

Constable No.124, Manoj Kumar Vs. State of Jharkhand and Ors.

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Court : Jharkhand

Decided On : Nov-27-2015

Appellant : Constable No.124, Manoj Kumar

Respondent : State of Jharkhand and Ors.

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 6082 of 2006
Constable number-124, Manoj Kumar Rai, Son of Sri Jagdeo Rai, Permanent
resident of Village-Mahthawan, P.S.-Bhargawan, District-Araria, Bihar. ...
Petitioner Versus 1. The State of Jharkhand 2. Director General of Police
(Personnel), Secretariate at Jharkhand Government, Project Building, Ranchi.

3. Deputy Inspector General of Police, Coal Region, District-Bokaro.

4. Superintendent of Police, Dhanbad.

5. State of Bihar.

6. Superintendent of Police, Supaul, District-Supaul, Bihar.

7. Smt. Meera Devi, Daughter of Sri Munde Roy, resident of Village Ramganj,
P.S. Kumar Khand, District-Madhepura, Bihar. Respondents --- CORAM :
HON'BLE MR. JUSTICE PRAMATH PATNAIK --- For the Petitioner : M/s Manoj
Tondon, Shiv Shankar Kumar, Kumari Rashmi & Sanjay Pandey, Advocates For
the Respondent-Jharkhand : Mr. Ashish Kr. Thakur, J.C. to Sr. S.C. I For the

Respondent-Bihar : Mr. Pankaj Kumar, J.C. to G.A. ----- CAV ON0910.2015
Pronounced On 27/11/2015 Per Pramath Patnaik, J.

In the accompanied writ application, the petitioner has inter-alia prayed for quashing the dismissal order passed by the S.P. Supaul dated 29/08/2002 and for quashing the order dated 05.04.2004 passed by the D.I.G. (Personnel) Bokaro, Jharkhand rejecting the appeal filed by the petitioner and for quashing the order dated 31.08.2006 passed by the Director General of Police (Personnel) rejecting the revision filed by the petitioner and also for reinstatement on the said post with all the consequential benefits.

2. Sans details, the facts as disclosed in the writ application, in brief is that the petitioner was initially appointed as a Constable on 11.02.1984 at Saharsa. After working several years, the petitioner was transferred to Supaul in the year 1995 and continued till 2002. A lady named as Mira Devi gave a written complaint before the S.P., Supaul on 08.04.1995 that she was married to this petitioner in the year 1986 whereby a male child was born out of their wedlock. She alleged that the petitioner left her and is not maintaining her and her child and she is in acute financial crisis and further stated that the petitioner had kept one Anjulata as a concubine as a result she is not taken care of. Basing on the complaint dated 08.04.1995, the S.P. Supaul framed the charges against the petitioner. A departmental enquiry was constituted by S.P. Supaul and one Sri Rama Shankar Sinha was appointed as an enquiry officer and also one Dinesh Sharma was appointed as a Conducting Officer on behalf of the Department. The enquiry proceeded ex-parte and enquiry officer found that Mira Devi from the day of the alleged marriage itself is living along with her father and she has a small child born from her womb. During enquiry, the enquiry officer interrogated some of the villagers of the complainant Mira Devi who alleged to have supported the version of the complainant. On the other hand, the petitioner in spite of the notices given to the petitioner through S.P. Dhanbad, he did not turn up. On the basis of inquiry report, the S.P., Supaul served a second show cause notice upon the petitioner on 3 26.05.2002 and in pursuance to receipt of the second show cause notice, the petitioner filed his reply before the S.P. Supaul on 05.07.2002 on several grounds. On the basis of inquiry report, the S.P., Supaul vide order dated 29.08.2002

dismissed the petitioner from services. However, the order of S.P., Supaul was recalled by the S.P., Dhanbad and the petitioner was supposed to have been reinstated in service w.e.f. 25.01.2003. Instead of enquiring the allegation and giving a separate charge by the S.P., Dhanbad, relied upon all the charges and enquiry report made in Supaul itself and thereafter, the S.P., Dhanbad issued the second show cause notice directly to the petitioner on the same allegation and on the basis of the same enquiry report without supplying the copy of the enquiry report asked the petitioner to file his reply within 15 days on the proposed penalty of dismissal failing which, ex-parte dismissal order would be passed. The petitioner filed second show cause reply explaining the entire facts before the S.P., Dhanbad denying the factum of marriage with Mira Devi and again the notice was issued by the S.P., Dhanbad to the petitioner to explain as to why he should not be dismissed. Since earlier he replied to the show cause so he did not reply second time but the S.P., Dhanbad dismissed in the same line on the basis of the same enquiry report vide order dated 26.08.2003 (Annexure-11 to the writ application) and thereafter, the petitioner filed an appeal before the D.I.G., Bokaro dated 05.11.2003 and the said appeal was dismissed by the Appellate Authority vide order dated 05.04.2004 and, thereafter, revision petition was filed by the petitioner before the Director General of Police (Personnel), Jharkhand on 06.07.2004 which was also rejected on the same ground vide order dated 31.08.2006. 4 Being aggrieved by the impugned order of dismissal from services confirmed by the Appellate Authority as well as Revisional Authority, the petitioner, left with no other alternative efficacious and speedy remedy has approached this Court invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances.

3. Per-contra a counter-affidavit has been filed on behalf of the respondents, controverting the averments made in the writ applications. In the counter-affidavit, it has been inter alia submitted that in pursuance to the departmental proceeding, the petitioner was dismissed from the services which has been confirmed by the Appellate Authority as well as Revisional Authority that the proceeding has been conducted in a fair manner and there is no violation of principles of natural justice as alleged and the orders cannot be said to be unlawful under any circumstances.

4. Heard Mr. Manoj Tondon, learned counsel appearing for the petitioner, Mr. Ashish Kr. Thakur, J.C to Sr. S.C-I, learned counsel appearing for the respondents and Mr. Pankaj Kumer, J.C to G.A. Bihar. Perused the records.

5. Learned counsel for the petitioner has strenuously urged that the impugned order of dismissal which has been confirmed by the Appellate Authority as well as Revisional Authority is not legally sustainable. Since, no inquiry has been conducted by the S.P., Dhanbad (respondent no.4), the allegation made against the petitioner that he has married with one Anjulata about whom he has not stated anything in the reply. If the enquiry made by the S.P., Dhanbad afresh, everything will come to the conclusion and on the basis of reality, the officer shall find that the entire allegation is false and concocted. When the initial order of departmental enquiry, framing of charges and dismissal order passed by the S.P., Supaul are illegal then no other order 5 subsequently passed on the basis of the same orders by the Authorities of Jharkhand shall sustain. Learned counsel for the petitioner has further submitted that in order to ascertain veracity of the allegations no enquiry was conducted prior to infliction of major punishment while appendix 49 of the Police Manual. Learned counsel for the petitioner further submits that the impugned order of punishment is cryptic and the reply filed by the petitioner has not been taken into consideration which has caused serious prejudices to the petitioner. Learned counsel for the petitioner further submits that the impugned order of the Appellate Authority is non-speaking order which is not legally sustainable.

6. As against this submission of learned counsel for the petitioner, learned counsel for the State has assiduously submitted that the impugned order of punishment was passed basing on the inquiry report confirmed by the Appellate Authority as well as Revisional Authority and the writ court under Article 226 of the constitution cannot reappreciate or reappraise the evidences led in the inquiry.

7. Having heard learned counsel for the respective parties and on perusal of the relevant documents on records, it appears that the impugned order of punishment dated 26.08.2003 vide Annexure-11 and the order of the Appellate Authority dated 05.04.2004 and the order of rejection of the revision dated 31.08.2006 are not

legally sustainable due to the following facts, reasons and judicial pronouncements:- (i) In the instant case, admittedly basing on the allegations made by one lady named Mira Devi alleged to be the first wife of the petitioner, made complaint against the petitioner for keeping one lady Anjulata as concubine. 6 Basing on the complaint, charges were framed against the petitioner by S.P., Supaul and the inquiry was conducted basing on the inquiry report. The petitioner was dismissed from services by S.P. Supaul vide order dated 29.08.2002. Subsequently, the said order of S.P., Supaul recalled by S.P., Dhanbad vide dated 25.01.2003 reinstating the petitioner in services. But the present Disciplinary Authority i.e. S.P., Dhanbad without inquiring the matter relying on the report earlier inquiry report made by S.P. Supaul itself has issued to second show cause to the petitioner without supply of the inquiry report asking to the petitioner to file on reply on the proposed punishment as per appendix 49 of the Police Manual. (ii) In the instant case, the impugned order passed by the disciplinary authority is a cryptic one and also the impugned order of the Appellate Authority is non-speaking order which is not legally sustainable but petitioner has been visited with civil consequences being violative of Article 311(2) of the Constitution of India. (iii) It is true that the judicial review is not supposed to substitute its own opinion on reappraisal of the evidence in exercise of power of judicial review. However, the Court can interfere with the punishment imposed which is found to be totally irrational or outrages defiance of logic. The limited scope of judicial review is temporary and interferece is required only when the punishment is shockingly disproportionate.

8. On the cumulative effect of facts, reasons and judicial pronouncements and in view of the discussions made in the foregoing paragraphs, I am of the considered view that the impugned order of dismissal dated 26.08.2003 vide Annexure-11 and the order of the Appellate Authority dated 05.04.2004 and the order of rejection of the revision dated 31.08.2006 being not legally 7 sustainable are quashed and the matter is remitted to the disciplinary authority to start denovo proceedings, if so legally advised by following Principles of natural justice and pass appropriate orders as deemed necessary in the ends of justice strictly within a period of six months from the date of receipt/production of copy of this order, in accordance with law.

9. With the aforesaid observations and directions, this writ petition stands disposed of. (Pramath Patnaik, J.) RKM/- N.A.F.R.

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