

Chandra Pal Singh Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Jul-26-2001

Reported in : 2001(3)AWC2324; (2002)1UPLBEC728

Judge : Ashok Bhushan, J.

Acts : Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 - Rules 14 and 16

Appeal No. : C.M.W.P. No. 30135 of 1999

Appellant : Chandra Pal Singh

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : V. Singh, Dinesh Tiwari and ;B.K. Srivastava, Advs.

Disposition : Petition dismissed

Judgement :

Ashok Bhushan, J.

1. Heard Sri B. K. Srivastava, counsel for the petitioner and learned standing counsel appearing for the respondents. Counter and rejoinder-affidavits have been exchanged. The writ petition is being decided at the admission stage with the

consent of the parties.

2. The present writ petition has been filed by the petitioner challenging the order dated 27.2.1997 passed by the Superintendent of Police, Pilibhit dismissing the petitioner from service and the order dated 18.6.1998 passed by the Deputy Inspector General of Police rejecting the appeal of the petitioner and the order passed by the Inspector General of Police dated 8.2.1999 dismissing the revision filed by the petitioner. The case of the petitioner as set out in the writ petition is that the petitioner was appointed on the post of constable in the year 1974. Petitioner has stated that in the year 1995, he was posted at district Pilibhit. It has been averred in paragraph 3 of the writ petition that the petitioner became mentally sick and he was undergoing treatment under Dr. H. B. Singh, Agra from 21.9.1995 to 18.5.1997. Petitioner states that a show cause notice dated 27.12.1996 was issued by the Superintendent of Police, Pilibhit. A charge-sheet dated 27.12.1996 was also issued to the petitioner which has been filed as Annexure-3 to the writ petition. Petitioner states that on 27.2.1997, an order was passed by the Superintendent of Police that petitioner's absence from 19.9.1995 is sanctioned as leave without pay. Petitioner further states that on the same day, an order has been passed by the Superintendent of Police dismissing the petitioner from service. Against the aforesaid order the petitioner filed an appeal which was dismissed. Thereafter he preferred a revision which was too dismissed.

3. The respondents in their counter-affidavit have stated that the petitioner absented from 19.9.1995 without any information. It was stated that the petitioner never gave any information regarding his alleged absence. It was stated that the disciplinary enquiry against the petitioner was initiated on 29.12.1996. Charge-sheet was issued on 2.11.1996 which was received by the brother of the petitioner on 3.11.1996 at his residence. Again on 12.11.1996 a copy of charge sheet was served on the wife of the petitioner Smt. Munni Devi. Show cause notice dated 17.12.1996 along with the findings of the enquiry was issued which was served upon the petitioner on 27.1.1997. The petitioner did not appear in spite of information. The allegation that the petitioner was ill is incorrect. Petitioner never appeared nor gave any explanation. Counsel for the petitioner raised following three submissions :

(1) That the decision of the respondent to dispense with the enquiry against the petitioner was bad in law. There was no reason to dispense with the enquiry and proceed under Rule 16 of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991.

(2) The charge against the petitioner was only of absence from duty which was not such a serious charge on which dismissal from service could have been done. Punishment awarded to the petitioner is disproportionate to the charge levelled against the petitioner.

(3) On 27.2.1997 the day when the dismissal order has been passed, another order was also issued by the Superintendent of Police sanctioning leave without pay to the petitioner with effect from 19.9.1995, hence the absence of the petitioner was condoned and the very foundation of the charge came to an end rendering dismissal order on the basis of charge of unauthorised absence is erroneous.

4. After having heard counsel for the petitioner and the learned standing counsel and after perusing the record, it is clear that the disciplinary proceedings were initiated by issuing a charge-sheet under Rule 14 of Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. The copy of show cause notice which contained the charge filed as Annexure-3 to the writ petition, clearly proves ; that the disciplinary enquiry against the petitioner was initiated under Rule 14 of Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. The findings of the Enquiry Officer has also been filed from page 22 to 29 of the writ petition. The findings also prove that the enquiry has been held under Rule 14 of Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. The final dismissal order which has been filed as Annexure-5 to the writ petition against the petitioner also referred to the enquiry against the petitioner under Rule 14 of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. The respondents have never taken decision to dispense the enquiry against the petitioner. Rule 16 of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 was never invoked. The

first submission of the petitioner is against the record and not made out. The disciplinary enquiry was held against the petitioner after giving a charge-sheet and thereafter serving a show cause notice with the findings of the enquiry.

5. The second submission of the counsel for the petitioner that the punishment awarded is disproportionate to the charge has also no substance. The charge against the petitioner was to the effect that on 19.9.1995 he was on duty in the night on Alfa Mobile. The petitioner did not report his duty and without any permission absented himself and is continuously absent. Charge sheet was issued on 27.12.1996. Thus, the petitioner absented without any information and without any permission for a period of more than 15 months. Petitioner is a member of a disciplined force and absenting from duty in the night without information is a serious misconduct. Counsel for the petitioner has placed reliance on single Judge judgment of this Court in *Vijay Bahadur Singh v. State of U. P. and others*, 1995 AWC 1512. In the aforesaid case, the charge of absence was only for 132 days. In the aforesaid judgment, the learned single Judge has held that there was no application of mind in that case by the punishing authority as to whether the delinquent has become incorrigible and his retention in the force is undesirable. The learned single Judge also noted that in the aforesaid case penalty of dismissal was not awarded which proves that the Superintendent of Police was not satisfied with misconduct in question was sufficient to warrant to award a punishment of dismissal. In view of the aforesaid case, learned single Judge interfered with the punishment and ordered for award of lesser punishment. In the present case the Superintendent of Police has awarded punishment of dismissal to the petitioner. Superintendent of Police has further held that due to gross negligence and inefficiency shown by the petitioner, he is not fit to be retained in the disciplinary force. The Apex Court in the case of *State of U. P. and others v. Ashok Kumar Singh and another*, (1996) 1 SCC 302, held that disciplined force demand strict adherence of the rule. The Apex Court said that the order of the High Court in which the High Court interfered with the punishment holding that the punishment does not commensurate with the gravity of the charge. In the aforesaid judgment of the Apex Court, the respondent a police constable in the State of U. P. was found absent for 251 days. It was held by the Apex Court in paragraph 8 :

'We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedure more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that 'his absence from duty would not amount to such a grave charge.' Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that the punishment does not commensurate with the gravity of the charge especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out.'

6. In view of the law laid down by the Apex Court in the above case, it cannot be held that the punishment is disproportionate to the gravity of the charge. Petitioner was charged with a serious allegation which was found proved in the enquiry. In view of the above, there is no force in the second submission raised by the counsel for the petitioner.

7. Counsel for the petitioner Sri B. K. Srivastava laid much emphasis on the fact that on the same day when the dismissal order was passed he was sanctioned leave without pay from 19.9.1995 by which the very basis of dismissal was knocked out and the dismissal was not justified. Counsel for the petitioner elaborating his submission submitted that when any kind of leave was granted to the delinquent, the charge of remaining absent did not survive. Counsel for the petitioner placed reliance on following decisions :

1. State of Punjab v. Chanan Singh, 1988 (3) AISLJ 216.
2. G. Papaiah v. State Director, Medical Services, Secunderabad, AIR 1976 AP 75.
3. Union of India and others v. Ram Pal, AIR 1996 SC 1500.

8. The first decision cited by the counsel for the petitioner of Punjab and Haryana High Court does support the contention raised by him. In the aforesaid case, the plaintiff proceeded on leave on 27.2.1973 and was required to report back on duty on 10.3.1973 but he could not report on due date due to illness and remained absent till 25.6.1973. The plaintiff was charged for remaining absent from duty and was dismissed. Plaintiff claimed that it was not a case of absence from duty but was over-stay on leave. In paragraph 10 of the aforesaid judgment, it was held :

'10. Counsel for the respondent contends that it amounts to regularising the absence and only charge against the respondent being that he was absent from duty without leave, the charge is knocked out at its basis. He, in order to support his contention relied upon *Tito Francisco Pereira v. Administrator of Goa Daman and Diu and others*, 1978 SLJ 614), *G. Papaiah v. Assistant Director, Medical Services Secunderabad*, AIR 1976 AP 75 and *Bhursinh Hamsinh Rajput v. State of Gujarat and another*, 1982 (1) SLJ 697. The consensus of the decision in the precedents relied upon by the respondent is that once the period of absence is treated as leave of any kind whatsoever, the fact that the delinquent remained absent no more survives. The charge of absence from duty cannot be sustained after the person has been treated on leave of whatsoever kind it may be as admittedly in the case in hand the absence was treated as leave without pay : and it amounted to as if there was no break in service. The counsel for the appellant only contends that the above precedents do not lay down the correct law as no reason has been pointed out for the same. In view of my above observations, I find force in the contention raised by the counsel for the respondent. In view of the observations made by the punishing authority in the order of dismissal that the period of absence shall be counted as leave without pay amounts to regularising the absence and as such the charge of absence no more survives.'

9. The next judgment relied by the counsel for the petitioner is *G. Papaiah v. Assistant Director, Medical Services, Secunderabad*, AIR 1976 AP 75. In the aforesaid case, the order passed by the Assistant Director withholding his increment for one year was challenged. Allegation against the petitioner was that he was unauthorisingly absent from duty from 16.5.1973 to 25.5.1973. The order of punishment was passed on 3.8.1973. Before passing the order of punishment,

the competent authority on 18.6.1973 itself has passed an order granting ten days extraordinary leave from 16.5.1973 to 25.5.1973. In the aforesaid circumstances, it was held by the Andhra Pradesh High Court in paragraph 6 :

'6. This brings me to examine the question whether charge No. 2 relating to the absence of the petitioner from duty for the period commencing from 16th May, 1973 and ending with 25th May, 1973 is maintainable. Admittedly the Major Officer Commanding by his Order No. SHO/125/A/93 dated 18.6.1973, granted ten days' E.O.L. from 16th May, 1973 to 25th May, 1973 (both days inclusive) to the petitioner to regularise his intentional absence for the period. I am unable to agree with the learned counsel for the respondent that notwithstanding the grant of the extraordinary leave to the petitioner, he can be proceeded against for his absence from duty for that period. Whether it is an extraordinary leave, ordinary leave, leave on pay, leave on half pay, medical leave or casual leave, nonetheless it is a leave. The kind or nature of leave is not material but the substance of the matter is that the petitioner was granted leave. When once leave is granted to a public servant, in respect of a particular period, it must be considered that he is permitted to absent himself from duty for that period. In such a case, it is not permissible or open to the employer or any other authority to proceed against the public servant for absenting from duty for the same period and punish him. The employer, either private or public cannot blow hot and cold. The authorities should have refused to grant leave of any kind to the petitioner and then proceeded to punish him after due and proper enquiry and after affording reasonable opportunity to him. When once leave has been granted, it cannot be said that the petitioner had absented himself from duty and thereby made himself liable to be punished. Hence, the second charge relating to the absence of the petitioner from duty from 16th May, 1973 to 25th May, 1973, both days inclusive is not sustainable. I may add that the very order granting extraordinary leave states that such leave has been granted to regularise the petitioner's intentional absence for the period. The very purpose of granting the leave being to regularise the petitioner's intentional absence, it is not open to the respondent to initiate any proceedings against the petitioner for his absence from duty for that period. Judged from any angle, the second charge must be quashed, as it is not sustainable.'

In the above case that leave was granted to the petitioner on 18.6.1973 and on the same day charge sheet was issued. It is to be noted that the charge sheet was issued after sanction of leave. In that circumstances the Andhra Pradesh High Court took the view that after the sanction of leave it was not open for the employer to proceed and punish him.

10. The third judgment relied upon by the counsel for the petitioner is Union of India and others v. Ram Pal, AIR 1996 SC 1500. In the aforesaid case, the respondent constable in the B.S.F. was found absent. On account of his absence after show cause notice, he was dismissed from service on 5.5.1984 by the Commandant. He filed a suit. The suit was decreed by the trial court. On appeal, the Additional District Judge dismissed the appeal and also held that the order of dismissal itself discloses that period of absence of the respondent was treated as extraordinary leave and that amounted to regularising his absence, therefore, no order of dismissal can be lawfully passed on the ground of continuous absence. The High Court summarily dismissed the appeal against which Union of India filed appeal in the Apex Court. Before the Apex Court, the judgment of the Punjab and Haryana High Court in State of Punjab v. Chanan Singh, 1988 (3) Al SLJ 216, and some other cases of the High Court were cited by the respondent that extraordinary leave having been allowed, his absence ceased to be a misconduct and dismissal order was bad. The Apex Court noted the aforesaid judgment and distinguished that case. The Apex Court held in the aforesaid case that while ordering that period to be treated as extraordinary leave, the Commandant did not knock out the basis of the order of dismissal passed by him as the basis of the order was that by remaining absent without leave for a long period, the respondent had so conducted himself that his further retention in service had become undesirable. In paragraph 9 of the aforesaid judgment, the Apex Court held :

'While ordering that period to be treated as extraordinary leave, the Commandant did not knock out the basis of the order of dismissal passed by him as the basis of the order was that by remaining absent without leave for a long period the respondent had so conducted himself that his further retention in service had become undesirable. We do not think that by treating the period of absence as extraordinary leave, the Commandant had made his order of dismissal

inconsistent. Therefore, without deciding the contention of the learned Additional Solicitor General that the said decisions do not lay down correct law, we hold that the ratio laid down in those cases cannot apply to a case of this type.'

Before the Apex Court, it was contended that the State of Punjab v. Chanan Singh (supra) and other decisions taking the same view did not lay down the correct law. The Apex Court did not decide the issue in that judgment.

11. The Apex Court's judgment in Ram Pal's case (supra) does not help the petitioner since the Apex Court did not decide the question in issue in the present writ petition. The Apex Court, however, made observations in paragraph (9) which have been quoted above.

12. The Superintendent of Police while dismissing the petitioner from service has also recorded findings of similar nature. The Superintendent of Police has held that petitioner absented himself without any permission and has shown indisciplined and irresponsible conduct and retention of such person in disciplined force is undesirable.

13. In the present case also the decision of the Superintendent of Police is also to the effect that the petitioner has so conducted himself that his further retention in service had become undesirable. From the observations of the Apex Court in paragraph 9 as quoted above it is clear that by treating the period of absence as extraordinary leave, the Superintendent of Police had not made his order of dismissal inconsistent and the order of dismissal can be supported on the observations of the Apex Court quoted above.

14. In the present case extraordinary leave which was sanctioned to the petitioner without pay was from 19.9.1995 till unauthorised absence of the petitioner. In the order dated 27.2.1997 by which the extraordinary leave was granted, it was found that the petitioner is guilty. Thus, there was no conscious condonation of the period of unauthorised absence of the petitioner by the Superintendent of Police so that to create any kind of estoppel against the Superintendent of Police for taking a decision. The condonation of charge of unauthorised absence may arise in a case when any kind of leave is sanctioned to an employee before initiating

any disciplinary proceedings. In the case where the leave has been sanctioned for any period, it can be said that subsequently on such absence, enquiry cannot be held or charge cannot be levelled but when before initiating the enquiry, no such condonation has been done, it is open to the employer to initiate an enquiry on the charge of unauthorised absence. By granting of any kind of leave to an employee and thereafter holding an enquiry, the principle which is pressed into service against the employer is the estoppel. The ratio of the judgment cited by the petitioner is to the effect that after sanction of the leave, the charge on the basis of absence did not survive nor can be the basis for imposing penalty. While considering the aforesaid issue, distinction has to be drawn in cases where at the time of passing of the dismissal order, an order is being passed for regularising the absence for purposes of continuity of service till the date of dismissal without any intention of condoning the misconduct or charge and in case where even before starting the disciplinary enquiry, leave has been granted regarding the absence. The Superintendent of Police while dismissing the petitioner on the basis of charge and also by sanctioning the extraordinary leave to the petitioner clearly found the petitioner guilty of the charge, hence In the facts of the present case there was no condonation of the charge to give an argument to the petitioner that charge against him has been knocked out. Holding such grant of extraordinary leave at the time of dismissal for purposes of regularising the continuity of service as amounting to condoning the charge will be unreasonable and amounts to putting the conduct on the employer which he never intends or even professed.

15. In view of the above discussion. I am of the view that the grant of extraordinary leave at the time of passing the order of dismissal or any other penalty on the employee for the purposes of regularising the services for continuity, does not knock out the charge nor amounts to condonation of charge against the employee and the dismissal order on that basis cannot be faulted with. The aforesaid proposition may be available in a case where the leave is granted or condonation is done even before start of the disciplinary enquiry. The proposition laid down in the State of Punjab v. Chanan Singh (supra) will be applicable in the above mentioned circumstances when condonation has been done before initiating enquiry.

16. Under the aforesaid circumstances. I am unable to pursue myself to hold that the dismissal order of the petitioner was vitiated in view of the law laid down by the Punjab and Haryana High Court in the case of State of Punjab v. Chanan Singh (supra) and the decision of other High Court cited by the petitioner.

17. In view of the above discussions. I do not find any infirmity in the order of dismissal passed by the Superintendent of Police and the orders rejecting the appeal and representation. The writ petition is dismissed.

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