

## State Of Orissa vs Mohd. Yunus on 17 September, 1993

**Equivalent citations: AIRONLINE 1993 SC 410, AIRONLINE 1993 SC 113, 1994 SCC (L&S) 795, (1994) 27 ATC 403, 1994 SCC (SUPP) 2 55**

PETITIONER:

STATE OF ORISSA

Vs.

RESPONDENT:

MOHD. YUNUS

DATE OF JUDGMENT 17/09/1993

BENCH:

ACT:

HEADNOTE:

JUDGMENT:

### & ORDER

1. We have heard the counsel on either side. Leave granted.

2. This appeal arises against the order of the tribunal made in O.A. No. 1005 of 1989 dated March 22, 1993. The respondent is an ex-serviceman. He applied for recruitment to Orissa Administrative Service, Class 11. Pending proceedings a direction was given to keep one post vacant for consideration of the appellant in the event of his succeeding in the original application. The tribunal allowed the petition and directed to appoint him in that post. The State is aggrieved against this order. Thus, this appeal by special leave.

3. The only question that arises for consideration in this appeal is whether the respondent could be treated on a par with members of the Scheduled Castes and Scheduled Tribes for lowering the standard for selection by the Public Service Commission. The tribunal following the judgment of the Full Bench of Punjab and Haryana High Court in the case of Jagdish Rai v. State of Haryana' directed that the respondent is entitled to the same benefits. We are unable to agree with the tribunal and the ratio in the Full Bench judgment. The members of the SCs and STs have been given benefit by operation of Article 16(4) of the Constitution. Any concession or relaxation in their favour is in compliance of the constitutional mandate to provide adequate representation of them in any

service or posts under the State. Any other category other than SCs and STs cannot be put on a par with them in the matters of relaxation of the conditions for recruitment or other conditions. It is stated by Mr Mehta, learned counsel for the State that the Commission has put a minimum of 780 marks as qualifying marks for the general candidates. The respondent admittedly belongs to the general category. Though three posts have been reserved for ex-servicemen, if a candidate who belongs to ex-servicemen gets eligibility by securing 780 minimum marks, irrespective of the fact whether he/they comes by general selection or not, by virtue of reservation made to the ex-servicemen, he/they + Arising out of SLP (C) No. 10343 of 1993 1 AIR 1977 P&H 56: 79 Punj LR 1 : 1977 Lab IC 353 become eligible for consideration. This relaxation has been made in contradistinction with other general candidates but for which the respondent would be ineligible. The fixation of the general standard marks prescribed for the general candidates would undoubtedly be a handicap to the ex-service personnel who are made to compete with youngsters after several years of service put in the defence service. The State Government and the Public Service Commission are directed to consider the desirability to fix a lesser standard than that of the general candidates as ex- servicemen have served the nation in its defence and in the process they may not come on a par with the general candidates. Therefore, some relaxation in their behalf would be necessary to meet the exigencies of coping up with the reservation given to them. Otherwise, reservation would be illusory. The State Government in consultation with the Public Service Commission would decide this issue within a period of three months from the date of the receipt of this order and thereafter consider the case of the respondent accordingly.

4. The appeal is allowed with no order as to costs.

## ORDER

1. Leave granted. Heard on merits.

2. The appellant was appointed as a Constable in the U.P. Police Force on probation in a clear vacancy in December 1986. He was then sent for training at the Police Training School, Moradabad in January 1987 and had successfully completed the training course. In December 1990 while the appellant was + Arising out of SLP (Civil) No. 14711 of 1991 posted as a Constable in Police Station Nangla in District Bijnor, a report was made by the Station House Officer on December 17, 1990 accusing the appellant of certain misconduct. The very next day, on December 18, 1990, the appellant was transferred to the Police Lines. However, without holding any inquiry, on December 19, 1990, the appellant's services were terminated (Annexure B) by giving him one month's salary in lieu of notice. The appellant challenged the termination of his services by filing a writ petition in the Allahabad High Court. That writ petition has been dismissed by the impugned judgment dated July 20, 1991. Hence this appeal by special leave.

3. The High Court has taken the view that the services of the appellant being merely temporary, there was no infirmity in the termination of his services in this manner. Learned counsel for the appellant submitted that the appellant was not appointed merely temporarily but on probation in a clear vacancy and, therefore, the procedure for termination of his services would be governed by Regulation 541 of U.P. Police Regulations; and that the termination having been made without

complying with the requirements of Regulation 541, it was invalid. In reply, learned counsel for the State merely contended that the appointment of the appellant was not on probation in a clear vacancy but was temporary appointment which was not governed by Regulation 541 of the U.P. Police Regulations. We are satisfied that this appeal has to be allowed.

4.The appellant has expressly asserted that his appointment as a Constable was on probation in a clear vacancy. On behalf of the State of U.P., there is no denial of this assertion and no material has been produced by the State to indicate that the appellant's appointment was not of this nature. There can be no doubt that the State which is in possession of the entire record was not in a position to show with reference to the record that the factual position was different. The failure of the State Government to produce any record in support of its submission is alone sufficient to reject its submission to this effect. The case has, therefore, to be examined on the basis that the appellant's appointment was on probation in a clear vacancy which was governed by Regulation 541 of the U.P. Police Regulations.

5.Mere perusal of Regulation 541 shows that an inquiry is contemplated of the kind mentioned therein before any order of discharge thereunder is made in a case like the present during the period of probation. Admittedly that procedure was not adopted in the present case before terminating the appellant's services. The order of termination is, therefore, obviously invalid.

6.In the result, the appeal is allowed with costs. Consequently, the impugned judgment of the High Court is set aside and writ petition filed in the High Court is allowed, with consequential benefits. The appellant is to get costs from respondent-State of U.P. The costs are quantified at Rs 5000 (Rupees Five thousand) only.