

Nicholson Peter Vs. State of Bihar and ors.

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Court : Jharkhand

Decided On : Dec-09-2003

Reported in : [2004(1)JCR392(Jhr)]

Judge : Amareshwar Sahay, J.

Acts : Service Law

Appeal No. : CWJC No. 2893 of 1997 (R)

Appellant : Nicholson Peter

Respondent : State of Bihar and ors.

Advocate for Def. : R.R. Mishra, to GP II and; Manoj Kumar, JC GP II

Advocate for Pet/Ap. : N.K. Sahani, Adv.

Disposition : Appeal allowed

Judgement :

Amareshwar Sahay, J.

1. The original writ petitioner is dead and therefore, his heirs i.e. wife and three minor children have been substituted in his place.

2. The prayer in this writ application is for quashing of the order of dismissal passed by the Senior S.P. Ranchi in Departmental Proceeding No. 9/87 as well as the order dated 6.7.1991 passed by the D.I.G. of Police, South Chotonagpur, Range, Ranchi confirming the order of Senior S.P., Ranchi.

3. The fact of the matter in short is that the original writ petitioner, namely, Nicholson Peter, who was a constable in Bihar Police, had gone on casual leave for 20 days from 1.8.1983. He had to report on duty on 20.8.1983 but he absented unauthorisedly till 27.8.1986 without any information. Consequent there to, a departmental proceeding was initiated against him which was decided ex parte, finding the petitioner guilty. Thereafter, show cause notice was issued to him by Senior S.P. to which the petitioner submitted his show cause and stated therein that since he became mentally sick and was under treatment of Doctor for about three years because of sudden death of his mother, therefore, he could not attend his duty. However, Senior S.P. was not satisfied with the cause shown by him and therefore, he passed an order of dismissal from service.

4. The petitioner, thereafter, filed an appeal before the DIG South Chotonagpur, Ranchi who by his order dated 7.3.1996 as contained in Annexure 2 to the writ application dismissed the appeal and maintained the order of Senior SP Ranchi dismissing the petitioner from service.

5. From the order of the appellate authority it appears that he has only mentioned in the order that he perused the relevant file and found the charge to be proved and therefore, he did not find any reason to differ with the order of the Sr. SP and thereby he dismissed the appeal.

6. In my view the order of the appellate authority suffers from serious infirmity of non-application of mind with the facts and circumstances of the case. He has only referred the order of the Sr. SP Ranchi and has not given his own independent finding after considering the relevant evidence on record. Since the departmental proceeding was ex parte and further that the appellate order is also sketchy and suffers from non-application of mind, therefore, in my view, the order of dismissal passed against the petitioner cannot be sustained,

7. In the result this application is allowed and consequently the orders as contained in Annexures 1 and 2 are quashed. The petitioners shall be entitled to all consequential, benefits which shall be calculated and paid to the petitioner within a period of four months from the date of receipt/production of a copy of this order.

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