

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3102 of 2009**

- Jagmohan Koushik, S/o Salikram Koushik, aged about 42 years, (Mental Sick) through Smt. Sunita Koushik, W/o Jagmohan Koushik, R/o Kanderi Road Mungawali, District Ashok Nagar (MP)

---- Petitioner

Versus

1. State Of Chhattisgarh, through Chief Secretary, Chhattisgarh State, DKS Bhawan, Raipur (CG)
2. The Secretary General, Administrative Department, DKS Bhawan, Raipur (CG)
3. The Secretary, Home Department, DKS Bhawan, Raipur (CG)
4. The Director General of Police, D.G.P. Office, Raipur (CG)
5. The Assistant Inspector General of Police (T/C), 4/32 Bangala, Head Office of Police Tel Communication, Bhilai (CG)
6. The Superintendent of Police (T/C), Bilaspur Zone, Police Line, Bilaspur (CG)
7. The Election Commissioner, Vidhansabha Election, CG Election Commissioner Office, Raipur (CG)
8. The Station House Officer (T.C.), Police Station Balrampur, District Surguja (CG)

---- Respondent

For Petitioner : Shri Vineet Kumar Pandey, Advocate.
For Respondents/State : Shri Avinash Choubey, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board**

21/11/2019 :

1. The petitioner was appointed as Constable on 21.4.1987. On account of personal reasons he submitted his resignation, which was allowed on 10.11.1997. However, the petitioner again moved an application for rejoining which was allowed by the DGP vide order dated 30.8.99. By a consequential order dated 10.9.99 (Annexure-P/2), the petitioner was re-appointed without giving benefit of past services or any back wages.
2. When after his reappointment the petitioner was working as Wireless Operator at Police Station Kusmi, he proceeded on sick leave but did not return to the duties despite various notices including the notices dated 20.7.2004, 25.8.2004, 22.2.2005, 9.12.2005, 25.8.2006 and 8.11.2007. In all the notices, the petitioner was informed that on his failure to submit proper reply, disciplinary action shall be taken against him. In the notice dated 8.11.2007, he was informed that if he does not furnish certificate of Medical Board and resume duties within 7 days, it shall be treated that he is not willing to do the Government job and action shall be taken to remove him from service.
3. The petitioner's wife replied to the notice dated 9.12.2005 vide Annexure-R/3 and the petitioner himself submitted his reply, which is also part of Annexure-R/3. However, in both the replies, the petitioner did not demonstrate his desire to resume duties and submit certificate of medical board. On both occasions, the petitioner's wife and the petitioner himself used indecent language against the department and

sought payment of entire back wages as a pre-condition for joining duties. The contents of the reply would clearly demonstrate that the petitioner was not mentally fit and was treated at Mental Hospital, Gwalior. In these circumstances, the Superintendent of Police (Telecommunication), Bilaspur Zone, submitted a detailed report (Annexure-R/5) dated 18.1.2008 recommending that the petitioner's name be struck off from the roll. Based on this recommendation, the petitioner has been removed from the roll of the department in exercise of power under regulation 190 of the Police Regulations.

4. Learned counsel for the petitioner would submit that the petitioner being mentally sick, any lesser punishment should have been imposed on him instead of striking off his name from the roll of the department. He would also submit that no enquiry was made against the petitioner nor proper opportunity of hearing was afforded to him.
5. Shri Avinash Choubey, learned State Counsel would refer to the document filed with the return to argue that not only the principles of natural justice have been adhered but the same was done on number of occasions continuously for about 4 years, yet the petitioner did not join the duties, therefore, there was no option left with the department but to invoke the regulation 190.
6. I have scrutinized the papers available in the record. It may be true that the petitioner fell sick while on duty, however, it can be simultaneously gathered that the petitioner was available in his house, yet he did not submit any application for grant of leave including

medical or special leave due to his illness nor did he submit any such application along with certificate of medical board when such certificate was demanded from him while serving notices for rejoining. The intent on the part of the petitioner not to rejoin the duty is apparent. The fact that he was mentally unfit to join duties would not come to his rescue, rather it may weaken his case for the reason that if he is not mentally fit to resume duties that is a good ground for removing him from the roll.

7. The principles of natural justice having been followed by the department before invoking Regulation 190 while serving repeated notices, it is not a case of violation of Article 14 of the Constitution of India.
8. No case for quashment of order dated 18.2.2008 (Annexure-P/1) is made out. However, the respondents are directed to make payment of all admissible dues to the petitioner for which he would be entitled in accordance with the relevant service rules.
9. The Writ Petition is accordingly dismissed subject however to the above observations.

Sd/-
Judge
(Prashant Kumar Mishra)