

Kashi Nath Vs. State and ors.

Kashi Nath Vs. State and ors.

SooperKanoon Citation : sooperkanoon.com/133495

Court : Patna

Decided On : Feb-28-2006

Judge : V.N. Sinha, J.

Acts : Bihar Classification Control and Appeals Rules, 2005 - Rule 9

Appeal No. : C.W.J.C. No. 1364 of 2006

Appellant : Kashi Nath

Respondent : State and ors.

Disposition : Petition dismissed

Judgement :

V.N. Sinha, J.

1. Heard Sri Abhay Kumar Singh, learned Senior Advocate for the petitioner and Sri Haemendra Prasad Singh for the State of Bihar.

2. The petitioner who earlier served as the Jail Superintendent in the Central Jail at Gava has filed this writ petition questioning the correctness and the validity of the order dated 22.1.2006. Annexure-2, whereunder the Inspector General, Prison, Bihar has placed him under suspension fixing his Headquarters in the Inspectorate at Patna on the charge of dereliction of duty as three dreaded prisoners managed to escape from the Central jail after digging a tunnel and that

the petitioner failed to inform the Headquarters about the escape of three prisoners from Central Jail, Gaya.

3. Learned Counsel for the petitioner has assailed the said order as violative of Rule 9 of the Bihar C.C.A. Rules, 2005 as the said order has been passed by the I.G., Prison who is neither the Appointing Authority nor the Authority superior to the Appointing authority nor the Disciplinary authority nor an Authority authorised by general or special order to pass suspension order. According to learned Counsel subsequent approval of the suspension by the State Govt. under order dated 31.1.2066 Annexure-A to the counter affidavit shall not redeem the position. In support of his submission, he has relied on a decision in the case of *Marathwada University v. Seshrao Balwant Rao Chavan* reported in : (1989)IILLJ161SC paragraphs 25 to 27 Paragraph 27 of the decision reads as follows:-

These principles of ratification, apparently do not have any application with regard to exercise of powers conferred under statutory provisions. The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity. It is ab initio void and cannot be ratified.

He has further assailed the said order on the ground that while passing the suspension order, Annexure-2, the I.G., Prison did not consider the guidelines as innumarated by the State Government, itself under Circular dated 9.1.1953 and 4.4.1960 as contained in Annexures 3 and 4 as while passing the suspension order the I.G. did not even contemplate initiation of a departmental proceeding as also failed to consider as to whether it was absolutely necessary to place the petitioner under suspension.

4. On the other hand, Sri Haemendra Prasad Singh, learned counsel appearing for the State of Bihar has refuted the challange with reference to Rules 21, 60 and 67 of the Bihar Jail Manual which has been framed in terms of the Statute and thus has statutory effect. Rule 60, inter alia, provides that the general control and superintendence of the Jails in the State is vested with the Inspector General, Prison and all Magistrates and Jail officers shall abide the orders issued by him in all matters relating to internal economy, discipline and management of jails. With

reference to the said provision it has been categorically submitted that the I.G., Prison is the Disciplinary authority of all the Jail staff including the Jail Superintendent. It has further been pointed out with reference to Rule 60 of the Jail Manual that the I.G., Prison has the Power to recommend the removal of the Jail Superintendent. With reference to Rule 67 of the Manual he has pointed out that it is the duty of the Superintendent of Jail to visit the Precints/Campus of the Jail everyday and it is submitted with reference to Rule 67 that had the petitioner visited the precjncts/Campus of the Gaya Jail every day then a tunnel of the length of 25 feets could not have been dug leading to escape of three dreaded prisoners. The I.G. having come to learn of the digging of the tunnel of such length facilitating escape of three dreaded prisoners, being the Disciplinary authority placed the petitioner under suspension under the impugned order, Annexure-2 fixing his Headquarters in the Inspectorate at Patna and then forwarded the suspension order for approval by the State Government, as the State Government happens to be the Appointing authority of the Jail superintendents. The State Government subsequently approved the suspension of the petitioner under order dated 31.1.2006 which is contained in Annexure-A to the counter affidavit and thereafter the petitioner has also been served with the memo of charge and thus the order of the Disciplinary authority initially placing the petitioner under suspension dated 22.1.2006, Annexure-2 having been confirmed by the State Government need not be interfered with and the prayer made in the writ petition to quash the same should be rejected.

5. Having heard the counsel for the parties, I am of the view that the petitioner being Superintendent of Jail his Appointing authority is the, State Government and the I .G. Prison is the Disciplinary Authority had the jurisdiction to pass the initial order of suspension dated 23.1.2005, Annexure-2 which has also been approved by the State Government, as such, there does not appear to be any illegality either in the initial order placing the petitioner under suspension or in the subsequent order approving the same.

6. The other ground that the impugned order is violative of instructions contained in Annexures 3 and 4 is also not made out as the I.G. Prison having learnt of the grave situation prevailing in the Central Jail, Gaya leading to the b2 escape of

three dreaded prisoners after digging a tunnel of 25 feet length rightly proceeded to place the petitioner under suspension fixing his headquarter in Inspectorate at Patna.

7. In the circumstances, there does not appear to be any merit in the writ petition which is accordingly dismissed but without cost.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com