

(2008) 06 JH CK 0030

Jharkhand High Court

Case No: Writ Petition (S) No. 4732 of 2007

Mohan Kumar Pandey

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: June 17, 2008

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2008) 56 BLJR 2144 : (2008) 4 JCR 147

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: Delip Jerath and M.K. Tandon, for the Appellant; J.C. to A.G., for the Respondent

Final Decision: Allowed

Judgement

R.R. Prasad, J.

Heard learned Counsel appearing for the petitioner and learned Counsel appearing for the State.

Petitioner has preferred this writ application for quashing the order dated 22.05.2007, issued by the respondent No. 4 the Superintendent of the Police, Giridih (Annexure-6), whereby the appointment of the petitioner to the post of constable, was cancelled.

2. Learned Counsel appearing for the petitioner submits that the petitioner having been appointed as "Home Guard" on 02.03.1989 in the erstwhile. State of Bihar, received training at Central Training Institute, Bihata, Patna.

3. Subsequently, pursuant to the advertisement (Annexure-3) Issued/published by Jharkhand Police, calling for applications for appointment on the post of Constables in different districts in the State of Jharkhand. The petitioner applied for and thereupon call letter was issued, whereby the petitioner was called upon to take

different tests and the petitioner having come out successful in all the tests, was appointed as, Constable and was sent for receiving training to be held from 10.04.2007 in Company-D, Training Centre, Giridih Stadium, Giridih and while the petitioner was under going training, he was suddenly informed verbally that his appointment has been cancelled.

4. Thereafter, he was served with a copy of the order, as contained in Memo No. 1778 dated 22.05.2007 (Annexure-6), issued by the Superintendent of Police, Giridih, informing therein that his services have been terminated on the ground that he had secured appointment in the quota of Home Guard on the basis of Home Guard Training Certificate, but that certificate relates to training of Home Guard in the State of Bihar not to the State of Jharkhand.

5. Learned Counsel appearing for the petitioner further submits that the impugned order (Annexure-6) is illegal on several counts. In this regard it was pointed out that none of the Clauses of the Advertisement ever speaks about certificate of training imparted in the State of Jharkhand should be furnished and that the services of the petitioner was terminated without affording him any opportunity of placing his case and as such, there has been violation of the principle of natural justice and on this account alone, the impugned orders fit to be set aside.

6. Counter affidavit has been filed on behalf of the respondents wherein it has been stated that the petitioner, in course of process of selection, did produce the certificate of training, which the petitioner under went in the State of Bihar and as such the petitioner's appointment, on the basis of the decision taken by the Selection Committee that the person who under went training of Home Guard in the State of Bihar is not eligible to be appointed as "Constable", terminated his services and, therefore, impugned order needs not to be interfered with.

7. Having heard learned Counsel appearing for the parties, it does appear that the petitioner's appointment was Cancelled without observing rule of audi alteram partem and as such it smacks arbitrariness as it has been well settled that non-arbitrariness is an essential facet of Article 14 pervading the entire realm of State action governed by Article 14. It has come to be established, as a further corollary, that the audi alteram partem facet of natural justice is also a requirement of Article 14, for natural justice is the antithesis of arbitrariness. It has also been well settled that in the sphere of public employment, any action taken by the employer against an employee must be fair, just and reasonable which are the components of fair treatment. The conferment of absolute power to terminate the services of the employee is an antithesis of fair, just and reasonable treatment. In this respect, reference of a case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress 1991 Supp. (1) 600 be made.

8. Thus, having found termination order (Annexure-6) being passed without affording any opportunity to the petitioner is hereby quashed. However, the

authority would be at liberty to take appropriate action, if permissible, in accordance with law.

9. Accordingly, this writ application is allowed.