

Ram Dhani Singh Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Apr-04-2007

Judge : Sudhir Kumar Katriar, J.

Acts : [Constitution of India](#) - Articles 142 and 226

Appeal No. : Civil Writ Jurisdiction Case No. 12825 of 2005

Appellant : Ram Dhani Singh

Respondent : The State of Bihar and ors.

Advocate for Def. : Lalit Kishore, Additional Advocate General III and Rabindra Priyadarshi, JC to AAG III

Advocate for Pet/Ap. : Awadhesh Kumar Mishra and Sushil Chandra Keshri, Adv.

Disposition : Petition dismissed

Judgement :

S.K. Katriar, J.

1. This writ petition is directed against the order dated 14.12.2002 (Annexure 6), passed by the Deputy Inspector General of Police, Magadh Range, Gaya, in the capacity of the appellate authority, whereby he has rejected the petitioner's

appeal, and has upheld the order of punishment dt. 15.9.2001 (Annexure 4), passed by the Superintendent of Police, Aurangabad, whereby the petitioner has been dismissed from the services of the Bihar Government.

2. According to the writ petition, the petitioner had joined the Bihar Police Force in 1988 as a Constable. While he was so posted in the Aurangabad Police Lines, he was served with charge-sheet dated 7.2.97 (Annexure 1), levelling five charges against him. He was subjected to a departmental proceeding in which he participated. The learned Enquiry Officer submitted his report. The petitioner was issued with second show-cause notice to which he had shown cause. On a consideration of the materials on record, the learned disciplinary authority passed the impugned order bearing memo No. 275, Aurangabad, dated 15.9.01 (Annexure 4), whereby he has been dismissed from service. The petitioner's appeal has been rejected by the impugned herein.

3. While assailing the validity of the impugned action, learned Counsel for the petitioner submits that Rajendra Prasad Verma, one of the alleged victims at the hands of the petitioner in terms of charge No. 2, was not produced for cross-examination. He next submits that two other witnesses were also not produced for the petitioner's cross-examination. It is further submitted that the department did not produce any eyewitness to support the charges. It is next submitted that there is no material on record to prove that he was on unauthorised leave. It is then submitted that the petitioner was never punished in any criminal proceeding. Counsel further submits that there is no cogent material on record to prove the charges. It is submitted that the entire departmental proceeding is the product of biased attitude and malafide action. It is lastly submitted that a lenient view may be taken, and another opportunity may be given to the petitioner to serve the Bihar Police Force.

4. The respondents have placed on record their counter affidavit. Learned Additional Advocate General No. III in his elaborate submissions has supported the impugned action.

5. I have perused the materials on record and considered the submissions of learned Counsel for the parties. Five charges were levelled against the petitioner.

All the charges have been held by the learned Enquiry Officer to have been proved. With respect to the first charge, the learned Enquiry Officer has found that, in violation of the order dated 2.2.97 of the appropriate authority, he did not report for duty at the concerned police station on 4.2.97, and had instead been roaming around in the township of Aurangabad in a drunken state.

5.1) In so far as the second charge is concerned, the learned Enquiry Officer has found that, while homeguard Rajendra Prasad Verma was moving in the township on a bicycle, the petitioner had thrown a live dog on him as a result of which he fell down on the ground resulting in injury to him, whereafter the petitioner had beaten him and had also bitten his nose by his teeth, causing injuries.

5.2) The third charge has also been held to have been proved, and it has been found that he had appeared before the Sergeant Major on 4.2.97 in a drunken state, who forwarded him to the police hospital, Aurangabad, for medical examination. He was examined after four hours and was found by the Medical Officer to be drunk, and had in a drunken state engaged in acts of indiscipline.

5.3) The fourth charge has equally been held to have been proved, and it has been found that he was on unauthorised leave continuously for a period of 144 days, i.e. from 19.11.95 to 11.4.1996, during the period of deputation. He had engaged himself in scuffle with the general public during the period of deputation as a result of which the Officer-in-Charge of the police station had returned him to the Police Lines. He was so released on 27.12.96, did not report in the Police Lines till 12.1.97, and was, therefore, placed under suspension, whereafter he reported for duties on 16.1.97.

5.4) The fifth charge has also been held to have been proved and it has been found that the petitioner has habitually been absenting himself from duties in unauthorised manner, the service record disclosed that during his service period of eight years, he had been on unauthorised leave on nine occasions, and punishment of censure was also recorded in his service book.

6. In so far as the petitioner's first grievance is concerned, namely, Rajendra Prasad Verma was not produced for cross-examination, it appears that he was not

examined as a witness. Therefore, there was no question of his cross-examination.

7. The petitioner's next grievance is that two other witnesses of the department were also not produced for cross-examination. It appears that the petitioner was present at the time they had appeared as witnesses whereafter it was open to him to cross-examine them. He did not do so and, therefore, the witnesses were discharged. Furthermore, no contemporaneous material has been brought to my notice to show that the petitioner had, after he had realised his mistake that he had failed to cross-examine the witnesses soon after they were examined, made any attempt before the learned-Enquiry Officer for recall of those witnesses for cross-examination. The contention seems to be an after-thought before the learned disciplinary authority. It is rejected.

8. The petitioner's next grievance is that eye-witnesses had not been produced to prove the charges. It appears to me that the department has produced a lot of reliable and cogent evidence to prove the charges. The petitioner had participated in the enquiry proceeding but had failed to cross-examine the witnesses. The legal consequence on account of failure to cross-examine the witnesses automatically followed. The department also produced documentary evidence in support of the charges. Furthermore, the petitioner does not seem to have examined any witness, or produced any evidence, in support of his case. The petitioner's representation to the second show-cause notice is the only material brought to my notice. It is trite law that pleadings cannot take the place of proof. To conclude this part of the submission, the department has produced cogent and reliable evidence in support of the charges, the petitioner had failed to cross-examine the department's witnesses, and had not produced any evidence at all during the course of departmental proceeding in support of his defence. Adequacy of materials cannot be gone into in writ jurisdiction. The contention is rejected.

9. The petitioner's next grievance is that there is no material on record to prove the charge that he was on unauthorised leave. The learned Enquiry Officer has held that the petitioner never applied for leave and was unauthorisedly absent for a period of 144 days, perhaps taking advantage of his deputation to a different

police station thinking that he was away from the scrutinising eyes of the Police Lines, but was detected and was proceeded against. On the contrary, the petitioner has not placed any material during the course of enquiry proceeding that he had applied for leave, and had availed of it after obtaining sanction of the appropriate authority. Furthermore, the second part of the charge that he had been on such unauthorised leave on nine occasions without leave during the tenure of eight years of service, and he was also once censured for the same, are incorporated in his service record, and has been proved by documentary evidence.

10. The petitioner has also contended that he was never punished for any criminal act. The petitioner is trying to raise a chimerical issue. No part of the charges alleged that the petitioner was convicted in a criminal proceeding. The contention is rejected.

11. The petitioner's next grievance is that the departmental proceeding is a product of bias and malafide attitude on the part of the respondent authorities. The contention is stated only to be rejected. Excepting one bald sentence stated during the course of submissions, no material has been brought to my notice to show even prima facie, an attitude of bias and mala fide on the part of the authorities. Furthermore, law is well settled that, if the charges have been proved on merits, malafides lose all force. The contention is rejected.

12. Law is well settled by a long line of cases of high authority, that this Court in exercise of its writ jurisdiction under Article 226 of the [Constitution of India](#) does not exercise appellate functions. It is supervisory jurisdiction to satisfy itself that the prescribed procedure was followed, the principles of natural justice and fair-play were observed, and the punishment meted out to the petitioner was not disproportionate to the gravity of the proven charges. Paragraph-4 of the judgment of the Supreme Court in State of Uttar Pradesh v. Raj Kishore Yadav reported in : (2006)IIILLJ11SC , is relevant in this context and is set out herein below for the facility of quick reference:

4. On a consideration of the entire materials placed before the authorities, they came to the conclusion that the order of dismissal would meet the ends of justice.

When a writ petition was filed challenging the correctness of the order of dismissal, the High Court interfered with the order of dismissal on the ground that the acts complained of were sheer mistakes or errors on the part of respondent herein and for that no punishment could be attributed to the respondent. In our opinion, the order passed by the High Court quashing the order of dismissal is nothing but an error of judgment. In our opinion, the High Court was not justified in allowing the writ petition and quashing the order of dismissal and granting continuity of service with all pecuniary and consequential service benefits. It is a settled law that the High Court has limited scope of interference in the administrative action of the State in exercise of extraordinary jurisdiction under Article 226 of the [Constitution of India](#) and, therefore, the findings recorded by the enquiry officer and the consequent order of punishment of dismissal from service should not be disturbed. As already noticed, the chargers are very serious in nature and the same have been proved beyond any doubt. We have also carefully gone through the enquiry report and the order of the disciplinary authority and of the Tribunal and we are unable to agree with the reasons given by the High Court in modifying the punishment imposed by the disciplinary authority. In short, the judgment of the High Court is nothing but perverse. We, therefore, have no other option except to set aside the order passed by the High Court and restore the order passed by the disciplinary authority ordering dismissal of the respondent herein from service. It is ordered accordingly. The civil appeal stands allowed.

13. As discussed hereinabove, the department has been able to prove the charges on the basis of reliable and cogent evidence. The petitioner was afforded adequate opportunity to defend himself during the course of enquiry proceeding. Copy of the enquiry report, documentary evidence and copies of the depositions were supplied to him twice over because he had made a complaint before the authorities that the first set were not clear and legible. No complaint has been made before the learned disciplinary authority or the learned appellate authority, nor in this Court, that the prescribed procedure was not followed, or the principles of natural justice and fair play were not observed. On the contrary, the petitioner had failed to cross examine the department's witnesses, did not produce any evidence - oral or documentary - in support of his defence. On a perusal of the entire materials on record, I am satisfied that the charges have been proved by

cogent and reliable evidence, and as per the established procedure.

14. This leaves me with the question of quantum of punishment. The petitioner submits that a lenient view may be taken, and he may be given another opportunity to serve the Police Service. No mitigating circumstance has been put forth. On the contrary, all the circumstances obtaining on record accentuate the guilt of the petitioner. He appears to be a habitual and extremely irresponsible drunkard. Instead of reporting for duties at the transferred police station, he had almost run a riot in the township of Aurangabad in a drunken state, engaged himself in scuffle with the general public, and had quarrelled with his colleague in a manner which makes ludicrous reading. He had appeared in the office before his superior in a drunken state and the effect of his intoxication had lingered even after a lapse of four hours when he was examined by the Medical Officer. During his period of deputation, he was on unauthorised leave continuously for a period of 144 days, perhaps under a belief that the police headquarter will not be able to detect it during his period of deputation but that was not to be. Equally, as to his past conduct, over a period of eight years of service, he has been unauthorisedly absent on nine occasions. He was once given the punishment of censure. The learned disciplinary authority has, therefore, rightly observed as follows:

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15. The judgment of the Supreme Court in the case of State Bank of India v. Ramesh Dinkar Punde, reported in : (2006)IIILLJ563SC , is relevant in the present context. That was a case where the enquiry officer had held that the charges had been proved and the disciplinary authority dismissed him from service. The

statutory appeal was rejected. The High Court on reappreciation of evidence reversed the findings of the enquiry officer, and set aside the orders of the disciplinary authority and the appellate authority. The Supreme Court reversed the judgment, of the High Court, restored the order of punishment, and proceeded to observe that it is impermissible for the High Court to reappreciate the evidence which has been considered by the inquiry officer, disciplinary authority, and the appellate authority. The High Court erred both in law and on facts in interfering with the findings of the inquiry officer, the disciplinary authority, and the appellate authority, by acting as a court of appeal and reappreciating the evidence. The Supreme Court quoted with approval the observations, of an earlier judgment in Govt. of A.P. v. Mohd. Nasrullah Khan : (2006)ILLJ 1108 SC , which reads as follows:

Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an Appellate Authority.

15.1) The Supreme Court also quoted with approval the following observations in its earlier judgment in the case of Union of India v. Sardar Bahadur reported in : (1972)ILLJ1SC :

A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that lender was a person likely to have official dealings with the respondent was one which a reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. The Letters Patent Bench had the same power of dealing with all questions, either of fact or of law arising in the appeal, as the Single Judge of the High Court. If the enquiry has been properly held, the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterised as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts.

16. Paragraphs 21 and 22 of the judgment in *State Bank of India v. Ramesh Dinkar Punde* (supra), are equally relevant in the present context and are set out hereinbelow for the facility of quick reference:

21. Confronted with the facts and the position of law, learned Counsel for the respondent submitted that leniency may be shown to the respondent having regard to long years of service rendered by the respondent, to the Bank. We are unable to countenance such submission. As already said, the respondent being a bank officer, holds a position of trust where honesty and integrity are in-built requirements of functioning and it would not be proper to deal with the matter leniently. The respondent was a Manager of the Bank and it needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer so that the confidence of the public/depositors is not impaired. It is for this reason that when a bank officer commits misconduct, as in the present case, for his personal ends and against the interest of the bank and the depositors, he must be dealt with iron hands and he does not deserve to be dealt with leniently.

22. In *TNCS Corporation Ltd. v. K. Meerabai* : (2006)ILLJ826SC , such plea had been rejected by this Court. It was pointed out at SCC p. 267, para 29 as under:

29. Mr. Francis also submitted that a sum of Rs. 33,436.85 being 5% of the total loss of Rs. 6,88,737.12 is sought to be recovered from the respondent and that the present departmental proceedings is the only known allegation against the respondent and there was no such allegation earlier and, therefore, a lenient view should be taken by this Court and relief prayed for by both the parties can be suitably moulded by this Court. We are unable to agree with the above submission which, in our opinion, has no force. The scope of judicial review is very limited. Sympathy or generosity as a factor is impermissible. In our view, loss of confidence is the primary factor and not the amount of money misappropriated. In the instant case, the respondent employee is found guilty of misappropriating the corporation funds. There is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial

forums and interfering therefor with the quantum of punishment awarded by the disciplinary and Appellate Authority.

(Emphasis added)

16.1) In other words, the Supreme Court observed that such cases of misconduct should be dealt with iron hands, the delinquent employee does not deserve to be dealt with leniently, and sympathy or generosity as a factor is impermissible in judicial review. There is no place for generosity or sympathy in judicial forums, and interference with the quantum of punishment awarded by the departmental authorities is impermissible.

17. The Supreme Court has dealt with this issue in its judgment in the case of Divisional Controller, NEKRTC v. H. Amaresh reported in 2006 (3) PLJR (SC) 409. That was a case where the delinquent had been found guilty of grave misconduct and, after a departmental proceeding was dismissed from service. The Labour Court orderd for reinstatement despite holding the employee guilty of pilferage. The High Court affirmed the order of the Labour Court. The Supreme Court restored the order of dismissal passed by the disciplinary authority, and proceeded to observe that the orders of the Labour Court and the High Court were contrary to law, and there is no place for misplaced sympathy in judicial forums for interfering with the punishment.

18. Reference may also be made to the Constitution Bench judgment of the Supreme Court in Secretary, State of Karnataka v. Uma Devi reported in : (2006)IIILLJ722SC , which dealt with the question of regularisation of back-door entrants in Government service. Their Lordships quoted with approval the observations of Farwell, L.J., in Latham v. Ricahard Johnson & Nephew Ltd. (discussed in paragraph 19 hereinbelow). The same was also quoted with approval by the Supreme Court in its judgment in the case of Umarani v. Registrar, Cooperative Societies reported in : (2004)IIILLJ780SC . Paragraph-36 of the judgment in Uma Devi (supra) is set out hereinbelow for the facility of quick reference:

36. This Court also quoted with approval (at SCC p.131, para 69) the observations of this Court in *Teri Oat Estates (P) Ltd. v. U.T., Chandigarh*, to the effect: (SCC p. 144, para 36)

36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation where to the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution, this Court ordinarily would not pass an order which would be in contravention of a statutory provision.

This decision kept in mind the distinction between 'regularisation' and 'permanency', and laid down that regularisation is not and cannot be the mode of recruitment by any State. It also held that regularisation cannot give permanence to an employee whose services are ad hoc in nature.

19. Reference may be made to the judgment of the Court of Appeal in England in the case of *Latham v. Johnson & Nephew*, reported in 1911-13 All E.R., 117. The defendants were the owners of a piece of unfenced waste ground, on which to their knowledge and with their permission children had been in the habit of playing. Early one morning a heap of stones was deposited on the land by the defendants' servants, and soon after, while on the land alone, the plaintiff, a child under three years of age, was injured by one of the stones falling on her hand. In an action brought on behalf of the plaintiff for damages for his injury, it was held that the defendants were not liable. It was further held that '...we must be careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will o' the wisp to take as a guide in the search for legal principles....'

20. In view of the facts and circumstances of the case, and the foregoing discussion, I am of the view that the order of dismissal from service is the only punishment fit to be inflicted on the petitioner.

21. In the result, this writ petition is dismissed. There shall, however, be no order as to costs.