

Samunder Singh Vs. State of Raj. and ors

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Court : Rajasthan Jodhpur

Decided On : Dec-11-2013

Appellant : Samunder Singh

Respondent : State of Raj. and ors

Judgement :

1 D.B.Civil Writ Review Petition No.213/2011 Samunder Singh V/s The State of Rajasthan & ORS.11.12.2013 Hon'ble the Chief Justice Mr.Amitava Roy Hon'ble Mr.Justice P.K.Lohra Mr.S.P.Sharma for the review-applicant.

Heard Mr.S.P.Sharma, learned counsel for the review applicant.

Briefly stated the facts relevant for the present adjudication are that the appellant-writ-petitioner while serving as Constable (Driver) in the State Poilce department was served with a memorandum of charges initiating proceeding under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (for short, hereafter referred to as the CCA Rules.) levelling the following charges:- " (.) :- -13() // /2009/1557 + 27.2.2009 . 16 3 5 (6,) 1958 ? . .

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(.).The appellant-writ-petitioner participated in the enquiry that followed.

Thereafter, the Enquiry Officer submitted his report holding that the charges were found proved against him.

The appointing authority concurring with the said finding imposed the penalty of dismissal from service.

Eventually, he turned to this Court for redress by filing S.B.Civil Writ Petition No.3231/2011.

The learned Single Judge negated the challenge, whereafter, he preferred D.B.Civil Special Appeal (Writ) No.792/2011, which by judgment and order dated 29.6.2011 was also dismissed.

As the judgment and order dated 29.6.2011 sought to be reviewed instantly would reveal, it was pointed out on behalf of the appellant-writ petitioner that the charges levelled against him (appellant-writ-petitioner) had not been fully proved and that even assuming it was so, the penalty of dismissal from service was 4 unwarranted.

It was argued as well that in imposing the penalty of dismissal from service, the disciplinary as well as the appellate authority had wrongly taken note of his past conduct which was impermissible in law.

A Coordinate Bench of this Court while dismissing the appeal rejected all these contentions on a detailed consideration of all relevant aspects factual and legal.

It was recorded inter-alia that in the light of the statement of the appellant-writ-petitioner himself one could come to the conclusion that he had consumed liquor on the date of incident while on duty and that no further evidence was necessary to prove the charges levelled against him.

It was noted as well that the evidence of the doctor also proved that he had consumed liquor.

The Coordinate Bench therefore returned a categorical finding that the charges levelled against the appellant-writ-petitioner had stood proved.

Vis-a-vis the plea that his past conduct could not have been taken into consideration for determining the penalty, the Coordinate Bench held that even de hors the same, the misconduct proved against him on the charges levelled was adequate enough to warrant his dismissal from service, more particularly in view of the fact that he at all relevant times was a member of the disciplined force.

Mr.Sharma has emphatically argued that as in no view of the matter, the disciplinary as well as the appellate authority could have taken note of the past conduct of the appellant-writ- petitioner without affording an opportunity to him, the same could not have been taken note of in determining the penalty and thus, the impugned judgment and order suffers from an error apparent on the face of the record warranting re-call and/or reconsideration thereof.

Upon hearing the learned counsel for the review-applicant and on a consideration of the materials on record, we are of the unhesitant opinion that not only the plea is untenable on the face of it, it by no means constitutes a ground for review.

The Coordinate Bench of this Court having dealt with all factual and legal aspects and recorded categorical finding vis-a-vis the charges proved against the appellant-writ petitioner, we do not find any cogent and convincing reason to entertain the instant petition.

More importantly, as adverted to hereinabove, the Coordinate Bench did in fact deal with the contention now raised and rejected the same on merits.

We are in respectful agreement with the conclusions recorded.

The review petition, in our comprehension, lacks in merit and is therefore dismissed.

(P.K.Lohra)J.

(Amitava Roy)CJ Parmar

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