

# **Rajesh Kumar Srivastava vs State Of Jharkhand & Ors on 10 March, 2011**

**Equivalent citations: 2011 AIR SCW 1874, 2011 (2) AIR JHAR R 477, 2011 LAB IC 1830, (2011) 4 MAD LJ 894, 2011 (4) SCC 447, (2011) 3 SERVLR 231, (2011) 2 JCR 146 (SC), (2011) 3 MAD LW 132, (2011) 3 SCALE 435, (2011) 2 ESC 261, (2011) 1 WLC(SC)CVL 590, (2011) 3 CGLJ 93, (2011) 129 FACLR 252, (2011) 131 FACLR 764, (2011) 2 SERVLJ 35, (2011) 2 CAL LJ 131, 2011 (3) KCCR SN 238 (SC), 2011 (8) ADJ 83 NOC**

**Author: Mukundakam Sharma**

**Bench: Anil R. Dave, Mukundakam Sharma**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2419 OF 2011

[Arising out of S.L.P (C) No. 8463 of 2009]

Rajesh Kumar Srivastava

.... Appellant

Versus

State of Jharkhand & Ors.

...Respondents

JUDGMENT

Dr. MUKUNDAKAM SHARMA, J.

1. Leave granted.

2. The appellant herein submitted his application offering himself as a candidate for the post of Munsif to be recruited by the respondents for which an advertisement was also issued.

Pursuant to the aforesaid application filed by the appellant, he was called to appear in the various tests held, including the interview conducted by the High Court. He successfully completed his tests and consequently was declared successful in the year 2001.

3. After completing his training period, a notification was issued on 21.05.2002, appointing him as a Probationer Munsif. The said notification was issued by the Government of Jharkhand.

He was posted at Dhanbad by a notification issued by the High Court. On 04.06.2002, he assumed the charge as Probationer Munsif at Dhanbad. On 15.07.2002, he was conferred with the power of Judicial Magistrate 1st Class.

While he was discharging his duties as such, he passed an order on 06.01.2003, discharging all the accused under Section 239 Cr.P.C. in G.R. No. 4698 of 1995 under Sections 406, 408, 420, 120-B IPC.

4. A complaint from one Ram Kumar was received by the High Court on 04.03.2003, wherein it was alleged that the appellant had discharged the said accused persons, despite rejection of revision application by the High Court earlier. It was also alleged that the aforesaid order discharging the accused was passed for extraneous consideration. The High Court on receipt of the aforesaid complaint called for a report from the District & Sessions Judge, Dhanbad. On receipt of the said communication, the District & Sessions Judge, Dhanbad, sent a letter to the appellant directing him to offer his remarks which were submitted by the appellant. The said remarks and report along with confidential report of the appellant were submitted by the District & Sessions Judge, Dhanbad, before the High Court. On 28.04.2003, the concerned Zonal Judge referred the matter to the Standing Committee for further action. In terms of the decision of the Zonal Judge, the then Chief Justice of the High Court also referred the matter to the Standing Committee by way of recording an order on 01.05.2003. The matter was considered in the meeting of the Standing Committee held on 08.07.2003.

5. After considering the performance and the suitability of the appellant, it was resolved that the matter be referred to the Full Court for consideration, and a decision as to whether or not the continuation of the service of the appellant was required. Consequent thereupon the matter was placed before the Full Court meeting held on 18.07.2003, wherein it was resolved by the Full Court that the continuation of the service of the appellant was no longer required and that he should be discharged. Consequent thereupon the resolution of the Full Court was sent to the Government. The

Government of Jharkhand issued an order dated 31.07.2003, stating that the services of the appellant are no longer required in public interest, and therefore, the appellant stands discharged from service with effect from 31.07.2003.

6. Challenging the said order passed by the State Government, the appellant filed a Writ Petition before the High Court which was dismissed by the Division Bench of the High Court by a detailed order giving reasons for its decision dated 04.04.2008.

7. The appellant being aggrieved by the aforesaid order passed by the High Court filed the present appeal in this Court, on which we heard learned counsel appearing for the parties, who had also taken us painstakingly through the records of the case.

Having considered the same, we proceed to dispose of the present appeal by recording our reasons for our conclusion.

8. The counsel appearing for the appellant submitted that the order challenged by way of the Writ Petition was an order of removal and the same having been passed without holding an enquiry amounts to, not only violation of principles of natural justice but also amounts to casting a stigma in the career of the appellant and, therefore, the order passed by the High Court is illegal and liable to be set aside.

9. The Counsel appearing for the respondents, however, refuted the aforesaid submissions. He submitted that the appellant was on probation when a notification removing him from the service in public interest was issued and that the order passed was just and proper. He denied that the impugned order is stigmatic or in any way punitive or that there was any violation of the principles of natural justice.

10. The records placed before us disclose that at the time when the impugned order was passed, the appellant was working as a Probationer Munsif. A person is placed on probation so as to enable the employer to adjudge his suitability for continuation in the service and also for confirmation in service. There are various criteria for adjudging suitability of a person to hold the post on permanent basis and by way of confirmation. At that stage and during the period of probation the action and activities of the appellant are generally under scrutiny and on the basis of his overall performance a decision is generally taken as to whether his services should be continued and that he should be confirmed, or he should be released from service. In the present case, in the course of adjudging such suitability it was found by the respondents that the performance of the appellant was not satisfactory and therefore he was not suitable for the job. The aforesaid decision to release him from service was taken by the respondents considering his overall performance, conduct and suitability for the job. While taking a decision in this regard neither any notice is required to be given to the appellant nor he is required to be given any opportunity of hearing. Strictly speaking, it is not a case of removal as sought to be made out by the appellant, but was a case of simple discharge from service. It is, therefore, only a termination simpliciter and not removal from service on the grounds of indiscipline or misconduct. While adjudging his performance, conduct and overall suitability, his performance record as also the report from the higher authorities were called for and they were

looked into before any decision was taken as to whether the officer concerned should be continued in service or not.

11. In a recent decision of this Court in *Rajesh Kohli vs. High Court of J & K & Anr.* reported at (2010) 12 SCC 783; 2010 (10) JT 276, almost a similar issue cropped up for consideration, in which this Court has held that the High Court has a solemn duty to consider and appreciate the service of a judicial officer before confirming him in service and for this not only judicial performance but also probity as to how one has conducted himself is relevant and important. It was also held in the same decision that upright and honest judicial officers are needed in the district judiciary, which is the bedrock of our judicial system.

12. The order of termination passed in the present case is a fall out of his unsatisfactory service adjudged on the basis of his overall performance and the manner in which he conducted himself. Such decision cannot be said to be stigmatic or punitive. This is a case of termination of service simpliciter and not a case of stigmatic termination and therefore there is no infirmity in the impugned judgment and order passed by the High Court.

13. We do not find any merit in this appeal, therefore, we dismiss the same, but leaving the parties to bear their own costs.

.....J [Dr. Mukundakam Sharma] .....J [Anil R. Dave]  
New Delhi, MARCH 10, 2011.