

Satish Kumar Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Dec-04-2015

Appellant : Satish Kumar

Respondent : State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 7671 of 2011
Satish Kumar, son of Sri Raj Narayan Prasad, resident of Village: Mohadinagar,
P.O: Halsi, P.S: Halsi, District: Lakhisarai, Bihar. Petitioner Versus 1. State of
Jharkhand.

2. Director General-cum-Inspector General of Police, Jharkhand, Ranchi, Police
Head Quarter, P.O. & P.S: Dhurwa, District: Ranchi, Jharkhand.

3. Inspector General of Police, Jharkhand, P.O. & P.S: Dhurwa, District: Ranchi,
Jharkhand.

4. Deputy Inspector General of Police, Coal Range, P.O: Bokaro Steel City, P.S:
Bokaro Steel City, District: Bokaro, Jharkhand.

5. Superintendent of Police, Dhanbad, P.O: Dhanbad, P.S: Dhanbad, District:
Dhanbad, Jharkhand. Respondents --- CORAM : HON'BLE MR. JUSTICE
PRAMATH PATNAIK --- For the Petitioner : Dr. S.N. Pathak, Sr. Advocate &
Diwakar Upadhyaya, Advocate For the Respondents : Ms. Shruti Shrestha, J.C to
A.G ----- CAV on 29/10/2015 Pronounced on /12/2015 Per Pramath Patnaik, J.

In the accompanied writ application, the petitioner has inter-alia prayed for issuance of a writ in the nature of certiorari for quashing the order dated 06.03.2010 passed by the Disciplinary Authority (Respondent no.5) and the order dated 08.07.2010 passed by the Appellate Authority (Respondent no.4) 2 and also the order dated 05.05.2012 passed by the Revisional Authority pertaining to dismissal from the services and the petitioner has further prayed for issuance of writ in the nature of mandamus commanding upon the respondents to reinstate the petitioner with all consequential benefits in accordance with law.

2. Sans details, the facts as disclosed in the writ application, in a nutshell, is that while the petitioner was posted at Dhanbad, charges were framed against him along with others and show cause was asked from him. In pursuance thereto, the petitioner submitted his reply denying the same and the show cause reply was found unsatisfactory and the petitioner was proceeded departmentally. In the departmental proceeding, the matter was enquired into and the inquiry officer held the petitioner guilty of charges. On the basis of inquiry report, the disciplinary authority agreeing with findings of the inquiry officer has passed order of dismissal from services, which has been affirmed by the Appellate as well as the Revisional Authority. Being aggrieved by the order passed by the Disciplinary, Appellate as well as Revisional Authority and 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 by the respondent nos. 2 to 5 controverting the averments made in the writ applications. In the counter- affidavit, it has been inter alia submitted that the Sub Divisional Officer, Dhanbad issued a letter dated 08.11.2011 whereunder on 22.09.2008 one Bansilal son of Late Bipal Sahu accused in R.C. 5-(A) of 2005 A.H.D.R was being treated in PMCH Dhanbad and the petitioner alongwith others constable were deputed for security in PMCH. On 22.09.2008 the accused Bansilal got burn injury and on 23.09.2008 admitted to casual department PMCH and on 25.09.2008 the accused person was transferred to RIMS Ranchi. The Sub Divisional Officer, Dhanbad on 31.10.2008 at 11:30 inspected the ward of PMCH where accused persons were treated during

the course of enquiry no security personnel was present, nor they were in uniform. Two security personnels had gone out and other two were lying in barrack. The statement of accused in custody also indicated that there was candles and matches in the prisoner ward because of which the incident to fire took place. The constable during the enquiry did not say truth. The prisoner wards where accused are treated and the police barrack are adjacent to each other and there was difference of just one wall. The constable deputed in security should have known about the incidents of fire but after the fire had engulfed, the security personnels came to learn about it and these shows that they were not on duty. It was also transpired that the petitioner and others were on the roof top, indicating that they were negligent in their duty and the catching fire of under trial was a suspicious circumstances. The departmental proceeding was subsequently started, not being satisfied with the reply given by the petitioner but during the course of inquiry the petitioner and others have been found guilty of charges. It is further been submitted that the then Superintendent of Police, Dhanbad agreed with the findings of the conducting officer after having considered the entire materials on record and found the petitioner guilty of charges and the then Superintendent of Police, Dhanbad found the act and conduct of petitioner and others as sufficient proof of undisciplined conduct and doubtful character and being incompetent police personnel. Hence, the then Superintendent of Police, Dhanbad passed an order asking for show cause from the petitioner on the proposed punishment 4 and the petitioner submitted his show cause and the disciplinary authority after considering the show cause reply unsatisfactory passed dismissal order of the petitioner from services. Which has been affirmed by the Appellate as well as Revisional Authority.

4. Heard Dr. S. N. Pathak, learned senior counsel appearing for the petitioner and Ms. Shruti Shrestha, J.C to A.G, learned counsel appearing for the respondents and perused the documents on records.

5. Learned senior counsel for the petitioner has strenuously urged that the impugned order of dismissal from services has been passed which has been affirmed by the Appellate as well as Revisional Authority in violation of provisions of cardinal principles of natural justice and in violation of Article 14 and 16 of the

Constitution of India. Learned senior counsel for the petitioner further submits that the inquiry report is perverse. Learned senior counsel for the petitioner further submits that the basis of the inquiry report is the enquiry of the Sub Divisional Officer which was done after one month but the said Sub Divisional Officer was not examined by the enquiry officer, as such the piece of evidence could not have been used against the petitioner and the inquiry report is based on conjecture and surmises to be treated as legal piece of evidence. Learned senior counsel for the petitioner further submits that the accused person who has been not mentally fit and occurrence took place due to mental ailment and the petitioner could not be held responsible for the same regarding dereliction of duty because it was the petitioner, who raised the alarm having seen smoke from the bed. Learned senior counsel further submits that the extreme punishment inflicted on the petitioner is very harsh, disproportionate and does not commensurate to the alleged charges. Learned senior counsel during course of hearing has referred 5 to rejoinder affidavit dated 12.12.2012 wherein it has been stated that the incident took place on 22.09.2008 whereas the enquiry was made by the S.D.O after a lapse of more than one month on 31.10.2008 passed by the S.D.O formal witnesses/hearsay witnesses who were not present at the time of incident and the findings of the S.D.O based on mere suspicion without any legal evidence. During the enquiry conducted by the S.D.O., Dhanbad the opportunity of cross examining of the witnesses were not given to the petitioner. Moreover, the petitioner was very vigilant due to which the prisoner was given medication instantly.

6. As against this submission of the learned senior counsel for the petitioner, the learned counsel for the respondents has assiduously submitted that inquiry was held and the disciplinary authority on careful consideration of the inquiry report has passed the order of punishment of dismissal from services which has been concurred by the Appellate as well as Revisional Authority. Considering the gravity of charges since three concurrent findings given by the Disciplinary, Appellate as well as Revisional Authority, the same do not call for any interference.

7. After hearing the learned counsel for the respective parties at length and on perusal of the relevant documents on records, I am of the considered view that the petitioner has not been able to demonstrate a case for interference due to the

following factual and legal aspects: (i) In the instant case, the petitioner alongwith other constables were deputed for security in PMCH but the accused got burn injury and was admitted to casual department of PMCH, thereafter the accused person was transferred to RIMS Ranchi. The Sub Divisional Officer, Dhanbad inspected the ward of PMCH, during course of 6 inquiry, where the accused person was treated, there was no constables in dress. Two security personnels had gone out and other two were lying in barrack. As per the statement of the accused, there was candles and matches in the prisoner ward, the fire incident took place due to absence of the petitioner and others on the spot the fire engulfed. Due to such lapses the proceeding was initiated and the disciplinary authority on perusal of the inquiry report has passed the impugned order, which has been affirmed by Appellate as well as Revisional Authority. The High Court under Article 226 cannot reappraise the evidence and cannot disturb the facts finding given by the Disciplinary authority since it is settled law that the High Court has limited scope to exercise any extra-ordinary jurisdiction under Article 226 of the Constitution of India and, therefore, findings recorded by the inquiry officer and punishment of dismissal from services being affirmed by the Appellate and Revisional Authority cannot be interfered with. (ii) In the case in hand, in view of the seriousness of allegation and misconduct committed by the petitioner, the power of judicial review cannot be applied. Moreover, finding three consecutive materials on record cannot be interfered with, as has been held by the Apex Court in the case of Uttar Pradesh and Another Vs. Man Mohan Nath Sinha & Another as reported in (2009) 8 SCC310 (iii) In that view of the matter, I find no reason with the impugned order of dismissal from services passed by the Disciplinary, Appellate as well as Revisional Authority. 7 8. On the cumulative effect of aforesaid facts, reasons and judicial pronouncement as well as logical sequitur to the factual legal aspects, the impugned order of punishment of dismissal from services dated 06.03.2010 passed by the Disciplinary Authority, the order dated 08.07.2010 passed by the Appellate Authority and order dated 05.05.2012 passed by the Revisional Authority pertaining to dismissal from services do not warrant any interference by this Court.

9. Accordingly, the writ petition is dismissed being devoid of any merit. (Pramath Patnaik, J.) RKM/- N.A.F.R.

