

Hemant Kumar Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : May-18-2009

Reported in : 2009(3)AWC3096

Judge : Rakesh Tiwari, J.

Appellant : Hemant Kumar

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : Sri. Vijay Gautam

Disposition : Petition dismissed

Judgement :

Rakesh Tiwari, J.

1. Heard Sri Vijay Gautam, learned Counsel for the petitioner and learned standing counsel.

2. The petitioner has sought indulgence of the Court and has challenged the impugned order of suspension dated 30th March, 2009 passed by the Superintendent of Police, District Lalitpur. The petitioner has prayed for a writ in the nature of mandamus directing the respondents to reinstate the petitioner in service and allow him to join his duties with all consequential benefits and salary.

3. The facts of the case as culled out from the records are that petitioner is posted as Sub-Inspector at Police Outpost Kailguwan, Police Station Banpur, Lalitpur. He was in-charge of police station aforesaid. It is claimed that while petitioner was on special patrolling due to Lok Sabha Election on 29th March, 2009 alongwith two other constables on their motorcycles, the law and order situation arose when they reached Chiraulan Churaha, crossing of village Kailguan.

4. The version of the petitioner is that on reaching the crossing aforesaid he saw two persons in a state of intoxication, holding 'katta' in their hands and fighting with each other. The petitioner and their companion constables immediately stopped their motorcycles and intervened. In the meantime some local residents of the village also assembled and started abusing the petitioner and the two constables with him. The villagers also pelted stones threatening them for intervening in the matter. In the situation the petitioner alongwith his colleagues were somehow able to run away the village crossing as some persons fired from their firearms upon them. A number of persons are said to have received injuries in the said incident.

5. It is averred that the unruly mob gathered at the Police Station and F.I.R. was lodged at about 12.30 in the night of 29.3.09 as Case Crime No. 414/09 under Section 307, I.P.C. against the petitioner and two constables.

6. The petitioners also lodged F.I.R. against 37 named and 150 unnamed persons under Sections 147, 148, 149, 307, 332, 353, 188, 323, 504 and 506, I.P.C. read with Section 7 Criminal Law Amendment Act which was registered as Case Crime No. 414A/09 in the Police Station, Banpur.

7. It is urged by the counsel for the petitioner that the impugned order of suspension has been passed by the Superintendent of Police under Rule 17 (1) of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 which provides that the order of suspension may be passed by the appointing authority or by any other authority not below the rank of Superintendent of Police, authorised by him in this behalf.

8. Learned Counsel for the petitioner submits that in the present case appointing authority of the petitioner is the Deputy Inspector General of Police, hence the

order passed by the Superintendent of Police, Lalitpur is prima facie without jurisdiction. It is stated that it is only the appointing authority who can suspend the Police Officer under Rule 17 (1) B of the 1991 Rules aforesaid and that the order of suspension being against the aforesaid Rule 17 (1) B, is bad.

9. It is alleged that neither any departmental proceedings are pending nor contemplated against the petitioner, hence the suspension order in violation of Rules 17 (1) of the 1991 Rules, is illegal. The power of suspension could be exercised only if the charges are so serious which may entail dismissal or removal from the service or reduction in rank of the petitioner.

10. At this stage reference to the F.I.R. lodged by the villagers may be made which is as under:

Isok esa] Jh eku~ {ks=kf/kdkjh egksn; yfyriqj] mRrj izns'k fo'k;&xzke; dSyxqok esa iqfyl }kjk dkuwu dk nq;i;ksx A egksn; fuosnu gS fd xzke dSyqxaok Fkkuk ckuiqj esa 'kke es lkr cts xzke dSyqok ds gh f[kYyw iq= xus'k tkfr vfgjokj vius [ksr ls dke djds yk SV jgk Fkk rHkh pkSdh bpktZ gsear th us mls cqyk;k tks fd nqdku ls vius fy, lkeku ys jgk Fkk rFkk iqfyl bapktZ egksn; us cqyk;k mls lkeku ysus ds dkj.k nsj gks xbZ blfy, iqfyl LVkQ us viuh ukSdj'kkgh esa vkdj mlds gkFk iSj cka/kdj ydM+h ds [kEHkk ls cka/kdj mls csjgeh ls ihVus yxs A fiVrs&fiVrs; csgks'k gks x;k rks ekSds ij xkao okys x;s rks iqfyl LVkQ us xksyh pykuh 'kq: dj fn;k rks HkhM+ frj&fcrj; gks xbZ A xksyh fd'ku iq= gYdk o Hkokuh ckbZ iq=h fd'ku vfgjokj dks yxh ftdh gkyr xEHkhj gS ,oa cpus dh IHkkouk de g SA rFkk Jheku~ th iqfyl okyks us rHkh f[kYyw iq= xus'k dks ykirk dj fn;k rFkk xzkeokyksa us iqfyl o njksxk th dks ns[kk rks xzke ds gh jru ik.Ms iq= gydkbZ ik.Ms us njksxk th dks fNik fy;k vkSj ge yxsxks ls dgus yxs fd ;gka ls Hkkx tkvks ugh rks ek:axk rFkk xzke ds gh deys'k iq= euksgj rFkk dYyw iq= euksgj lkgw ekSds ij x;s ftudh nqdku ij cSBdj iqfyl okyks us xksyh pykbZ rFkk iqfyl okyks dks txnh'k fjNkfj;k us Nqik;k rFkk Jheku~ mDr O;fDr;ksa ds f[kykQ dkuwuh dk;Zokgh djus dh d`ik djs rFkk nsoh iq= jathr flag rFkk fQjkst iq= egcwc [kku iqfyl okyks dks jru ik.Ms ds ?kj NksMus x;s Fks ys[kd mEesn iq= ?kklhjke xzke dSyxqok tuin yfyriqj izkFkhZ lqjs'k iq= gYdk tkfr vfgjokj izkFkhZx.k A g0v0 jkts'k dqekj g0 izdk'k] g0 ohju] g0 v'kksd] g0 tkgj] g0 egs'k] g0 dYyw g0 jfrjke] g0 jkts'k dqekj g0 ccyw o gYds fu'kkuh vaxwBk lfj;k] fu0 [kqeku] fu0v0 n;kyh] g0 jkts'k

fnukad 29-3-2002

11. In pursuance of the aforesaid F.I.R. the order of suspension has been passed as under:

m0fu0uk0iq0 gsear ddekj dks mlds fo:) fuEufyf[kr vkjksiks ds laca/k esa vuq'kklfud dk;Zokgh izLrkoFr gSa dks ,rn~}kjk rkRdkfyd izHkko ls fuyafer fd;k tkrk gS%

vkjksi&

iqfyl pkSdh dSyxqvka Fkkuk ckuiqj tuin yfyriqj esa bl m0fu0 ds fo:) fnukad 29-3-2009 dks eq0v0la0 414@09 /kkjk 307 Hkk0n0fo0 dk vfHk;ksx iathd`r gksus ds vkjksi esaA

2- fuyacu dh vof/k esa mDr dehZ dks foRrh; fu;e laxzg [akM&2 Hkkx&2 ls 4 ds ewy fu;e&53 ds izko/kkuks ds vuqlkj thou fuokZg HkRrs dh /kujkf'k ds cjkcj ns; gksxh rFkk bUgs thou fuokZg HkRrs dh /kujkf'k ij egaxkbZ HkRrk vkfn ,sls vodk'k osru ij ns; gS Hkh vuqeU; gksxh fdUrq ,sls deZpkjh dks thou fuokZg HkRrs ds lkFk dksbZ egaxkbZ HkRrk ns; ugh gksxk ftUgs fuyacu ls iwoZ ;k izklr osru ds lkFk dksbZ egaxkbZ HkRrk vFkok egaxkbZ HkRrs dk mikfUrd lek;kstu izklr ugh Fkk fuyacu ds fnukad dks izklr osru ds vk/kkj ij vU; izfrdkj HkRrs Hkh fuyacu dh vof/k esa bl 'krZ ij ns; gksxs tc bldk lek/kku gks tk;s fd muds }kjk ml en es O;; okLro esa fd;k tk jgk gS ftlds fy, mDr izfrdj HkRrs vuqeU; g SA

3- mijksDr izLrj nks esa mfYyf[kr enks dk Hkqxrku rHkh fd;k tk;sxk tcfd mDr dehZ bl vk'k; dk izek.k i= izLrqr djs fd og vU; fdlh lsok;sktu@O;kikjo`fRr O;olk; esa ugh yxk gS A fuyacu dh vof/k esa mDr dehZ iqfyl ykbZu esa gh fuokl djsxk rFkk fcuk vuqefr vodk'k ds eq[;ky; ls ckgj ugh tk;sxkA

12. Perusal of the F.I.R. shows that the petitioner has misused the power as incharge of the Police Station alongwith his two constables and later on as a counter-blast, lodged an F.I.R. against the villagers in order to protect himself from the F.I.R. lodged by the villagers.

13. The duty of the Police Officer is to protect the public and not indulge in 'rahjani', dacoity or for extracting money or any other act against law. From the

above there appears to be no reason for the villagers to have intervened in the matter. The injured from gun shots alleged to be fired by the policemen are villagers, not the petitioner.

14. These questions of fact require ordinarily findings which can only be recorded if the parties adduced oral and documentary evidence which is not feasible in writ jurisdiction. Neither medical reports nor ballistic reports etc., are available on record, it is not feasible for the Court to take any decision in the matter and record any findings of fact.

15. In these facts and circumstances of the case, writ petition is dismissed on the ground of alternative and efficacious remedy.

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