

2. The main question raised by the petitioner, in the instant writ application is as to whether the petitioner, who is admittedly appointed to the post of Constable after his selection having been made, could be terminated from service under the provisions of Rule 49 read with Rule 55 of the Civil Services (Classification, Control & Appeal) Rules, 1935, without initiating a departmental proceeding on specific charge of misconduct?

3. The facts of the petitioner's case are as follows:

In response to an Advertisement No. 01 of 2003, issued by the State Government and published in the local newspapers on 15.08.2003, inviting applications from suitable candidates for the post of Constable in the District Armed Forces of Ranchi, Jamshedpur, Hazaribagh, Dumka and Dhanbad, the petitioner submitted his application in the prescribed format annexing thereto all the relevant requisite documents.

On being called upon, the petitioner had appeared at the Physical Test on the basis of the roll Number allotted to him. The petitioner was declared successful at the Test. He was thereafter called upon to appear at the Medical Test. Having been

declared as medically fit, he was finally selected and by letter dated 06.02.2004, issued by the Respondent No. 2, he was appointed on the post of temporary Police. He was thereafter sent for Training at the Police Training Centre at Punjab.

More than nine months after the date of his appointment, a show cause notice was served upon him by the Respondent No. 2, calling upon him to explain as to why he should not be removed from service for violations of the conditions of Advertisement. The purported violation of the conditions of the Advertisement was that the petitioner had submitted simultaneously two separate applications for two separate districts.

The petitioner submitted his show- cause replies before the Respondent No. 2 explaining therein, that he had submitted only one application in respect of the District Police Force and though he had filed another writ application but it was in respect of the Railway Police Force, Jamshedpur. He had also explained that though he had submitted two different applications but he had appeared for one Test only in respect of the Railway District Force, in which he had qualified.

Inspite of the explanations offered, the Respondent No. 2 passed the impugned order vide Memo No. 4807, dated 29.12.2004 (Annexure-5), terminating the services of the petitioner under Rule 49 read with Rule 55 of the Civil Services (Classification, Control & Appeal) Rules, 1935 with retrospective effect from 26.12.2004.

4. Besides challenging the aforesaid impugned order and praying for quashing the same, the petitioner had also prayed for an order directing the Respondents to reinstate him in service with all consequential benefits.

5. Counter affidavit has been filed on behalf of the Respondents.

6. Assailing the impugned order of the termination of the petitioner's services, learned Counsel for the petitioner would advance the following grounds:

(i) That the petitioner was not served with any chargesheet, nor was any departmental proceeding initiated against him on any specific charge.

(ii) That the impugned order is a nonspeaking and vague order.

(iii) That the impugned order is violative of the principles of equity and natural justice and is also violative of the provisions of Rule 668 and 668(Ka) of the Bihar Police Manual and is not in consonance with the procedure as laid down in Rule 49 read with Rule 55 of the Civil Services (Classification, Control & Appeal) Rule, 1935.

7. Per contra, the stand taken by the learned Counsel for the Respondents is that even as admitted by the petitioner himself, he had applied simultaneously for two different districts, whereas, the Advertisement had declared that the candidate should apply in respect of any one district only and in case he applies for more than one district, his candidature for appointment shall be cancelled automatically. Learned Counsel adds that since the petitioner had violated the conditions as

stipulated in the Advertisement, the Superintendent of Police, East Singhbhum, Jamshedpur, being the competent authority, had rightly called upon the petitioner to submit his show cause replies against the proposed termination of service and after affording him opportunity to explain, and being not satisfied with the explanation, the Superintendent of Police had rightly passed the order of termination of the petitioner's services.

Learned Counsel adds that since even in his show cause replies, the petitioner had admitted that he had submitted two separate applications for two separate districts simultaneously, such admission in itself, would be sufficient for proceeding against the petitioner even without conducting any disciplinary proceeding against him, for his removal from service.

8. As it appears from the rival submissions, even though, the petitioner had applied simultaneously for two separate districts, he had appeared only for the Physical Test conducted in respect of only one district and had refrained himself from appearing at the Test conducted for the other district. This fact has not been denied or disputed by the Respondents. Furthermore, the petitioner was allowed to participate in the Physical and Medical Tests and he was found successful and thereafter got selected. Consequent upon such selection being made, he was given a letter of appointment and was accordingly appointed in service. The impugned order of termination of the petitioner's service (Annexure-5), even as declared therein, was passed under the provisions of Rule 49 read with Rule 55 of the Civil Services (Classification, Control & Appeal) Rules, 1935. Thus, apparently the order of removal has been passed as a major punishment as envisaged under Rule 49 read with Rule 55 of the Civil Services Rules and the same has been made effective from a retrospective date i.e. from 26.12.2004.

As it appears, the essence of the ground for dismissal is that the petitioner had suppressed material information and submitted false declarations of his violating the conditions of the Advertisement and his conduct was found to be suspicious/doubtful. The alleged act of the petitioner was treated to be an act of the misconduct.

9. Rule 55 of the Civil Services Rules, 1935 lays down the procedure for removal of Government servants and it provides that in cases of alleged misconduct, a chargesheet was to be served upon the delinquent Government servant, and a departmental proceeding should be conducted by the Enquiry Officer duly appointed and it is only on the basis of the Enquiry Report that any action can be taken by the disciplinary authority/appointing authority for imposing punishment on the ground of proof of the alleged misconduct.

The elaborate procedure as laid down in Rule 49 read with Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1935, shall have to be strictly followed and the only exception thereto, is in the case of a probationer, discharged

on the ground of his unsuitability in service as described in Explanation II, Rule 49 of the Rules.

10. It is not the case of the Respondents that the petitioner's appointment was as a probationer or that any finding was recorded that the services were not found satisfactory. On the contrary, his services were terminated on specific accusation of his having committed an act of misconduct.

11. A similar issue came up for consideration before a Bench of this Court in the case of Cosmos Bhengra and Anr. v. State of Jharkhand and Ors. vide W.P. (S) No.474 of 2005 with W.P. (S) No. 532 of 2005. The facts in the aforesaid case in identical circumstances, were that the writ petitioner had violated the conditions of Advertisement and had suppressed certain material facts in his application. The appointment of the writ petitioner, therein, was terminated by an order similar to the order impugned in the present case. While considering the facts of the case in the light of the provisions of Rule 49 read with Rule 55 of the Civil Services (Classification, Control & Appeal) Rules, 1935, this Court had held that the orders passed under Rule 49 read with the Rule 55 of the Civil Services Rules are penal in nature. Such orders of removal from service, having been passed without initiation of a departmental proceedings as per Rule 55 of the Civil Services Rules, no charge having framed against the petitioner, no enquiry officer having been appointed, no enquiry having been conducted after notice to the petitioners and the orders of removal having been effected from retrospective date, such orders cannot be upheld.

12. The aforesaid judgment as passed in the case of Cosmos Bhengra (Supra) was upheld by a Division Bench of this Court in L.P.A. No. 477 of 2005 and the ratio decided by the single Bench in the case of Cosmos Bhengra (Supra) was upheld by the Division Bench of this Court in L.P.A. No. 477 of 2005. The same ratio would squarely apply to the facts of the present case.

13. In the light of the above discussions and relying upon the ratio as decided in the case of Cosmos Bhengra (Supra), I hereby quash the impugned order of the petitioner's dismissal from service. Consequently, the Respondents shall reinstate the petitioner to the post which he had held, with full back wages.

14. This writ application is accordingly, allowed with the above observations. However in the facts and circumstances, there shall be no order as to costs.