

Sanjeev Kumar Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Mar-19-2016

Appellant : Sanjeev Kumar

Respondent : State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 1103 of 2015
Sanjeev Kumar, son of Sri Surya Dev Singh, resident of village-Kulti, P.O. Kulti,
P.S. Asthma, Dist-Nalanda, 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, Dist-Ranch, Jharkhand.

3. Deputy Inspector General of Police, Jharkhand Armed Police, Ranchi, P.O. &
P.S. Doranda, Dist -Ranchi, Jharkhand.

4. Commandant, Jharkhand Armed Police, IRB-2, Chaibasa, Camp Musabani,
P.O. Chaibasa, Camp Musabani, P.O. Chaibasa, P.S. Chaibasa, Dist-East
Singhbhum, Jharkhand .. Respondents ----- CORAM: HONBLE MR. JUSTICE
PRAMATH PATNAIK ----- For the Petitioner : Dr. S.N. Pathak, Sr. Advocate
For the Respondents : Ms. Nitika Agrawal, J.C. to A.G. ----- th CAV on:18
January, 2016 Pronounced on 19/03/2016 Per Pramath Patnaik, J.:

1. In the accompanied writ application, the petitioner has inter alia prayed for
issuance of writ/direction in the nature of certiorari for quashing the order dated

09.05.2014 passed by the Commandant, Jharkhand Armed Police, IRB-2, Chaibasa, Camp Musabani (respondent no.4) and the order dated 16.09.2014 passed by the Deputy Inspector General of Police, Jharkhand Armed Police, Ranchi (respondent no.3) whereby service of the petitioner has been dismissed under Rule 668(A) and 673(C) of the Police Manual and for direction 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 brief facts, as disclosed in the writ application, is that petitioner was appointed as Constable on 21.06.2013 in IRB-2, Chaibasa, Camp Musabani and thereafter, the petitioner performed his duties to the best of his ability and to the utmost satisfaction of the respondent authorities. On 06.03.2014 the petitioner received show cause from the Commandant as to why his services shall not be dismissed and the petitioner submitted his show cause reply denying the allegations levelled against him. To the utter surprise and dismay, the petitioner was dismissed from services following 2 the Rule 668(A) and 673(C) of the Police Manual. Being aggrieved by the order of dismissal, the petitioner submitted appeal before the Deputy Inspector General of Police, Jharkhand Armed Police, Ranchi along with copy of the judgment in the criminal case passed by the District Judge. The appellate authority vide order dated 16.09.2014 rejected the appeal of the petitioner being not maintainable. Being aggrieved by the impugned orders dated 09.05.2014 and 16.09.2014, left with no alternative, efficacious and speedy remedy, the petitioner has approached this Court under Article 226 of the Constitution of India, invoking extraordinary jurisdiction of this Court for redressal of his grievance. 3 Heard Dr. S.N. Pathak, learned senior counsel appearing for the petitioner as well as Ms. Nitika Agrawal, J.C. to A.G., appearing for the respondents.

4. Learned senior counsel appearing for the petitioner has submitted with vehemence that the respondent authorities have not followed the Rule 668-A and 673-C of the Police Manual which provides that services of the probationer will not be taken away without following the minimum requirement of principles of natural justice. Learned counsel appearing for the petitioner further submits that the impugned order dated 09.05.2014 is not a termination simpliciter rather specific

allegations has been levelled against the petitioner and the impugned order is stigmatic or punitive order, therefore, the principles of natural justice ought to have been adhered to. Learned counsel appearing for the petitioner further submits that the probationer like a temporary servant is also entitled to certain protection and his services cannot be terminated arbitrarily nor can those services be terminated in a punitive manner without complying with the principles of natural justice, therefore, action of the respondents is colourable exercise of power being violative of Articles 14 and 16 of the Constitution of India.

5. Learned counsel for the petitioner in order to buttress his submission has referred to the decision reported in (2013) 3 SCC607(State Bank of India & Ors. vs. Palak Modi & Anr.) in which the Honble Apex Court has been pleased to inter alia hold, if an allegation of misconduct constitutes the foundation of action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of rules of natural justice. It has further been held that if the misconduct/misdemeanor constitutes the basis of the final decision taken by the competent authority to dispense with the service of the probationer albeit by a non-stigmatic order, the Court can lift the veil and declare that in the garb of termination simpliciter, the employer has punished the employee for an act of misconduct.

6. Learned counsel for the petitioner has also referred to the decision of the Honble Apex Court reported in [2011 (2) JCR186(SC)] (Commr. of Police & Ors. vs. Sandeep Kumar) wherein, at paragraph 11, it has been held as under:

11. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

7. Per contra, a counter affidavit has been filed on behalf of the respondents controverting the averments made in the writ application. In the counter affidavit, it has been stated that the respondent authority by memo dated 18.07.2013 sent letter to the Superintendent of Police, Nalanda for verification of character of the petitioner and the Superintendent of Police, Nalanda after proper verification of the character of the petitioner sent memo dated 20.09.2013 wherein it is stated that there is a criminal case bearing no. Bakhtiyarpur P.S. Case No.168 of 2011 under section 366(A) I.P.C against the petitioner and the petitioner went to jail in connection with the said case. The Commandant IRB-2, Chaibasa Camp, Musabani, East Singhbhum vide memo dated 21.12.2013 issued show cause notice to the petitioner stating therein that the character is contrary to the police manual, as such, as per the Rule 668(A) of the Police Manual, he should be dismissed from services without following the procedure of Rule 828. The petitioner submitted his show cause reply stating therein that he is innocent. The Commandant IRB- 4 2, Chaibasa, Camp Musabani, East Singhbhum after considering the show cause reply of the petitioner as well as provisions and Rules contained in Police Manual and the gravity of charge against the petitioner found that the petitioner has given wrong declaration in the application form and the character of the petitioner is suspicious. The petitioner was dismissed from services following the Rule 668 (A) and 673(C) of the Police Manual vide memo dated 09.05.2014 issued under the signature of respondent no.4 and thereafter, the petitioner preferred appeal before the Deputy Inspector General of Police, Jharkhand Police Force, Ranchi, but the appellate authority after considering the matter rejected the appeal.

8. Learned counsel appearing for the respondents on the other hand has assiduously submitted that the order of dismissal passed by the disciplinary authority being affirmed by the appellate authority do not suffer from any infirmity or illegality so as to call for any interference by this Honble Court.

9. After hearing the learned counsels for the respective parties and after giving my anxious consideration to the factual and legal aspects, I am of the considered view that the petitioner has not been able to demonstrate any legally tenable ground to warrant interference by this Court due to the following facts: (I) Admittedly, while

filling up the form, the petitioner gave a wrong declaration about pendency of any criminal case against him. But, on verification of S.P., Nalanda it came to light that the petitioner was implicated in a criminal case being Bakhtiyarpur P.S. Case No.168 of 2011 under section 366(A) I.P.C and the petitioner went to jail in connection with the said case. But, the said fact was deliberately concealed which amounts to gross misconduct and the character of the petitioner was found to be very suspicious, therefore, by following Rule 668 (A) and 673(C) of the Police Manual the petitioner has been dismissed from services vide memo dated 09.05.2014 issued under the signature of respondent no.4, Commandant IRB-2, Chaibasa, Camp Musabani, East Singhbhum. The said order has been affirmed by the appellate authority after consideration of the case in right prospective. (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 and moreover the fact finding given by the enquiry officer based on the materials on record cannot be interfered with, as has been held by the Honble Apex Court in the case of State of Uttar Pradesh and Another Vs. Man Mohan Nath Sinha & Another as reported in (2009) 8 SCC310 specially at paragraph 15, which is quoted herein below:

15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to reappreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions (III) So far as aforesaid decisions cited by the learned senior counsel appearing for the petitioner is concerned, there cannot be any doubt or debate regarding the ratio of the aforesaid decisions. But, in the facts and circumstances of the case and considering the seriousness and gravity of the charge, the said decisions are not even remotely applicable. (IV) Applying the aforesaid principles of Honble Apex Court as indicated herein above, the impugned order dated 09.05.2014 passed by the Commandant, Jharkhand Armed Police, IRB-2, Chaibasa, Camp Musabani (respondent no.4) and the order dated 16.09.2014 passed by the Deputy Inspector General of Police, Jharkhand Armed Police, Ranchi (respondent no.3) do not warrant any interference by this Court.

Resultantly, the writ petition sans merit, is dismissed. (Pramath Patnaik, J.) Saket/-

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