

(2009) 02 JH CK 0044

Jharkhand High Court

Case No: None

Ramesh Kumar

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Feb. 2, 2009**Acts Referred:**

- Constitution of India, 1950 - Article 14, 16

Hon'ble Judges: R.R. Prasad, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

R.R. Prasad, J.

It is the case of the petitioner that the father, grand-father and a cousin of the petitioner were killed by some extremists in the year 1983. The Superintendent of Police, Bhojpur having come to know about the occurrence, immediately came to meet the members of the bereaved family and gave assurance to the mother of the petitioner that the petitioner would be recruited in the police force on his attaining majority. The petitioner after attaining age of majority and completing his Intermediate course, submitted an application on 6.1.2000 before the Director General of Police, Bihar, Patna for his appointment in the police force. That application was forwarded by the Director General of Police, Bihar, Patna to the Superintendent of Police, Chaibasa with an endorsement "may be appointed if found fit". The Superintendent of Police, Chaibasa after verifying the educational qualification and after taking physical test, made recommendation for the appointment of the petitioner to the Director General of Police, Bihar, Patna, who, in turn, directed the Superintendent of Police, Chaibasas to appoint the petitioner as constable if he considers him fit. Thereupon the petitioner was appointed as temporary constable with effect from 1.5.2000. After rendering services for more than 4 years the petitioner was asked by Superintendent of Police, West Singhbhum, Chaibasa, vide its memo No. 1954 dated 25.7.2004 to show cause as to why not he

being appointed illegally be terminated from the service. On receiving the same, the petitioner submitted his show cause on 25.8.2004 stating therein that any decision of termination would be in violation of the established rules. Thereupon, under District Order No. 2558/2005 as contained in memo No. 3324/C dated 17.12.2005 (Annexure 7), District Superintendent, West Singhbhum, Chaibasa terminated the services of the petitioner on the ground that the appointment of the petitioner was never in accordance with the rules and procedure. Thereafter the petitioner filed an appeal before the D.I.G (Kolhan) Range, Chaibasa on 21.1.2006, which appeal, during the pendency of this writ application, has also been rejected.

2. Being aggrieved with the order of termination, this writ application has been filed.

3. Learned Counsel appearing for the petitioner submits that the petitioner's service cannot be terminated on the ground of appointment being made illegal in the manner in which it has been done when he had already put in service for a considerable period of time and without initiation of any proceeding and as such, the impugned order is fit to be set aside.

4. As against that, learned Counsel appearing for the respondents-state submits that the petitioner's appointment was quite illegal as it had never been made after observing rules under the Police Manual and therefore, before terminating the service of the petitioner, a show cause was asked which on its submission was found to be unsatisfactory and hence, order of dismissal, in the circumstances as stated above, is quite legal and it needs no interference by this Court.

5. Learned Counsel in support of his submission has placed his reliance rendered in a case of [Seema Devi Vs. State of Jharkhand and Others](#), and other connected cases.

6. No doubt it is true that the petitioner having been appointed has put in 4 years of service. But the services were terminated on the ground that the petitioner had illegally been appointed without observing the rules as prescribed in Police Manual. In this respect, it was submitted on behalf of the respondents that the provision of Police Manual, nowhere prescribes for the appointment of a person on the ground of his family members being killed by the extremist and that before making appointment, no advertisement inviting applications from eligible candidates to fill up the post had been issued and as such, the appointment being illegal against the constitutional provision, any order of termination needs not to be proceeded with regular departmental enquiry. In support of his submission a case of Seema Devi v. State of Jharkhand and Ors. (supra) has been referred to. However, submission was advanced on behalf of the petitioner that even if the appointment was illegal, the petitioner should have given fair opportunity to meet the charge in a departmental proceeding but without drawing any proceeding, service of the petitioner was terminated which order can certainly be said to be arbitrary and as such, the impugned order being not fair, just and reasonable deserves to be set aside.

7. In support of his submission, learned Counsel has referred to a decision rendered in a case of [Basudeo Tiwary Vs. Sido Kanhu University and Others](#), notice of which was taken by this Court in deciding the similar issue in a case of Md. Sohail Alam v. State of Jharkhand and Ors. in W.P.(S) No. 2760 of 2006 disposed of on 5.11.2007. But while deciding the aforesaid case, no notice could be taken of the decision rendered by the Division Bench in the case of Seema Devi v. State of Jharkhand and Ors. (supra) and analogous cases and also the cases decided by the Hon'ble Supreme Court wherein it had been held that where a person has been appointed illegally, the authority need not to go for regular departmental proceeding for terminating the services of the person on the charge of appointment being illegal.

8. More or less similar view has been reiterated by the Hon'ble Supreme Court in a case of State of State of Manipur and Ors. v. Y. Token Singh and Ors. AIR 2007 SCW 1995 wherein it has been held hereunder:

Moreover, it was for the respondents who had filed the writ petitions to prove existence of legal right in their favour. They had inter alia prayed for issuance of a writ of or in the nature of mandamus. It was, thus, for them to establish existence of a legal right in their favour and a corresponding legal duty in the respondents to continue to be employed. With a view to establish their legal rights to enable the High Court to issue a writ of mandamus, the respondents were obligated to establish that the appointments had been made upon following the constitutional mandate adumbrated in Articles 14 and 16 of the Constitution of India. They have not been able to show that any advertisement had been issued inviting applications from eligible candidates to fill up the said posts. It has also not been shown that the vacancies had been notified to the employment exchange.

9. As I have stated above that the petitioner has failed to establish that his appointment was made after calling for the applications, pursuant to advertisement issued and as such, appointment of the petitioner never seems to be in accordance with the provision of the Police Manual. In that event, the impugned order dated 17.12.2005 as contained in Annexure 7 needs no interference by this Court. Accordingly, this writ application stands dismissed.