

Bablu Kumar Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : May-21-2015

Appellant : Bablu Kumar

Respondent : State of Jharkhand and Ors

Advocate for Pet/Ap. : Mr. S.N. Pathak

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S.) No. 4746 of 2009
.... Bablu Kumar son of Sri Bindeshwari Prasad Yadav, resident of village-
Phulaoth, P.O.-Phulaoth, P.S.- Chausa, District - Madhepura (Bihar) ... Petitioner
Versus 1. The State of Jharkhand 2. The Director General of Police, Jharkhand,
Ranchi.

3. The Inspector General of Police, J A P, Project Bhawan, Dhurwa, Ranchi 4. The
Deputy Inspector General of Police, J A P, Project Bhawan, Dhurwa, Ranchi.

5. The Commandant, I.R.B.-2, Chaibasa, Camp- JAP- 10 (Femala Battalin),
Hotwar, Ranchi ... Respondents ... CORAM:HON'BLE MR. JUSTICE PRAMATH
PATNAIK ... For the Petitioner : Dr. S.N. Pathak, Sr. Adv. For the Respondents :
Sr. S.C. I CAV on 17th April, 2015 Pronounced on :21/ 05 /2015 In the
aforesaid writ application the petitioner has inter alia prayed for issuance of writ of
certiorari for quashing the order passed by the respondent No. 5 in memo no. 235
dated 26.4.2009 vide Annexure-4 to the writ application wherein the petitioner has

been dismissed from services w.e.f. 24.1.2009 and also for quashing memo no. 1476 dated 03.07.2009 passed by respondent no. 4, there rejected the appeal and further prayer has been made for issuance of writ of mandamus commanding the respondents to re-instate the petitioner in service with all back wages and other consequential benefits as per law.

2. Sans details, the facts in a nutshell is that in pursuance to initial appointment as constable no. 130 in I.R.B.-2 Battalion, Chaibasa, Camp- JAP-10 (Female Battalion), Hotwar, Ranchi on 25.05.2008, the petitioner was sent for training along with other constables. During course of training, unfortunately the petitioner fell ill and was hospitalized at B.S.F. Hospital, Jodhpur on 7.1.2009 and subsequently discharged from the said hospital on 15.01.2009 as evident from Annexure-1 to the writ application. During course of treatment various tests were done and the treating physician of the BSF Hospital advised the petitioner to undergo treatment in the T.B. Centre at his home district since it would take long time for recuperation. Accordingly, movement order was given to the 2 petitioner on 24.1.2009 and petitioner reached his native place and as per advice of the doctor the petitioner was treated at K.K. Hospital, Purnea by Dr. K.K. Singh and after test the petitioner underwent operation on 2.2.2009 conducted by Dr. S.E. Rehman and the petitioner was declared medically fit on 21.5.2009 as per medical prescription vide Annexure - 2(series).

3. While undergoing treatment at Purnea, the petitioner received intimation dated 25.02.2009 issued by respondent no. 5 to join the duty. But due to his operation he has sent a letter dated 19.03.2009 (Annexure

3) to the respondent no. 5 requesting therein to allow him some time to join the duty. But, to the utter surprise and consternation, the petitioner on 7.5.2009 received the order issued vide memo no. 235 dated 26.4.2009 (Annexure

4) whereby he is dismissed from services w.e.f. 24.01.2009 without any departmental proceeding or without any inquiry as envisaged in Rule 843 of the Bihar Police Manual.

4. The petitioner after recovering from his illness went to Hotwar, Ranchi on 8.5.2009 to apprise the authority about his illness but was told that nothing can be done except to file appeal. Accordingly, on 19.6.2009, the petitioner preferred an appeal before the respondent no. 4 enumerating the reasons for his absence and requested for revoking the order of dismissal vide Annexure-5 to the writ application. Since, the appeal preferred by the petitioner did not evoke any response from the respondents, left with no alternative, the petitioner has approached this Court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances. During pendency of the writ petition, the petitioner has filed one Interlocutory Application bringing on record the order dated 03.07.2009 passed in Appeal preferred by the petitioner and prayed for amendment in the prayer portion of the writ petition for quashing of the said order, which was allowed vide order dated 30.03.2015.

5. Per contra, the respondents have filed a counter-affidavit repelling the contentions raised in the writ application. It has been, inter-alia, stated in the counter-affidavit that the petitioner was appointed as a probationer on 25.05.2008, but the appointment of the petitioner was subject to his successful completion of his training, good conduct and behaviour during the probationary 3 period as evident vide memo no. 1070-73 dated 24.01.2009 annexed as Annexure-A to the counter-affidavit. Movement order was issued by the Deputy Inspector General of Police, S.T.C./B.S.F., Jodhpur to report its commandant, India Reserve Battalion-2, Ranchi wherein it has been categorically mentioned that the petitioner on arrival at the destination should report to the Commandant for further orders. But the petitioner flouted the same and in utter disrespect did not report to the commandant. After finding no trace of the petitioner the Commandant I.R.B.-2, Chaibasa vide its letter contained in memo no. 92 dated 25.02.2009 directed the petitioner to immediately report to Head Quarters vide Annexure-B to the counter-affidavit. The petitioner, who is in probation period, neither submitted his joining nor had replied about his unauthorized absence and hence, in view of the unauthorized absence and misconduct on the part of the petitioner, the order of dismissal had been passed.

6. It has further been submitted in the counter-affidavit that during the probation period, Rule 668 (A) of the Police Manual Rule contemplates that the competent authority can remove the petitioner without resorting to full fledged departmental inquiry or proceedings. It has further been contended in the counter-affidavit that the petitioner was diagnosed for T.B. and was recommended by doctor to get treatment from T.B. Centre of his home District and directed to report at home district. It has also been stated in the counter-affidavit that there is a District T.B. Centre and other specialized hospitals at Ranchi where the petitioner is directed to report. Since, the petitioner flouted the order passed by the superior authority and chose not to intimate/reply to the letters of the superior authorities, in view of the nature of job in a disciplined force petitioner has committed grave and serious misconduct. Therefore, in view of the Rule 668 (A) of the Police Manual, the petitioner who had been on probation has committed misconduct by remaining absent for a longtime from service and hence, he has been dismissed from his services and order of dismissal has been passed in accordance with Rule, vide Annexure- C to the counter-affidavit. Since, the petitioner was not confirmed, the provisions under Police Manual Rule no. 843 is not at all applicable in the instant case. The departmental appeal has been preferred by the petitioner before the respondent no. 4, Deputy 4 Inspector General, Ranchi, which has been dismissed in view of the Police Manual Rule 668(A) vide Annexure-D to the counter-affidavit.

7. Heard Mr. S.N. Pathak learned senior counsel for the petitioner and Senior. Standing Counsel for the respondents.

8. Learned senior counsel appearing on behalf of the petitioner submitted that the impugned order of dismissal with retrospective effect without initiating any departmental proceeding is illegal, arbitrary and violative of article 14, 16 & 311 of the Constitution of India. Learned senior counsel further submits that the impugned order of dismissal passed under Rule 668 (A) of the Police Manual is not applicable to the petitioner, since the said Rule relates to appointment and promotion of officers and not to a constable. Therefore, the impugned action of the respondents is totally whimsical, fanciful and in complete derogation of the various Govt. Circulars and Rules regarding unauthorized absence and it is further submitted that the impugned order of dismissal is excessive and harsh. Since, the

petitioner was seriously ill and was absent from duty for the reason beyond his control, the impugned order of dismissal is shockingly disproportionate to the alleged misconduct and, therefore, the impugned order of punishment is hit by the doctrine of proportionality. Learned senior counsel also relied upon the decision of Hon'ble Supreme Court rendered in the case of R. Jeevaratnam Vs. State of Madras as reported in AIR 1996 SC951 specially paragraphs 4 and 5 thereof.

9. Learned counsel for the respondents, on the basis of counter- affidavit filed on behalf of the respondents, vehemently submits that impugned order of punishment i.e. dismissal of the petitioner has been passed strictly in accordance with the Rule 668 (A) of the Police Manual Rule for unauthorized absence tantamounting to misconduct.

10. On perusal of Rule 668 (A) of the Police Manual, there is no doubt or debate that the competent authority can remove the probationer without initiating full fledged inquiry or departmental proceedings. So, there is no procedural irregularity in passing the impugned order. Therefore, the impugned order of dismissal and order passed by the appellate authority cannot be interfered by this Court on this count.

11. Now, the moot question which falls for determination by this Court is as to whether the impugned order of punishment can be 5 interfered with by this Court on the ground of doctrine of proportionality or in other words on the question of quantum of punishment.

12. After going through the records and hearing the counsels at length, I am of the considered view that punishment awarded to the punishment is in commensurate with the charges leveled against the petitioner for the following facts, reasons and judicial pronouncements: I. It is an admitted fact that during his training period the petitioner fell ill and was advised to consult a doctor near his home town as he is required to undergo prolonged treatment. But, immediately thereafter the petitioner rushed to his home town without any intimation to the respondents-authorities. II. Further from perusal of the Movement order dated 24.01.2009, it appears that petitioner was to report in the Headquarters, but the petitioner flouted that order and even did not pay any heed to the same which amounts to insubordination and

dereliction of duty and can be construed as misconduct. III. Examining the issue of proportionality, the Hon'ble Apex Court in the case of S.R. Tewari Vs. Union of India & Anr. (2013) 6 SCC602 at paragraph 29 held as under:

29. In Union of India Vs. R.K. Sharma as reported in (2001) 9 SCC592: AIR 2001 SC3053 the Hon'ble Apex Court explained the observations made in Ranjit Thakur's Case { Ranjit Thakur Vs. Union of India-(1987) 4SCC611} observing that if the charge was ridiculous, the punishment was harsh or strikingly disproportionate it would warrant interference. However, the said observations in Ranjit Thakur (supra) are not to be taken to mean that a court can, while exercising the power of judicial review, interfere with the punishment merely because it considers the punishment to be disproportionate. It was held that only in extreme cases, which on their face, show perversity or irrationality, there could be judicial review and courts should not interfere merely on compassionate grounds. In the case at hand, the punishment awarded to the petitioner, who is a probationer, does not appear to be shockingly disproportionate, so as to call for any interference by this Court-under Article 226 of Constitution of India .

13. In such view of the matter, the impugned order of punishment at Annexure-4 to the writ application and order passed by appellate authority-the Deputy Inspector General of Police vide Annexure- D warrants no interference by this Court.

14. Accordingly, the writ petition is dismissed being devoid of any merit. (Pramath Patnaik, J.) The Jharkhand High Court, Ranchi Dated: / 05/ 2015 MM /AFR/NAFR

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