

Mandodari Devi Vs. State of Jharkhand and Ors.

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Court : Jharkhand

Decided On : Feb-13-2015

Appellant : Mandodari Devi

Respondent : State of Jharkhand and Ors.

Advocate for Def. : Mr. Atanu Banerjee

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 6730 of 2006
----- Mandodari Devi, wife of Sri Surendra Prasad Shukla, resident of Qrs. No. HLC-17-Agrico, Police, Golmuri, P.O. Agrico, P.S. Golmuri, District East Singhbhum, Jamshedpur. Petitioner Versus 1. State of Jharkhand 2. Director General of Police, Jharkhand, Ranchi.

3. Deputy Inspector General of Police, Kolhan Range, Chaibasa.

4. Superintendent of Police, Jamshedpur. 5. Deputy Superintendent of Police, Headquarters-II-cum- Conducting Officer, Jamshedpur. Respondents

----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : Mr. Prem Chand Tripathi, Sr. Adv. M/s Jai Shankar Tripathi & Abhas Kumar Pandey, Advocates. For the Respondents : Mr. Atanu Banerjee, G.A. -----

13/ Dated:

13. In February, 2015 Per Pramath Patnaik, J.: In the instant writ application, the petitioner has, inter alia, prayed for issuance of writ in the nature of certiorari for

quashing of Memo No. 1392 dated 28.02.2005 passed by respondent no. 4-Superintendent of Police, Jamshedpur wherein the petitioner has been dismissed from service with immediate effect pursuant to Departmental Proceeding No. 83 of 2004, and for quashing of Memo No. 715 dated 24.09.2005 and Memo No. 353 dated 26.10.20106 passed by appellate authority and revisional authority respectively and also for direction upon the respondents to reinstate the petitioner in service with all consequential benefits.

2. The facts of the case, as delineated and described in writ application, in a nutshell are that the petitioner, while 2 serving on the post of Havildar at Tuiadugri T.O.P under Golmuri Police Station, on 13.07.2004 at 6.00 a.m. the Police Inspector, Golmuri Circle conducted a raid at the residence of petitioner from where one Matiz Car bearing Registration No. BR-06C-4698 was recovered and the accused persons including the son of the petitioner was arrested, who were wanted in Muzaffarpur Sadar P.S. Case No. 262 of 2003 dated 24.12.2003 and Muzaffarpur P.S. Case No. 139 of 2004 dated 04.07.2004. Basing on the receipt of complaint by Police Inspector, Golmuri Circle, the respondent no. 4-Superintendent of Police, Jamshedpur put the petitioner and her husband, who is also a Havildar, under suspension, in contemplation of departmental proceeding and in the departmental proceeding memo of charge was served on the petitioner on 20.07.2004, under Annexure 2. After receipt of memo of charge, the petitioner submitted explanation on 26.07.2004, under Annexure 3. Thereafter, conducting officer was appointed, who submitted the report finding that the charges levelled against the petitioner have been proved. A second show cause notice was issued to the petitioner, to which, the petitioner filed her explanation on 16.02.2005 denying the allegations levelled against her. Thereafter, the disciplinary authority, after taking into account the charges and enquiry report inflicted the order of dismissal from service vide Memo No. 1392 dated 28.02.2005, under Annexure 8, which has been affirmed by the appellate authority as well as by the Revisional authority.

3. Heard Mr. Prem Chand Tripathy, learned senior counsel for the petitioner and Mr. Atanu Banerjee, learned counsel for the respondents. 3 4. It has been contended by learned senior counsel for the petitioner that the charges framed

against the petitioner appears to be based on baseless fact and there has been procedural irregularity and the impugned order of dismissal from service is grossly disproportionate to the alleged charges.

5. Learned counsel for the respondents has filed the counter affidavit repelling the assertions made in the writ petition. It has been stated in the counter affidavit that the charges levelled against the petitioner have been proved and after finding sufficient material to prove the allegation against the petitioner, the respondent no. 5 submitted his report on 30.10.2004. It has also been stated that the Conducting Officer has found that on 13.07.2004, at the time of raid, the petitioner was present at her house and her son, namely, Rajiv Shukla along with two other accused persons were arrested by the raiding team and the said Matiz Car, which was robbed was seized from outside verandah of the Residence of the petitioner and the petitioner's husband, who is co-accused had signed the seizure list at the place of occurrence and the copy of which was served upon her. It has further been submitted by the respondents that explanations submitted by the petitioner were not satisfactory and since, the charges, which were proved, were grave in nature, the respondents have rightly passed the order of dismissal from services, which has been affirmed by appellate authority and revisional authority. It has been submitted that being a employee in disciplined service, that too of the police department, just punishment has been inflicted upon the petitioner and moreover, no procedural irregularity has been committed, so far as disciplinary proceeding is concerned and so far as the quantum 4 of punishment is concerned that is commensurate with the charges levelled against her.

6. During the pendency of the writ application, petitioner has filed an Interlocutory Application, being I.A. No. 3470 of 2014, praying therein for disposal of the instant writ application in view of the order dated 01.09.2011 passed by the Hon'ble Supreme Court in the case of Surendra Prasad Shukla Vs. The State of Jharkhand & Ors in Civil Appeal 7548 of 2011, arising out of S.L.P. (C) No. 19150 of 2008. In the said Civil Appeal, the husband of the present writ petitioner, who was also a constable, preferred the S.L.P. challenging order dated 09.06.2008 passed in L.P.A. No. 176 of 2008 by the Division Bench of this Court.

7. Learned counsel for the petitioner has strenuously urged before this Court that the case of the petitioner is squarely covered by the above-referred decision of the Hon'ble Apex Court. It is further submitted that writ petitioner, who is wife of the appellant in that Civil Appeal and since the charges levelled against both of them were same and punishment inflicted upon them are for the same cause of action, the petitioner is entitled for the same relief, as has been granted by the Hon'ble Apex Court in the above-referred Civil Appeal.

8. In that case, the Hon'ble Apex Court taking into account the services rendered by the appellant (husband of the present petitioner) has been pleased to modify the order of dismissal from service to compulsory retirement. For ready reference, the relevant paragraphs 6 and 7 of the said Civil Appeal is reproduced herein below:

6. The question which however arises for our decision is whether such negligence of the appellant was sufficient for the disciplinary authority to dismiss him from service. There was no charge against the appellant that he had in any way aided or abetted the offence under Section 392 IPC or that he knew that his son had stolen the car and yet he did not inform the police. The appellant, as we have held, was guilty of negligence of not having enquired from his son about the car kept in front of the government quarters occupied by him. The appellant had served the government as a Constable and thereafter as a Head Constable from 07.08.1971 till he was dismissed from service on 28.02.2005, i.e. for 34 years, and for such long service he had earned pension. In our considered opinion, the punishment of dismissal of the appellant from service so as to deprive him of his pension for the service that he had rendered for long 34 years was shockingly disproportionate to the negligence proved against him.

7. We accordingly, allow this appeal in part and modify the punishment of dismissal from service to compulsory retirement. The L.P.A and the Writ Petition filed by the applicant before the High Court are allowed in part. There shall be no order as to costs.

9. To a specific query made by this Court, learned counsel for the respondents submitted that respondents have no serious objection if the case of the petitioner

is disposed of in terms of the said decision of Hon'ble Apex Court and fairly submitted that the case of the petitioner stands on the same footing like of the husband of the petitioner, namely, Surendra Prasad Shukla.

10. After giving my anxious consideration to the factual as well as legal aspects in the backdrop of rivalised submissions and also the decision rendered by the Hon'ble Apex Court in the case of Surendra Prasad Shukla (supra), I am of the considered view that the petitioner is entitled to the same benefit as been extended to her husband, namely, Surendra Prasad Shukla.

11. In that view of the matter, the impugned order, as contained in Memo No. 1392 dated 28.02.2005, under Annexure 6 8; Memo No. 715 dated 24.09.2005 under Annexure 10 and Memo No. 353 dated 26.10.2006 under Annexure 12 are hereby quashed. The respondents are directed to pass appropriate order keeping in view of the order passed in the above-referred Civil Appeal and the observations made herein above, within a period of two months from the date of receipt/production of copy of this order.

12. With the aforesaid observations and directions, this writ petition is disposed of.

13. Resultants, I.A. No. 3470 of 2014 also stands disposed of. (Pramath Patnaik, J.) Alankar/- A.F.R.

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