

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 2318 of 2012

1. Sandeep Pandey S/o Shri Ramnath Pandey, aged about 35 years (Constable No.-390 MT), 2nd Battalion, Sakri, Bilaspur (C.G.), R/o Brahma Para, Lormi, District Mungeli.
2. Ashutosh Pandey S/o Shri Shivram Pandey, aged about 32 years (Constable No.-253 MT), Quarter No.H-21, 2nd Battalion, Sakri, Bilaspur (C.G.).
3. Pradeep Pandey S/o Shri Angad Prasad Pandey, aged about 32 years (Constable No.-366 MT), Quarter No.C-94, 2nd Battalion, Sakri, Bilaspur (C.G.).
4. Chatrapal Singh S/o Phool Singh Chatri, aged about 37 years (Constable No.-622 MT), 2nd Battalion, Sakri, Bilaspur (C.G.), R/o Khairkundi, Ratanpur, Bilaspur (C.G.).
5. Ajay Shekhar Ongre S/o Late Shri B.R.Ongre, aged about 33 years (Constable No.-272 MT), 2nd Battalion, Sakri, Bilaspur (C.G.), R/o village & Post Arjuni, District Janjgir-Champa (C.G.).

---Petitioners

Versus

1. State of Chhattisgarh, Through The Secretary, Department of Home Affairs, D.K.S. Bhawan, Raipur (C.G.).
2. Director General of Police, Police Headquarters, Raipur (C.G.).
3. Additional Director General of Police, Police Headquarters, Raipur (C.G.).
4. Commandant, 2nd Battalion, Sakri, Bilaspur (C.G.).

---Respondents

WPS No. 2407 of 2012

1. Nandsagar Khunte S/o Shri Chandra Prakash Khunte, aged about 27 years (Constable No-251 MT), 11th Battalion, Janjgir Champa (C.G.), R/o Mukam Pachri, Post-Pakaria, Tahsil Thana - Palmgarh, District Janjgir-Champa (C.G.).
2. M.Umashankar S/o Shri M.Ramanna, aged about 35 years (Constable No-150 MT), 8th Battalion, Rajnandgaon (C.G.), R/o Tanki Maroda, School Para, Bhilai, District Durg (C.G.).
3. Santosh Thakur S/o Shri Kanshi Ram, aged about 42 years (Constable No-275 MT), 8th Battalion, Rajnandgaon, R/o E Block-3-Pendri, District Rajnandgaon (C.G.).

4. Suryakant Tripathy S/o Ram Prakash Tripathy, aged about 33 years (Constable No-68 MT), 7th Battalion, Bhillai (C.G.), R/o Quarter No-361, Pension Vada, Katul Bodh, Post Bhillai, District Durg (C.G.).
5. Hriday Ram Sahu S/o Shri Badri Prasad Sahu, aged about 41 years (Constable No-817 MT), 4th Battalion, Maana, R/o village Badhgaon & Post Godhi, Thana Mandi Hasaur, District Raipur (C.G.).

---Petitioners

Versus

1. State of Chhattisgarh, Through The Secretary, Department of Home Affairs, D.K.S. Bhawan, Raipur (C.G.).
2. Director General of Police, Police Headquarters, Raipur (C.G.).
3. Additional Director General of Police, Police Headquarters, Raipur (C.G.).
4. Commandant, 11th Battalion, Janjgir Champa (C.G.).
5. Commandant, 8th Battalion, Janjgir Champa (C.G.).
6. Commandant, 7th Battalion, Janjgir Champa (C.G.).
7. Commandant, 4th Battalion, Janjgir Champa (C.G.).

---Respondents

For petitioners	:	Ms. Naushina Afrin Ali, Advocate.
For State	:	Shri Chandresh Shrivastava, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02/08/2018

1. These are the two Writ Petitions arising out of common set of facts.
2. The challenge in both the Writ Petitions are to the order Annexure-P/1 dated 23/06/2012 whereby the order of posting/absorption of the petitioners on the post of Constable MT has been cancelled.
3. Since, the grounds raised and the facts in both the Writ Petitions are identical, this Court proceeds to decide both the petitions by this common order.

4. The facts of the case in brief is that, the petitioners were initially appointed with the police department in the State of CG on the post of Constable GD. Subsequently, with the consent of the petitioners, they were posted as Constable MT vide different orders passed in respect of each of the petitioners. Lateron, the services of the petitioners also were absorbed on the said post.

5. The petitioners right from March-2007 onwards have been working on the post of Constable MT till the impugned order Annexure-P/1 was passed on 23/06/2012 whereby posting all the petitioners as Constable GD their absorption as Constable MT have been cancelled.

6. The contention of the counsel for the petitioners is that, the reason assigned in the impugned order for cancelling the posting and absorption as Constable MT was coming into force of the new Rule i.e. "Chhattisgarh Armed Executive Force (CAF), Constable (General Duty) and Trade Constable (Trained/Untrained) (Recruitment and Conditions of Service) Rules, 2008 (In short "the Rules of 2008")". She further submits that, the said Rules cannot be brought into force for the issuance of the impugned order on the ground that, the said Rules came into force only on 05/07/2008 and the petitioners had by then already been posted and absorbed in service as Constable MT and they had also put in about 1 year of service on the said post when the Rules were brought into force.

7. It was further contended that, all the petitioners by the time the impugned order Annexure-P/1 was passed had already put in about more

than 5 years of service on the post of Constable MT and on this ground also the respondents should not have issued the impugned order.

8. She further submits that, before issuance of the impugned order Annexure-P/1, the fact that the petitioners had put in about 5 years of service a substantial right has been created in their favour. The impugned order cancelling their posting and absorption as Constable MT was passed without issuance of even a show cause to the petitioners. The least that was expected from the respondents was an opportunity of hearing and having not done so, the impugned order amounts to have been issued in violation of the principles of natural justice and thus she prayed for allowing the Writ Petition.

9. The State counsel however opposing the petition submits that, since the posting of the petitioners as Constable MT was made as a temporary arrangement and that meanwhile since the aforesaid Rules of 2008 had already come into force and under the said Rules the posts of Constable MT were to be filled up by way of direct recruitment, therefore the respondents thought it fit of cancelling the posting/absorption of the petitioners on the said post so that fresh recruitment as per rules could be carried out which led to the issuance of the impugned order.

10. He further submits that, since the action has been taken in the light of the Rule provision as per the Rules of 2008, the same cannot be held to be bad in law, neither would there be a requirement for an opportunity of

hearing to be granted since the order has been passed in compliance to the Rule provision.

11. A similar issue involved in these two petitions came up for hearing before this High Court in a bunch of Writ Petitions leading amongst which being WPS No.5558/2016 wherein the respondents invoking the same Rules had cancelled the absorption of the petitioners as Constable Armorer/MT.

12. This Court while deciding the said case had taking into consideration the submissions of the State counsel and the fact that before issuance of the impugned order, the principles of natural justice had not been applied with had allowed the Writ Petitions.

13. The operative part of the order dated 22/03/2017 passed in the above said bunch of Writ Petitions is reads as under:-

“13. In the backdrop of the aforesaid decisions when compared the facts of the present case it apparently reveals that the petitioners were regularized and absorbed in service as Constable Armorer/MT about 4-6 years earlier and they had been enjoying the fruits of the said posts uninterruptedly to the satisfaction of the Officers of the department till the impugned order under challenge in the present writ petition was passed. It is admitted position on the facts which has come on record that the petitioners were not given an opportunity of hearing before the impugned order was passed. In view of the same, this Court has no hesitation in reaching to the conclusion that the basic principle of “Audi Alteram Partem” not being followed, there has been a violation of principles of natural justice.

14. For the aforesaid reasons, the impugned order under challenge is not sustainable in the eye of law and the same deserves to be and is accordingly set

aside/quashed reserving liberty to the respondents to initiate appropriate proceedings against the petitioners in accordance with law if they feel so.”

14. Since, the factual matrix and the Rules which has been applied so also the stands taken by the State counsel are identical in the present Writ Petition, this Court is inclined to take the same view that has been taken by this Court in the aforesaid Writ Petition which pertains to other set of petitioners similarly placed and the impugned order dated 23/06/2012 therefore on the same terms deserve to be and is accordingly set-aside/quashed.

15. Both the Writ Petitions accordingly stands allowed in terms of the order passed by this Court on 22/03/2017 passed in WPS No.5558/2016 and other analogous Writ Petitions and consequences to follow.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit