Dater Singh Vs. State of Rajasthan and ors.

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SooperKanoon Citation : sooperkanoon.com/758321

Court : Rajasthan

Decided On : Nov-17-1988

Reported in : 1990(1)WLN338

Judge : Kanta Bhatnagar and; Milap Chandra, JJ.

Appeal No. : D.B. Civil Writ Petition No. 2598 of 1988

Appellant : Dater Singh

Respondent : State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

Milap Chandra, J.

1. This writ petition has been filed for quashing the order (Anx. 6) of the Superintendent of Police, Banswara (Respondent No. 2) dated June, 3, 1987 by which the petitioner was dismissed from service with immediate effect, the order (Anx. 8) December 4, 1987 by which his appeal has been dismissed by the Deputy Inspector General of Police, Udaipur (Respondent No. 3) and order (Anx. 9) dated July 11, 1988 by which his review petition has been dismissed by the Director General of Police, Raj., Jaipur. The facts of the case may be summarised thus.

2. The petitioner was appointed as a constable on probation for two years by order dated August 2, 1984 and his period of probation was extended by one year. He remained absent from duty on various dates. Charge-sheet (Annexure 4) was served upon him. After taking his reply and recording the evidence, Ire was dismissed from the service by the Superintendent of Police, Banswara by his order dated June 3, 1987 (Anx. 6) he referred appeal (Anx. 7) against this order before the Deputy Inspector General of Police, Udaipur. It was dismissed by him by his order dated December 4, 1987 (Anx. 8). His review petitition was also dismissed by the Director General of Police by his order (Anx. 9).

3. It has been contended by the learned Counsel for the petitioner that it is clear from a bare perusal of the charge-sheet (Anx. 4) that it has been issued on the basis of the absence from duty on different dates, extra-ordinary leave had been granted in respect of each absence and it cannot, therefore, be said that the absence of the petitioner was wilful. He also contended that in view of the circular (Annexure 10) dated February 28, 1982 of the Director General of Police Rajasthan, Jaipur, no charge-sheet could be given on the ground of absence from duty for which leave was duly sanctioned and for this reason, no reply has been filed by any respondent.

4. The learned Assistant Government Advocate tried his best to support the orders (Anxs. 6, 8 and 9).

5. No respondent has filed reply to the writ petition. Admittedly, it is mentioned in the charge-Sheet itself that EOL (Extra-ordinary leave) has been granted in respect of each absence much prior to the issuance of the charge-sheet. It has also been specifically stated so in the writ petition. As already mentioned above, reply to the writ petition has not been filed by any respondent. During arguments, this fact was not disputed. The granting of leave, of what ever nature it may be, tantamounts to considering the absence as justified or at any rate the condonation and regularisation of the absence. After such regularisation and condonation, no disciplinary action lies It was open to the Superintendent of Police, Banswara (Respondent No. 2) to have refused to grant leave to the petitioner. When once leave has been granted, it cannot be said that the petitioner had absented himself

from duty and thereby made himself liable for punishment. The very purpose of granting leave was to regularise the petitioner's absence. Thereafter, it was not open to him to initiate any disciplinary action against the petitioner for his absence from duty.

6. The Director General of Police, Rajasthan, Jaipur issued circular order (Anx. 10) as early as on February 28, 1982. It would be best to quote it: here in extenso. It runs as under:

^^gekjs ns[kus es dqN ekeys ,sls vk;s gS] ftles v/khuLFk iqfyl deZpkjh;ks ds fo:) M;wVh ls vukf/kd`r vuqifLFkfr ds vkjski ij vFkok iwoZ dh vuqifLFkfr ds vkpj.k laca/kh vkjksiks ij muds fo:) vuq'kklfud dk;Zokgh izkjEHk dh x;h A ,d vksj rks muds fo:) foHkkxh; tkap pyrh jgh vkSj nwljh vksj lEcfU/kr dEkZpkjh dh vuqifLFkfr vof/k dks ;k rks vkjksfir djus ls iwoZ gh vFkok foHkkxh; tkap ds vfUre fu.kZ; ls iwoZ fu;ec) dj fn;k x;k A vkSj foHkkxh; dk;Zokgh ds ifj.kke :o:Ik mls n.M+ Hkh iznku dj fn;k x;k A

2- bl izdkj dh izfdz;k dks oS/kkfud ,oa fu;eks ds vuqdwy ugh dgk tk ldrk D;ksfd tc ml vuqifLFkfr vof/k ftlds vk/kkj ij lacaf/kr deZpkjh dks vkjskfir fd;k tkdj mlds fo:) vuq'kklfud dk;Zokgh dh tk jgh gS] dks fu;fer gh dj fn;k x;k rks foHkkxh; tkap ds vkjski dk ewy vk/kkj gh Lor% lekIr gks tkrk gS A bl izdkj ds dbZ izdj.kks es izlkfjr n.M+ vkns'kks dks U;k;ky;ks es pqukSrh nh tk pqdh gS rFkk U;k;ky;sk }kjk bl izdkj dh dk;Zokgh dks voS/kkfud ,oa fu;e fo:) djkj fn;k x;k gS A U;k;ky;ks }kjk izlkfjr QSlyks es O;Dr fd;k x;k fd ,d ckj vuqifLFkfr dh vof/k dk vodk'k Lohd`r djus ds Ik'pkr mlh vof/k ds laca/k es vuq'kklfud dk;Zokgh fd;k tkuk fof/k ,oa fu;eks ds izfrdwy gS A

3- vuqifLFkfr ds vkjksiks ij nsk'kh deZpkjh ds fo:) l{ke vf/kdkjh }kjk vuq'kklfud dk;Zokgh izkjEHk dh tk ldrh gS] fdUrq ,slh voLFkk es vuqifLFkfr vof/k dk dk fu;eu jsX;qykbts'ku foHkkxh; tkap es vfUre fu.kZ; ds lkFk gh fd;k tkuk pkfg, A ;g lqfu'pr dj ysuk gksxk fd vkjskfir dh vuqifLFkfr vof/k dk QSlyk foHkkxh; tkap ds vafre fu.kZ; ls iwoZ ugh fd;k tk pqdk gS vU;Fkk mijksDr vuqlkj foHkkxh; tkap dk vafre fu.kZ; fof/k foghu djkj fn;k tk ldrk gS A

4- vr% leLr fu;qfDr ,oa vuq'kkldh; vf/kdkjh;ks /;ku bl fLFkfr dh vksj vkd`'V fd;k tkdj vkns'k gS fd vuqifLFkfr ds ekeyks ij lacf/kr deZpkjh ds fo:) vuq'kklfud dk;Zokgh izkjEHk djus ls iwoZ ;g lqfu'pr dj fy;k tkos fd ml vof/k dk QSlyk ugh fd;k tk pqdk gS rFkk n'kkZ;h x;h vfu;ferrk ugh gksus ikos A

KkupUn fla?koh

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It is binding on all officers of the Police Department of Rajasthan. Reference of Navnit Lal v. Income Tax Appellate Commissioner : [1965]56ITR198(SC) para 6, may be made here. If the respondent No. 2 would have complied with it he would not have served the charge-sheet (Annexure. 4) upon the petitioner.

7. The order (Anx. 8) of the Deputy Inspector General of Police, Udaipur Range, Udaipur dated December 4, 1987, dismissing the appeal of the petitioner does not contain any reason. It has not at all discussed any point raised by the petitioner in his lengthy memo of appeal (Anx. 7). It is not a speaking order. It has been observed in V.B. Sarraf v. New Education, Institute : [1986]161ITR835(SC) at page 2109 para 17, as follows--

17. The above decision referred to in the case of Madhya Pradesh Industries Ltd. v. Union of India, 0044/1965 : [1966]1SCR466); where it has been observed that the practice of the executive authority dismissing pre-judice the rights of the aggrieved party without giving reasons is a negation of rule of Law. Similar observations have been made in the case of Mahabir Jute Mills v. Shibbon Lal, : (1975)IILLJ326SC at p. 2060. The same view was also reiterated in Siemen Engineering and Manufacturing Co. v. Union of India, : AIR 1976 SC1785 and Bachhan Singh v. State of Punjab, : AIR 1980 SC1355 and it was observed that where an authority made an order in exercise of a quasijudicial function it must record its reasons in support of the order it made Similar view was expressed by this Court in the case of Ranganath v. Daulat Rao : [1975]3SCR99 . Every quasijudicial order must be supported by reasons. This well settled principle will undoubtedly apply to orders made by a Court in disposing of writ applications.

8. Consequently, the writ petition is allowed with costs. The orders (Anxs. 6, 8 and 9) are set aside. The petitioner is reinsteted back with all consequential benefits.