

Subhash Chand, Head Constable Vs. D.i.G., Allahabad Range and ors.

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Court : Allahabad

Decided On : Jan-21-2002

Reported in : 2002(2)AWC1115

Judge : S.K. Singh, J.

Appeal No. : C.M.W.P. No. 35977 of 1999

Appellant : Subhash Chand, Head Constable

Respondent : D.i.G., Allahabad Range and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : A.B.L. Gour, Adv.

Disposition : Petition partly allowed

Judgement :

S.K. Singh, J.

1. By means of this writ petition, the petitioner has prayed for issuance of a writ in the nature of certiorari quashing the order passed by the Senior Supdt. of Police, Allahabad dated 31.3.1999 (Annexure-7 to the writ petition) by which the petitioner was placed in the lower grade for one year. A further prayer has been made for quashing the order of the D.I.G.. Allahabad range dated 21.7.1999 (Annexure-11

to the writ petition) by which the petitioner's services have been terminated.

2. The petitioner came in service as constable in civil police in the year 1974 and but for the present charge, as has been levelled in the year 1998, the petitioner claims that there has been no adverse entry or any kind of misconduct of the petitioner. The petitioner was married with one Smt. Dujee Devi, an uneducated village woman in the year 1960. Out of the said wedlock, five children were born. It has been pleaded that the petitioner's wife Smt. Dujee Devi was an uneducated village woman, sometimes used to become suspicious about the petitioner's involvement somewhere. It appears that in the year 1998, a complaint was made by Smt. Dujee Devi to some senior officers about the petitioner's involvement with some unknown woman 'with the prayer for taking action against the petitioner. On the said complaint, enquiry was made, a show cause notice was served on the petitioner. The Supdt. of Police, in his order dated 7.8.1998 gave a finding that although it has not been proved that who is the lady who came to the house of the petitioner, but on the basis of evidence as has come, the petitioner's conduct was censured. Against the said order of the Supdt. of Police dated 7.8.1998, the petitioner did not prefer any appeal. Thereafter, the petitioner's wife and children, who were residing at village were persuaded to live with the petitioner. It appears that again a complaint was made by Smt. Dujee in respect to the habits of the petitioner of having connection with some lady upon which the Circle Officer, Handia, Allahabad was appointed as Enquiry Officer. During the course of enquiry, one Smt. Ramesh Kumari Singh claimed herself to be legally wedded wife of the petitioner lodging a complaint that by giving false information that the petitioner's wife has died, he performed the second marriage with her. In the light of the aforesaid complaint, enquiry proceeded. During the course of enquiry. Smt. Dujee Devi in her statement stated that she made complaint against the petitioner on persuasion of certain persons. Smt. Ramesh Kumari Singh was also examined, who in her cross-examination stated that she is the wife of Udai Pratap Singh, who is still alive. The enquiry officer after completion of the enquiry gave a finding that the petitioner being married, misguided Smt. Ramesh Kumari Singh and performed second marriage in a temple. The S.S.P., Allahabad in pursuance of the enquiry report/recommendation given by the enquiry officer issued a show cause notice to the petitioner and after receiving objection, on a consideration of

the entire facts, came to the conclusion that placing the petitioner in lowest grade for one year will suffice. Against this order of the S.S.P., Allahabad, the petitioner preferred an appeal before the D.I.G., Allahabad range. The respondent No. 1 (D.I.G. Range, Allahabad) after getting the appeal having found the charge against the petitioner to be serious, issued a notice for enhancing the punishment, upon which the petitioner moved an application to the D.G. (P). for transferring the case to some other competent authority. The D.G. (P) appears to have issued an order asking the I.G. (P), Allahabad Zone to look into the matter. The petitioner claims that the D.I.G., range after coming to know about the aforesaid move of the petitioner, in a haste, passed the order terminating the petitioner's services by order dated 21.7.1999. Thus, the petitioner has come up before this Court against the order of the D.I.G., Allahabad Range dated 21.7.1999 and 21.3.1999 passed by the S.S.P., Allahabad.

3. This Court on 23.8.1999, passed a detail order staying the operation of the termination order dated 21.7.1999.

4. Learned counsel for the petitioner submits that the finding as has been given by the enquiry officer that the petitioner being married with Smt. Dujee Devi has misguides Smt. Ramesh Kumari Singh and performed second marriage, is perverse and is against the weight of evidence on record. Various discrepancies in the statements and other materials have been tried to be demonstrated taking, this Court to the evidence to establish the incorrectness in the findings so recorded by the enquiry officer. According to learned counsel, charge against the petitioner was not proved and, therefore, the punishment so given by the S.S.P., Allahabad, cannot be maintained. In furtherance to the aforesaid submission against the punishment so awarded by the S.S.P., Allahabad, learned counsel submits that the exercise of the powers by the D.I.G., Allahabad Range in enhancing the punishment as was given to the petitioner, by substituting the punishment of placement of the petitioner in lowest grade for one year as punishment of termination of service, was not at all warranted in the facts of the case. It was also argued that the D.I.G. range has passed order in haste after coming to know about the move of the petitioner to the Director General of Police for transferring the appeal to be heard by some other competent authority in respect to which the D.G.

(P), has already issued order to the Inspector General of Police to look into the matter. Learned counsel submits that in view of the incorrect findings recorded by the enquiry officer. Impugned orders passed by the S.S.P., Allahabad and D.I.G., Allahabad range are liable to be quashed.

5. In response to the aforesaid submission, learned standing counsel on the facts so stated in the counter-affidavit argues that the charge against the petitioner amounts to serious misconduct on his part. The petitioner being in a disciplined force could not be expected to commit such kind of misconduct, which is not less than a social crime. The petitioner on account of his misconduct has not only duped his innocent, illiterate wife but also has ruined the career of another lady, who is educated one, having social status. Learned standing counsel submits that on the finding so recorded by the enquiry officer, as the punishment awarded by the S.S.P.. Allahabad was inadequate, the D.I.G.. Allahabad range has rightly, after giving notice to the petitioner enhanced the same and thus the petitioner is not entitled to get any relief by this Court.

6. In view of the aforesaid submission as has come across the Bar, the pleadings as has been set forth from both sides and materials as has come on record, have been examined. So far the submission of learned counsel for the petitioner about incorrectness and perversity in the finding as has been recorded by the enquiry officer is concerned, suffice it to say that the finding so recorded in respect to the petitioner's misconduct is the finding of fact which cannot be said to be based on no evidence or on the facts of the present case, it cannot be said that reasonable person can come to that conclusion. It has been well-settled that even if on the question of fact, two views may be possible, this Court should refrain from reassessing the evidence to come to a different conclusion. The S.S.P., Allahabad, while inflicting the punishment by his order dated 31.3.1999 has discussed merits of finding, so given by the enquiry officer and the explanation/reply given by the petitioner and after applying his mind, he has taken a decision for awarding the punishment to the petitioner of his placement in the lowest grade for one year, although the enquiry officer has proposed the punishment of placement in the lower scale for three years. On own showing of the petitioner besides admission by Smt. Ramesh Kumari Singh, she is an educated lady being social and political

worker, there appears to be absolutely no motive or reason to level such a serious charge against the petitioner which casts much aspersion on her own in our society which a lady is not expected to do. On the facts and totality of the circumstances and on being satisfied with the facts that disciplinary authority has applied his mind to the facts and situation and the materials and in fact taking a lenient view after disagreeing with the punishment so proposed by the enquiry officer, has given a lesser punishment, this Court finds difficulty in agreeing with the petitioner's submission that the S.S.P., Allahabad-respondent No. 2 has committed any error in passing the order dated 31.3.1999 which has been challenged and, therefore, relief in this respect as prayed by petitioner is liable to be rejected.

7. So far as the petitioner's submission in respect to the order of respondent No. 1 (D.I.G., Allahabad range) by which punishment as was given to the petitioner by the S.S.P., Allahabad, was enhanced and was substituted by the order of termination, there appears to be no dispute about the fact that it is the petitioner who had filed appeal against the order of the S.S.P., Allahabad. If the petitioner would not have filed appeal, the situation would not have been made worse as now the petitioner is facing. It appears that on 15.6.1999 from the office of the Director General of Police, a direction was given to the Inspector General of Police, Allahabad Zone for looking into petitioner's grievance in respect to the pending appeal before the D.I.G., Allahabad range. The petitioner claims that after coming to know about the order of Director General of Police, respondent No. 1 passed the order in haste on account of annoyance as the petitioner has approached the D.G. (P.) making complaint against him. Be as it may, as the enquiry officer in the light of the materials so collected has made a recommendation for placement of the petitioner in the lowest grade for three years, it appears that the respondent No. 1 has not referred to any further material and no valid reason has been assigned for inflicting such a major punishment. The only circumstance which has been heavily relied by respondent No. 1 appears to be that as the petitioner's legally wedded wife Smt. Dujee Devi has changed her statement during the course of examination, which appears to be manoeuvred and, therefore, in view of the misconduct on the part of the petitioner, he is liable to be punished with termination of service. So far question of inflicting the

punishment is concerned, it is primarily the concern of the disciplinary authority who in the facts and situation of the case, is the proper Judge to analyse the same. The respondent No. 1 was not sitting over as appellate authority in appeal filed for, awarding higher punishment to the petitioner rather he was ceased of the matter in appeal filed by the petitioner for setting aside the impugned punishment awarded by the S.S.P., Allahabad. On perusal of the order of respondent No. 1, it appears that he has exceeded in his jurisdiction in passing the impugned order and otherwise also, there appears to be no proper justification for doing the same. The petitioner's plight as has aggravated much more on account of passing of the order of respondent No. 1, is liable to be redressed by keeping the petitioner to be contended by lesser punishment as was given by the S.S.P., Allahabad in view of the facts that the petitioner has an illiterate village wife and there are five grown up children. On the facts of the present case, this Court is satisfied that the impugned exercise by respondent No. 1 for deferring with the punishment so awarded by disciplinary authority is not in the ends of justice and thus, the order of respondent No. 1 dated 21.7.1999 is liable to be quashed.

8. In view of the aforesaid analysis, this writ petition succeeds and is allowed in part. The order of respondent No. 1 dated 21.7.1999 (Annexure-11 to the writ petition) is hereby quashed but at the same time, the order as has been passed by the S.S.P., Allahabad dated 31.3.1999 (Annexure-7 to the writ petition) is hereby maintained.

9. Parties shall bear their owncosts.

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