

GAHC040005852023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WA 15/2023

1:Jembang Darang
Son of Okut Darang, Resident of Mirem Village, PO Bilat, PS Ruksin, East Siang
District, Arunachal Pradesh Phone No. 8798671983

VERSUS

1:THE STATE OF AP and 3 Ors.
Through the Secretary (Home), Govt. of Arunachal Pradesh, Itanagar.

2:The Secretary (Home)
Govt. of Arunachal Pradesh
Itanagar.

3:The Director General of Police
Police Headquarters
Itanagar
Arunachal Pradesh.

4:The Assistant Inspector General of Police
Police Headquarters
Itanagar
Arunachal Pradesh

Advocate for the Petitioner : Dicky Panging

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MRS. JUSTICE MARLI VANKUNG
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 22-06-2023
(Kardak Ete,J)

We have heard Mr. D. Panging, learned counsel for the appellant. Also heard Mr. S. Tapin, learned Sr. Govt. Advocate for the State Respondents.

2. This intra-court appeal has been preferred by the appellant challenging the order dated 21.03.2023 passed by the learned Single Judge in WP(C)/142/2023 whereby the writ petition was disposed of at the motion stage with liberty to file an appeal against the order of termination dated 03.03.2023 by which the appellant was terminated from the service, that the authority has provided the petitioner with an option of filing an appeal to the DIGP(HQ) PHQ, Itanagar, finding it to be statutory appeal provided under Rule 26 of the Arunachal Pradesh Police (Discipline & Appeal) Rules, 1999.

3. The case of the appellant in brief is that pursuant to the advertisement No. PSC-R(B)/08/2020 dated 24.09.2021 the appellant along with 122 others were selected and issued offer of appointment for the post of Sub-Inspector(SI) vide order dated 24.02.2022 by the Assistant Inspector General of Police on being found medically fit and subject to satisfactory verification for the character & antecedents and were provisionally selected for the post of "Sub-Inspector" against the existing temporary vacancies of Civil

Police/IRBN in Arunachal Pradesh Police Department in the pay matrix, level 6, Rs. 35400-112400/-PM. Clause 6 of the terms and conditions of the appointment order provided that the appointment is purely temporary and may be terminated at any time without assigning any reason(s) thereof. Clause 7 provided that appointee will be on probation for a period of two years. It was stated that though the word 'temporary' has been used in the order dated 24.02.2022, the appointment is against a regular sanctioned post subject to confirmation on the completion of probation period.

4. Consequent upon the appointment the appellant was sent to Police Training Centre, Banderdewa on 01.03.2023 for training. Thereafter, the appellant was sent to North East Police Academy, Shillong, Meghalaya to undergo Police Basic Training on 16.04.2022.

5. In the meantime, it came to light that there was a leakage of question paper in the selection process for the post of Assistant Engineer being conducted by the Arunachal Pradesh Public Service Commission pursuant to advertisement dated 04.05.2021. Consequently, on investigation it was revealed that one Shri Taket Jerang, a Deputy Secretary of the Arunachal Pradesh Public Service Commission was involved in leaking question papers of various examinations for various posts being conducted by the Arunachal Pradesh Public Service Commission since the year 2016. The aforesaid revelations created a huge public outcry in the whole State with several demonstrations being held demanding cancellation of all examinations conducted by the Arunachal Pradesh Public Service Commission since the year 2016.

6. FIR was filed and registered by SIC (Vigilance) on 19.10.2022 as SC (Vig.) case no 12/ 2022. Pursuant to the registration of the FIR, many officers and officials were arrested. Sometime around 15.01.2023 when the appellant was undergoing training at the Police Training Centre, Shillong, Meghalaya, the appellant was arrested by the Police on the ground that during sustained interrogation in the police custody said Shri Taket Jerang (accused) had revealed that he had supplied the leaked question papers and the appellant had bought the question papers in respect of the selection process through which the appellant was selected as Sub-Inspector under the Department of Arunachal Pradesh Police, Government of Arunachal Pradesh. Consequently, the petitioner was placed under suspension w.e.f. 15.01.2023.

7. Thereafter vide notice dated 27.01.2023 issued by the Assistant Inspector General of Police (E) the appellant was directed to show cause as to why his service should not be terminated by invoking the terms and condition under clause 6 of his appointment order. Accordingly, the appellant submitted his reply on 15.04.2023 to the termination notice dated 27.01.2023 categorically denying therein that the appellant had adopted any unfair practice for his selection as Sub-Inspector pursuant to the advertisement dated 24.09.2020 and further stated that the baseless allegations has been made just on doubts considering the fact that the appellant belongs to the same clan as the prime accused Taket Jerang. The appellant further requested the concerned authorities not to give effect to the proposal for termination of the service of the appellant till conclusion

of the criminal proceeding that has been registered by the investigating agency.

8. While the appellant was in custody, and even before filing the charge sheet by the investigating agency, the Assistant Inspector General of Police, Police Headquarters, Itanagar issued an order bearing no PHQ/PB/DP-01/2023 dated 03.03.2023 by which the service of the appellant was terminated by invoking the terms and conditions of clause 6 of his appointment which provided that the appointment is purely temporary and maybe terminated at any time without assigning any reason(s).

9. Grieved by the termination order, the appellant has approached this Court by filing the writ petition being WP(C)/14/2023. Vide order dated 21.03.2023, the learned Single Judge has disposed of the writ petition at the motion stage, as the learned Single Judge was of the opinion that since the order itself had indicated the appeal could be preferred by the petitioner before the DIGP (HQ), PHQ, Itanagar within a specified time. The writ petition was disposed of by granting liberty to the petitioner to file an appeal under the Arunachal Pradesh Police (Discipline & Appeal) Rules, 1999.

10. Mr. D. Panging, learned counsel for the appellant submits that the rules governing the field though provided for an appeal, such an appeal is not maintainable against the order of termination. By referring to the Rule 3(2) and Explanation 2(g) of the Arunachal Pradesh Police (Discipline & Appeal) Rules, 1999, the learned counsel submits that it contains a major punishment and the explanation 2(g) makes it clear that though the observation was

there for filing an appeal, such appeal is not envisaged by the Arunachal Pradesh Police (Discipline & Appeal) Rules, 1999. He further submits that the learned Single Judge without even issuing notice to the respondent as to whether the Arunachal Pradesh Police(Discipline & Appeal) Rules, 1999 would be applicable to in the present case, had passed the impugned order dated 21.03.2023.

11. The learned counsel submits that the learned Single Judge did not appreciate the fact that the Arunachal Pradesh Police (Discipline & Appeal) Rules, 1999 does not even contemplate termination as a major punishment and therefore the conclusion of the learned Single Judge that though the petitioner was serving as a Cadet Sub-Inspector on probation before his service was terminated and an appeal against dismissal and removal from service etc. has been provided under Rule 26 of the Arunachal Pradesh Police (Discipline & Appeal) Rules, 1999 is totally misconceived inasmuch that there is great difference between an order of termination and an order of dismissal or removal from service.

12. The learned counsel further submits that the learned Single Judge did not appreciate the fact that no proceedings was initiated against the petitioner under the Arunachal Pradesh Police (Discipline & Appeal) Rules, 1999 and as such there was no question of filing any appeal under Rule 26 of the Arunachal Pradesh Police (Discipline & Appeal) Rules, 1999. He further submits that the learned Single Judge did not consider the fact that the Arunachal Pradesh Police (Discipline & Appeal) Rules, 1999 itself provides that termination of services of a member of the Sub-ordinate rank appointed on

probation, during or at the end of the period of his probation, in accordance with the terms of his appointment and order governing such probation shall not amount to a penalty within the meaning of this rule. Therefore, prays for setting aside of the order dated 21.03.20230 passed by the learned Single Judge.

13. Mr. S. Tapin, learned Senior Government Advocate for the respondents submits that since the appellant was on probation, the provisions of the Arunachal Pradesh Police (Discipline & Appeal) Rules, 1999 cannot be made applicable in the present case, therefore, the matter may be remanded back to the learned Single Judge for determination of the merits of the matter regarding the termination of the appellant.

14. We have considered the submissions advanced by the learned counsels for the parties.

15. We finds it apposite to consider the relevant rules as provided under the Arunachal Pradesh Police (Discipline & Appeal) Rules, 1999, which is reproduced herein below:

"Rule 3. Classification of punishments:-

(2). Major punishments

(a) Dismissal

(b) Removal from Service

(c) Reduction in rank

(d) Forfeiture of increments

(e) Fine not exceeding one month's pay.

...Explanation-2

The following shall not amount to a penalty within the meaning of this rule...

(g) Termination of the services:-

(i) Of a member of the subordinate rank appointed on probation, during or at the end of the period of his probation, in accordance with the terms of his appointment and order governing such probation; or

(ii) Of a temporary member of the subordinate rank in accordance with

the provision of Sub-rule (1) of rule 5 of Central Civil Services (Temporary Service) Rules, 1965, or
(iii) Of a member of the subordinate rank employed under an agreement in accordance with the terms of such agreement..."

Rule 26: Appeals:

(1) Appeal shall lie against order of dismissal or removal from service, compulsory retirement, reduction in rank or pay, forfeiture of increment(s), fine not exceeding one month's pay, and censure.

16. On bare perusal of the Rule 3(2) and Explanation 2(g), it transpires that a major punishment are dismissal, removal from service, reduction in rank, forfeiture of increments and fine not exceeding one month's pay which does not include the termination. Explanation 2(g) to the Rule 3(2) provides that termination of services shall not amount to penalty within the meaning of Rule when a member of the sub-ordinate rank appointed on probation during or at the end of his probation in accordance with the terms of his appointment and order governing such provision. Rule 26 provides that appeal shall lie against order of dismissal or removal from service, compulsory retirement, reduction in rank or pay, forfeiture of increment (s), fine not exceeding one month's pay, and censure which clearly would not include termination of services of the probationers.

17. On the careful consideration of the Arunachal Pradesh Police (Discipline & Appeal) Rules, 1999, same appears to be a comprehensive rule framed in exercise of powers conferred by sub-section (2) of Section 46 read with Section 2 and 7 of the Police Act, 1861 which provides for a detailed procedure for imposing major punishment before passing any order imposing a major penalty on a charged official which makes it apparent that the Arunachal Pradesh Police (Discipline & Appeal) Rules, 1999 has been framed for

proceeding departmentally against regular employees of the department and not against probationers. Thus, we are of the view that no appeal under Rule 26 of the Arunachal Pradesh Police (Discipline & Appeal) Rules, 1999 is envisaged against the order of termination of the service of a probationer even if the termination order dated 03.03.2023 provides for an appeal to the appellate authority.

18. On the perusal of the order dated 21.03.2023, we find that the learned Single Judge was of the opinion that since the order itself indicated that an appeal could be preferred by the petitioner before the DIGP(HQ), PHQ, Itanagar within a specific time and accordingly, the writ petition was disposed of with liberty to the appellant to file an appeal under the Arunachal Pradesh Police (Discipline & Appeal) Rules, 1999 on the ground that since the petitioner was serving as Cadet Sub-Inspector on probation before his service was terminated an appeal against dismissal and removal from service, etc has been provided under the Rule 26 of the Arunachal Pradesh Police (Discipline Appeal) Rules, 1999. We are of the view that the learned Single Judge was not correct in his opinion as the termination of probationers shall not amount to major penalty within the meaning of Rule 3(2) as referred to above as Explanation 2 (g) to said Rule clearly provides that the termination of the services of a member of the sub-ordinate rank appointed on probation in accordance with the terms of the appointment is not amount to major penalty.

19. In view of our conclusion herein above that if the service of a

probationer is terminated, no appeal is envisaged under Rule 26 of Arunachal Pradesh Police (Discipline & Appeal) Rules, 1999 in view of the explanation 2(g) to the Rule 3(2), we are of the considered view that the merits of the impugned termination order of the petitioner as per clause 6 of his appointment which provides that the appointment is purely temporary and may be terminated at any time without assigning any reason(s) thereof, requires determination coupled with the fact that the writ petition was disposed of at the motion stage without detailed determination and without providing the respondents opportunity to respond to, the impugned order dated 21.03.2023 passed by the learned Single Judge in WP(C)/142/2023 is hereby interfered with.

20. In the result, the order dated 21.03.2023 passed by the learned Single Judge in WP(C)/142/2023 is hereby set aside and the matter is remanded back to the learned Single Judge for determination of the WP(C)/142/2023 on its merit.

21. The writ appeal is allowed and disposed of accordingly. No order as to costs.

JUDGE

JUDGE

Comparing Assistant