

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO.28391 OF 2019

In the matter of an application under Articles 226 and 227
of the Constitution of India.

Niranjan Moharana

.....

Petitioner

-Versus-

State of Odisha & Others

.....

Opp. Parties

For Petitioner : M/s.S.K.Mishra & S.N.Parida

For Opp. Parties : M/s. A.K.Mishra,
Addl. Government Advocate

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE B.P.SATAPATHY**

DATE OF HEARING & DATE OF JUDGMENT ON:: 12.12.2022

B.P.SATAPATHY, J. The present Writ Petition has been filed challenging the order dated 07.02.2019 passed by the State Administrative Tribunal, Principal Bench, Bhubaneswar in O.A No.2137 of 2016 as well as the order passed by Opposite Party No.2 on 01.03.2014 under Annexure-5, wherein the prayer of the Petitioner for his reinstatement in service was rejected.

2. The factual matrix giving rise to filing of the present writ petition is that the Petitioner on being duly selected was appointed as a Constable vide order dated 13.12.2011 of the Commandant 3rd IR Bn., Kalinganagar, Jajpur. Pursuant to the said order, the Petitioner submitted his joining on 14.12.2011 vide Annexure-1-Series. The Petitioner was so appointed and allowed to join with the condition that the Petitioner will remain under probation for a period of two years, as per Home Department Resolution No.45054/D & A dated 24.10.2006 and with the further condition that during the probation period, one can be terminated at any time

without assigning any reason and without issuing any notice thereto.

2.1. Subsequently, while so continuing, the Petitioner was discharged from his service w.e.f. 31.05.2013 vide order dated 10.06.2013 of the Opposite Party No.3. After such discharge from service, the Petitioner was issued with a show cause with the allegation that the Petitioner availed leave from 10.05.2013 to 21.05.2013 by submitting falsehood. The Petitioner though submitted his explanation on 03.06.2013 itself under Annexure-3-Series, but no further action was taken on the same by Opposite Party No.3.

2.2. The Petitioner accordingly moved the Addl. D.I.G of Police, SAP, Odisha by filing a representation and with a prayer to reinstate him in his service. But the said authority refused to reinstate the Petitioner by rejecting his prayer. The Petitioner thereafter moved the D.G of Police-Opposite Party No.2 under Annexure-5 on 10.02.2014 by reiterating his prayer to reinstate him in service by setting aside the order of discharge. Opposite

Party No.2 in consideration of the memorial so submitted under Annexure-5 also rejected the prayer for reinstatement by confirming the order of discharge vide order dated 01.03.2014. The Petitioner challenging the rejection of his claim for reinstatement so passed vide order dated 01.03.2014 of the Opposite Party No.2 approached the Tribunal in O.A No.1445(C) of 2014, which was subsequently on transfer registered as O.A No.2137/2016. The Tribunal vide the impugned order dated 07.02.2019 dismissed the O.A with the finding that there is no infirmity in the order of discharge passed by Opposite Party No.3 as well as the rejection of the appeal by the Opposite Party No.2.

3. It is the contention of the learned counsel appearing for the Petitioner that the Petitioner on being duly selected was appointed as a Constable vide order dated 13.12.2011 of Opposite Party No.3 and pursuant to the said order, the Petitioner joined as a Constable on 14.12.2011. While undergoing the basic and advance course of training at Koraput, after such joining, the

Petitioner all of a sudden was discharged from his service vide order dated 10.06.2013 making the order of discharge effective w.e.f. 31.05.2013 under Annexure-2. But subsequent to such order of discharge passed under Annexure-2, the Petitioner when was asked for an explanation for his alleged mis-conduct in availing the leave by submitting falsehood, the Petitioner though submitted the same on 3.6.2013 vide Annexure-3-Series, but no further action was taken by the Opposite Party No.3.

3.1 The Petitioner being aggrieved by the order of discharge as well as the inaction of the Opposite Party No.3 in not taking any further decision, moved the D.I.G of Police, SAP, Odisha, Cuttack with a prayer to reinstate him in service through the S.P., Head Quarters. The D.I.G. of Police, SAP, Odisha, Cuttack when rejected the prayer for reinstatement by confirming the order of discharge vide order dated 03.12.2013, the Petitioner moved a memorial before the Opposite Party No.2 by reiterating his prayer for reinstatement and to set aside

the order of discharge passed on 10.06.2013. The Opposite Party No.2 without considering the claim of the Petitioner in its proper perspective, when rejected the prayer by confirming the order of discharge vide order dated 01.03.2014 under Annexure-6, the Petitioner challenging the same approached the Tribunal in O.A No.1445(C) of 2014. The matter on being transferred to the Principal Bench was registered as O.A No.2137 of 2016.

3.2. Before the Tribunal, it was strenuously urged that since the order of discharge has been passed in complete violation of the principle of natural justice, the same is a nullity in the eye of law and requires interference. Even though the Petitioner was discharged from his service w.e.f. 31.05.2013 vide order dated 10.06.2013 under Annexure-2, but subsequent to the same, the Petitioner was issued with the show cause on 03.06.2013 for explaining his conduct in availing the leave by stating falsehood. The Petitioner though submitted a detailed explanation on 03.06.2013 itself vide

Annexure-3-Series, but no further action was taken by the Opposite Party No.3. Being aggrieved by such inaction of the Opposite Party No.3, the Petitioner approached the D.I.G of Police, SAP, Odisha, Cuttack as well as D.G. of Police, the Opposite Party No.2 with a prayer to reinstate him in his service by setting aside the order of discharge. But the D.I.G of Police, SAP, as well as O.P. No.2 rejected the Petitioner's claim vide order under Annexures-4 & 6.

3.3. It is further contended that the Petitioner on receipt of information from his father regarding death of his mother, availed 11 days C.L./P.L w.e.f. 10.05.2013 to 21.05.2013. The Petitioner after availing such leave, reported on 22.05.2013 at the training centre. But all of sudden, he was discharged from his service w.e.f. 31.05.2013 by the Opposite Party No.3 vide order dated 10.06.2013. Since no prior show cause was issued while discharging the Petitioner from his service w.e.f. 31.05.2013, the order of discharge having been passed in

violation of the principle of natural justice, the same is liable to be interfered with by this Court.

3.4 Mr. S.K.Mishra, learned counsel appearing for the Petitioner in support of his aforesaid stand relied on the decision of the Hon'ble Apex Court in the case of **V.P.Ahuja vs. State of Punjab (SC)** reported in **2000(2) SLR-1**.

The Apex Court in Paragraph-7 of the judgment in the case of **V.P.Ahuja** (supra) has held as follows:-

"7. A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice".

3.5. It is contended that even though the Petitioner while was discharged from his service was under probation, but in view of the decision of the Hon'ble Apex Court as cited (supra), he was entitled to be given an opportunity of hearing. Therefore, on the ground of non-compliance of the principle of natural justice, the order of discharge is bad in the eye of law.

4. Mr. A.K.Mishra, learned Addl. Government Advocate for the State on the other hand contended that the Petitioner since availed the leave from 10.05.2013 to 21.05.2013 on the ground of death of his mother, but subsequently it was found that the Petitioner's mother is alive and because of availing such leave by stating falsehood, the Petitioner was discharged from his service w.e.f. 31.05.2013 vide order dated 10.06.2013.

4.1. Mr. Mishra, also brought to the notice of this Court, the leave application submitted by the Petitioner before Opposite Party No.3 under Annexure-A, wherein he prayed for leave on account of the death of his mother. Since the Petitioner during the relevant time was continuing under probation, because of his gross mis-conduct, he was discharged from service as per PMR-668(A), as the authority found that such indisciplined person will affect the moral and discipline of the force. Because of such admitted mis-conduct on the part of the Petitioner, not only he was rightly discharged from his service vide order dated 10.06.2013, but also his prayer

for reinstatement was rightly rejected by the D.I.G of Police, SAP, Odisha under Annexure-4 and by D.G. of Police under Annexure-6.

4.2 Before the Tribunal, the Petitioner took a plea that one Prakash Kumar Pahil of 3rd IR. Bn., Jajpur, who is similarly situated and proceeded on leave on the ground of death of her mother, which was subsequently found to be not true, but was allowed to continue. But the fact remains that even though the said Prakash Kumar Pahil availed the medical leave from 29.05.2013 to 09.06.2013 on the ground of death of her mother, when he found that his mother is alive, he rejoined on 04.06.2013 without availing the entire leave. The Tribunal also dealt with such stand while rejecting the plea raised by the Petitioner.

4.3. It is accordingly contended that the Petitioner since never came back to join without availing the entire leave from 10.05.2013 to 21.05.2013, the Petitioner cannot be said to stand on similar footing. Since the Petitioner by submitting falsehood, availed the

leave, he has been rightly discharged from his service and learned Tribunal after giving a detailed explanation to the stand taken by the Petitioner has rightly dismissed the O.A vide order dated 07.02.2019 and the same needs no interference of this Court.

5. We have heard Mr. S.K.Mishra, learned counsel for the Petitioner and Mr. A.K.Mishra, learned Addl. Government Advocate for the State. On the consent of the learned counsel appearing for the Parties, the matter was taken up for final disposal at the stage of admission.

6. This Court after going through the materials available on record finds that the Petitioner though was appointed vide order dated 13.12.2011 and joined on 14.12.2011 vide order under Annexure-1 Series, but as indicated in order dated 14.12.2011, the petitioner was under probation for a period of two years. The order dated 14.12.2011 under Annexure-1-Series also shows that during probation period one can be terminated at any time without assigning any reasons and without

issuing any notice thereto. Since the Petitioner in the present case availed leave on the ground of death of his mother from 10.05.2013 to 21.05.2013 and subsequently it came to the knowledge of the authority that the Petitioner's mother is alive, he was discharged from his service w.e.f 31.05.2013 vide order dated 10.06.2013 under Annexure-2 for such admitted mis-conduct.

6.1 The main contention of the learned counsel for the Petitioner that prior to such order of discharge, the petitioner was never given an opportunity of hearing is not required to be followed as the Petitioner during the relevant time was continuing under probation and in view of the stipulation contained in order dated 14.12.2011 under Annexure-1-Series, the same is not a requirement to be followed by the Department.

6.2. This Court also finds that not only the Opposite Party No.2 in due consideration of the matter rejected the prayer of the Petitioner for his reinstatement vide order dated 01.03.2014 under Annexure-6, but also the Tribunal after due consideration of the matter

confirmed the order of discharge by dismissing the O.A vide order dated 07.02.2019 under Annexure-11. The Tribunal not only dealt with the stand of the Petitioner claiming parity with another employee namely Prakash Kumar Pahil, but also properly distinguished the decision relied on by the Petitioner in the case of **Jaya Prakash Mohanty vs. State of Odisha** reported in **2017 (II) ILR-CUT-317**. The decision relied on by the learned counsel for the Petitioner in the case of **V.P.Ahuja** as cited (supra) is also not application to the facts of the present case as the facts of the case in **V.P. Ahuja** is completely different from the case of the present Petitioner.

6.3. Since the Petitioner even after coming to know that his mother is alive, never came back to join and availed the entire period of leave, as per the considered view of this Court, the same amounts to gross mis-conduct and indiscipline on the part of a police person. Therefore, this Court finds no illegality or irregularity either with the order of discharge or with the order passed by the Opposite Party No.2 under Annexure-

6 and consequential order passed by the Tribunal on 07.02.2019 under Annexure-11. Hence, this Court is not inclined to entertain the Writ Petition and dismiss the same. However, there shall be no order as to costs.

.....
B.P.SATAPATHY,
JUDGE

DR. B.R.SARANGI, J. I agree.

.....
DR. B.R. SARANGI,
JUDGE

Orissa High Court, Cuttack
The 12th of December, 2022, Subrat (Sr. Steno)
सुप्रतिमक जयंती

