

(2011) 01 JH CK 0026

Jharkhand High Court

Case No: Writ Petition (S) No. 5739 of 2010

Md. Nisar

APPELLANT

Vs

State of Jharkhand, The
Secretary, Health, Family
Welfare, Government of
Jharkhand and Civil Surgeoncum
Chief Medical Officer

RESPONDENT

Date of Decision: Jan. 20, 2011

Citation: (2011) 2 JCR 43

Hon'ble Judges: D.N. Patel, J

Bench: Single Bench

Final Decision: Allowed

Judgement

D.N. Patel, J.

The present petition has been preferred against the order passed by Respondent No. 3 dated 9th 10th September, 2010, which is at Annexure-5 to the memo of the petition, whereby, the services of the present Petitioner have been brought to an end mainly for the reason that he was absent for the period running from 9th August, 2010 to 18th September, 2010.

2. Having heard learned Counsels for both sides and looking to the facts and circumstances of the case, I hereby quash and set aside the order passed by Respondent No. 3 dated 9th 10th September, 2010 (Annexure-5) mainly for the following facts and reasons:

(i) In pursuance of the public advertisement, an application was preferred by the present Petitioner on the post of Pharmacist, thereafter, the Petitioner was appointed on the same post.

(ii) It appears from the facts of the case that the present Petitioner was called for verification of the documents with original certificates on 10th August, 2010.

(iii) It further appears from the facts of the case that the present Petitioner had not received the said letter and, therefore, one more chance was given by the Respondents to the Petitioner and he was again directed to remain personally present before the Screening Committee on 25th August, 2010 at 11:00 a.m. for verification of the original certificates.

(iv) It also appears that the present Petitioner was present before the Screening Committee on 25th August, 2010 at 11:00 a.m. with original certificates.

(v) It further appears from the facts of the case that after scrutiny of the documents, Respondent No. 3 has cancelled the selection of the present Petitioner vide order dated 9th 10th September, 2010 for the reason that he was absent since long. This reason is absolutely in contradiction with Annexure-4 letter dated 14th August, 2010. There was no question of absenteeism by the present Petitioner. In fact, he was called for verification of the original documents, initially on 10th August, 2010. For any reason, whatsoever, he was absent and, therefore, one more chance was given by the Respondents themselves, to present originals of his certificates before the Screening Committee. Thus, one more chance was given to the present Petitioner by the Respondents themselves and, therefore, the reason, which is given at Annexure-5, is no reason in the eye of law.

(vi) Moreover, looking to Annexure-5, it appears that the present Petitioner's selection is cancelled, because he was absent. No notice was ever given to the present Petitioner before putting this allegation. No opportunity to represent his case was ever given to the Petitioner.

(vii) It further appears that the Respondents have given one more reason in the counter affidavit that the original certificates, which have been presented by the Petitioner or upon verification of the certificates by the Respondents, it is found that the institution, from which, the certificates have been obtained by the Petitioner, is not approved by the Government, as submitted by learned Counsel for the Respondent State. Learned Counsel for the Respondent State is unable to point out which was that Government, which has not recognized the institution from which the Petitioner has obtained certificates. This ground, which is referred in paragraph 19 of the counter affidavit, is absolutely a vague ground. Nothing is sure that which Government has not approved the institution, from which, the Petitioner has obtained certificates. It may be either A.I.C.T.E. or U.G.C. or any of the State Governments of India.

(viii) Moreover, no new reason can be supplied by way of counter affidavit, which is not referred in the impugned order, otherwise, there will be long list of reasons, subsequently supplied in the counter affidavit, which are not present in the impugned order. It has been held by the Hon'ble Supreme Court in the case of Commissioner of Police, Bombay v. Gordhandas Bhanji as reported in AIR (39) 31952 SC 16, paragraph 9 thereof reads as under:

9. An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

(ix) It has been held by the Hon'ble Supreme Court in the case of [Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others](#), in paragraph 8 as under:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji²:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older.

(x) Thus, in view of the aforesaid decision, a reason which is not supplied in the impugned order can never be added. If any reason, which is not supplied in the impugned order, can never be supplied by way of counter affidavit. In view of the aforesaid decisions also, it appears that the reason which is added in the counter affidavit especially in paragraph 19 thereof can never be read as if it is there in the impugned order. Moreover, no notice has been given to the Petitioner for this allegation and the Respondents, unilaterally and ex parte, have come to the conclusion that the institution which has given certificates, which are presented by the Petitioner, is not approved institution.

3. In view of the aforesaid facts and reasons, I hereby quash and set aside the order passed by Respondent No. 3 dated 9th 10th September, 2010, which is at Annexure-5 to the memo of the present petition. Liberty is reserved with the Respondents to pass necessary orders, in accordance with law, rules, regulations and Government policies and at least after giving notice to the Petitioner.

4. The petition is, hereby, allowed and disposed of.