Sanjay Kumar Ram Vs. Union of India and Ors

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Court : Jharkhand

Decided On : Jun-21-2017

Appellant : Sanjay Kumar Ram

Respondent : Union of India and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 5473 of 2008 Sanjay Kumar Ram, son of late Sukhlal Mochi, (No.92002818, Ex-CT-74-BN BSF), Resident of village-Pochi, PO-Satobarwa, PS-Daltonganj, Sadar, District-Palamu. .... Petitioner Versus 1. Union of India.

2. The Director General, BSF, New Delhi.

3. The Commandant 74 B.N. B.S.F., Bhitawa Camp Bareilly, U.P. ... Respondents --- CORAM : HON'BLE MR. JUSTICE PRAMATH PATNAIK --- For the Petitioners : M/s Manoj Tondon, Shiv Shankar Kumar, Ramesh Anand & Micky Kumar, Advocates For the Respondents : Mr. Prashant Kr. Singh, Sr. C.G.C & Mr. Madan Prasad, C.G.C ----- CAV on 09/12/2016 Pronounced on 21/06/2017 Per Pramath Patnaik, J.

In the accompanied writ application, the petitioner has interalia prayed for quashing the order dated 29 th November, 2007 passed by Commandant 74 Battalion BSF, Bhitama Camp Barilly, U.P. pertaining to dismissal from services on the ground of plural marriage and has further prayed for quashing the order dated

5th March, 2008 whereby the prayer of reinstatement of the petitioner has been regretted by the Assistant Commandant (Min) Ftr. Head quarter, BSF, Kashmir.

2. The brief facts as disclosed in the writ application, is that in the year, 1992 the petitioner was enrolled in B.S.F. as constable (G.D.) and joined 74 Battalion B.S.F. in the month of April, 1993. After joining the said post, the petitioner discharged his service with utmost sincerity and full dedication, 2 while continuing as such, the complaint was filed by the wife of the petitioner under sections 494 and 498A of the Indian Penal Code for solemnizing second marriage and not giving any assistance to her and four children and the copy of the same was sent to the B.S.F. department and on receipt of the said complaint, explanation was called for under Rule 26 of B.S.F Rule 1969 vide letter dated 14.10.2007 as evident from annexure-1 to the writ petition and in pursuance thereto, the petitioner submitted his explanation on 06.11.2007 as per annexure-2 to the writ petition. The explanation was found to be not satisfactory and the Commandant agreeing with the order of court of inquiry came to the conclusion that the petitioner ought to be retired from services under the provision of Rule 26 of BN B.S.F. Rule 1969 with effect from 29th November, 2007 and his name was stuck off from the strength of 74 BN. B.S.F. with effect from afternoon of 29th November, 2007 as evident from annexure-3 to the writ petition. After receipt of the impugned order, the petitioner prayed for reinstatement in services on the sympathetic ground because of the fact he has not contracted second marriage nor has committed any offence which could result in dismissal from services. The mercy petition of the petitioner has been rejected vide order dated 5 th March, 2008 as evident from annexure-4 to the writ petition. Being aggrieved by the aforesaid orders, the petitioner left with no other alternative, efficacious and speedy remedy, has approached this Court invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances.

3. Learned counsel for the petitioner has strenuously urged that the Rule 7 and Rule 26 of BSF Rules quoted in the impugned order for dispensing with services of the petitioner for premature retirement of the petitioner from services and striking off from the strength of 74 BN. B.S.F. is absolutely not 3 applicable since, Rule 7 of the said rule is applicable only at the time of recruitment. Learned counsel for

the petitioner further submits that the impugned order of punishment has been passed in an arbitrary manner without full-dressed departmental inquiry. No inquiry officer was appointed nor the veracity of the charge of plural marriage has been proved so as to fashion guilt on the petitioner therefore the impugned order of punishment vide annexure-3 to the writ petition by invoking the provisions of Rule 26 of the Border Security Force Rules, 1969 cannot stand to the test of judicial scrutiny in view of violation of Article 311 of the Constitution of India. Learned counsel for the petitioner further submits that Rule 21 of the Civil Service (Conduct) Rules, 1964 under the chapter of misconduct is also not applicable. Since, on perusal of the aforesaid rules the allegations of plural marriage does not fall under the ambit and scope of aforesaid conduct rules. Therefore, the impugned order is liable to be legally assailable.

4. Controverting the averments made in the writ petition, a counter- affidavit has been filed by the respondents. In the counter-affidavit, it has been interalia submitted that the petitioner was enrolled in BSF on 04 th July, 1992 as a Constable and after completing basic training at STC BSF Hazaribagh (Bihar), joined 74 Bn BSF on 12.05.1993 on permanent posting. A complaint was received on 20 th April, 2007 from Smt. Kavita Devi. The allegation on the petitioner that he contracted second marriage with Mormani Devi @ Sunita @ Putil and not providing any assistance to her and her four children and she was living separately from her in-laws with her 04 children. Accordingly, a court of inquiry was ordered to investigate into the circumstances under which the petitioner having a spouse alive, entered into a contract of marriage with a girl namely Mormani Devi @ Sunita @ Putil in 4 contravention of Rule 7 of BSF Rules 1969 and Rule 21 of CCS (Conduct) Rules 1964 Rules, vide order dated 04.05.2007. The inquiry officer in his findings unambiguously established plural marriage of petitioner and opined that he is not eligible to be retained in services under Rule 7 and 26 of BSF Rules-1969 and Rule 21 of CCS (Conduct) Rules 1964 even a maintenance suit was pending in the Court of SDJM Daltonganj, District Palamu vide case No.26/2004 under Section 125 Cr PC and by the order of the learned court, the petitioner was directed to pay 1000/- per month to his wife and four children for maintenance. It has further been averred that an opportunity was given to the petitioner in the form of show cause notice dated 14 th October, 2007 stating as to why he should not

be retired from services on the grounds of unsuitability under Rule 26 of BSF Rules, 1969. On being not satisfied with the explanation offered in the reply to the said show cause notice in his defence, detrimental to discipline of the Force, which makes his further retention in the Force as undesirable and considering the matter in its entirety, Assistant Commandant retired him from service on 29 th November, 2007. Accordingly, he was struck off the strength of unit on 29.11.2007 and thereafter the petitioner filed a petition for reinstatement in service to DG BSF, and the same was considered by the competent authority being devoid of merit and order was communicated to the petitioner dated 5/7 th March, 2008. In the counter-affidavit, it has further been submitted that no cause of action did arise within the territorial jurisdiction of this Court since neither the dismissal of the petitioner took place in Jharkhand nor DG BSF is located, therefore, no cause of action wholly arises in the part of the Jharkhand but on the mere fact that the petitioner is resident of Jharkhand does not give rise to the cause of action. As per the decision of the Hon'ble Apex Court as 5 reported in (2007) 11 SCC335 therefore the writ petition is liable to be dismissed due to want of territorial jurisdiction.

5. Rejoinder/reply to the counter affidavit has been filed on behalf of the petitioner wherein the judgment dated 01.06.2016 passed in Criminal Appeal no.122 of 2013 has been annexed as Annexure-5, the petitioner has been acquitted for the offence under Sections 494 and 498A of the Indian Penal Code.

6. After giving my anxious consideration to the rivalized submissions, on perusal of the relevant documents, the petitioner has made out a case for interference due to the following facts and reasons: (I) The case in hand, the impugned order dated 29th November, 2007 which has been passed under Rule-26 of BSF Rules, 1969 on the ground of plural marriage. Without adhering to the provisions of Article 311 of the Constitution of India which is not legally sustainable. Admittedly, no regular departmental enquiry has been conducted, no enquiry officer was ever appointed to enquire into the allegation/misconduct alleged against the petitioner. No enqiry report has been submitted in a regular departmental enquiry against the petitioner holding the charge against the petitioner to be proved. Being a regular employee like the petitioner who has rendered almost 15 years of service prior to the passing

of the impugned order ought not to have been treated on unfairly by misconstruing the Rule 26 of the Border Security Force Rules, 1969 and in the garb of Rule 7 of the Border Security Force Rules, 1969 or Rule 21 of the Civil Services (Conduct) Rules, 1964. Therefore, the impugned order has been passed in gross violation of the principles of natural justice and in breach of Article 311 of the Constitution of 6 India. Moreover, the retirement of the petitioner under Rule 26 of BSF Rule, 1969 tentamounts to dismissal from services. (II) With regard to submissions of the respondents regarding lack of jurisdiction, let it be noted that the present writ petition was filed in the year 2008 and the same was admitted in the year 2009. The impugned order has been passed by the Boarder Security Force being a Para Military Force or by the officers of Indian Army may be challenged in any part of the country as has been held by the Hon'ble Apex Court reported in (2001) 9 SCC525in the case of Dinesh Chandra Gahtori Vs. Chief of Army Staff And Another. Moreover, at this distance of time, not to entertain the writ petition due to lack of territorial jurisdiction would cause serious miscarriage of justice and would not sub-serve the ends of justice. (III) The petitioner has been litigating the matter and the present writ petition has been pending for last nine years for adjudication for some reason or other therefore, instead of dismissing the writ petition due to lack of territorial jurisdiction, the matter has been dealt on merits to sub-serve the ends of justice. During the pendency of the writ application, the petitioner has been acquitted in the Criminal Appeal No.122 of 2013 vide order dated 1 st June, 2016 by the Additional Sessions Judge VII, Palamau at Daltonganj. No doubt acquittal in the criminal case does not ipso facto entail for reinstatement in services. It would be profitable to quote the Judgment of the Hon'ble Apex Court reported in (2013) 1 SCC598in the case of Inspector General of Police Vs. S. Samuthiram wherein the Hon'ble Apex Court has been pleased to hold in para 26, which is quoted hereinbelow:-

26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard 7 of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the

accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. Who was not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.

7. There is no quarrel over the proposition of the Hon'ble Apex Court but in view of the changed scenario the petitioner deserves for reconsideration by the authorities.

8. In view of the aforesaid reasons and as a logical sequitur to the said reasons, the impugned orders dated 29th November, 2007 vide Annexure-3 and the order dated 5th March, 2008 vide Annexure-4 to the writ petition are quashed and set aside and the respondents are directed to consider the case of the petitioner afresh in view of the acquittal of the petitioner, in Criminal Appeal No.122 of 2013 vide order dated 1st June, 2016 passed by the Additional Sessions Judge VII, Palamau at Daltonganj and pass appropriate orders within a period of four months from the date of receipt/production of the copy of this order.

9. With the aforesaid observations and directions, the writ petition stands disposed of. (Pramath Patnaik, J.) RKM/- N.A.F.R.