

Manju Devi Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Jun-28-2016

Appellant : Manju Devi

Respondent : State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 3740 of 2010
----- Manju Devi, wife of Late Vinay Kumar Das, resident of village-Champa
Nagar, P.O & P.S-Nath Nagar, District-Bhagalpur (Bihar) ... Petitioner Versus
1.The State of Jharkhand. 2.The Director General of Police, Jharkhand, Ranchi,
Office at Project Bhawan, P.O & P.S.-Dhurwa, District: Ranchi. 3.The Inspector
General of Police, JAP Project Bhawan, Dhurwa, Ranchi. 4.The Deputy Inspector
General of Police, JAP, Project Bhawan, Dhurwa, Ranchi. 5.The Commandant,
JAP-7, Hazaribagh, P.O-Hazaribagh, P.S. Sadar, District: Hazaribagh. 6.The
Commandant, JAP-5, Deoghar, P.O-Deoghar, P.S.-Sadar, District: Deoghar. . .
Respondents ----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK -----
For the Petitioner : Dr. S.N. Pathak, Sr. Advocate. M/s K.R. Bhatt & Birju Thakur,
Adv. For the Respondents : Mr. Chanchal Jain, J.C to A.A.G ----- C.A.V. On
04.04.2016 Pronounced on 28/06/2016 Per Pramath Patnaik, J.: In the instant writ
application, the petitioner has inter alia, prayed for quashing order dated
16.05.2006, whereby the husband of the petitioner was dismissed from services
w.e.f 12.05.2006 and further for direction upon the respondents to pay the death-
cum-retiral benefit of the petitioner.

2. The factual exposition, as has been delineated in the writ application, is that the husband of the petitioner was working as constable. During his continuance in service, the husband of the petitioner was sent for SPC Training at JAP-5, Deoghar. During the course of training, on 05.08.2005, he fell ill and accordingly he was treated by the doctor of the Force, who advised him for three days rest and accordingly, the husband of the petitioner on 06.08.2005 went to his native place for proper rest but as the condition of the husband of the petitioner was deteriorated, he could not join the duty after three days. Thereafter, the respondent no. 6 declared him absconder for remaining unauthorized absent from duty and accordingly an order was issued vide memo dated 24.08.2005, by which, the salary of the husband of the petitioner was withheld. Thereafter, he was put under suspension. In the meantime, a departmental proceeding was initiated against the petitioner by issuing charge-sheet vide memo dated 06.09.2005, which culminated to dismissal from services vide order dated 16.05.2006 w.e.f 12.05.2006.

3. Learned senior counsel appearing for the petitioner submitted that the husband of the petitioner has been dismissed from services without initiating any departmental proceeding and making any enquiry under Rule 843 of the Bihar Police Manual. Referring to Rule 843 of the Police Manual, learned senior counsel submitted that absence from duty for sufficient reason is not a misconduct as per Rule 843 of the Police Manual and in the case in hand, the petitioner fell ill, hence, he could not join his duties. It has further been submitted that before passing the impugned order of dismissal from services, even no second show cause notice was issued. It has further been submitted that the impugned order of dismissal from services is harsh since the husband of the petitioner was seriously ill and ultimately died on 04.03.2010 due to prolonged illness.

4. Referring to the charge-sheet, learned senior counsel submitted that foundation of the impugned order of punishment is the past conduct of the delinquent, which is bad in law as per the law laid down in the case of Indu 3 Bhushan Dwivedi Vs. State of Jharkhand & Anr as reported in (2010) 11 SCC278 5. Controverting the averments made in the writ application, learned counsel for the respondents submitted that husband of the petitioner proceeded to his home at Bhagalpur

(Bihar) even without making any request to the Commandant, JAP-5 Battalion, Deoghar to arrange for his treatment. Instead, he simply absconded without intimating or taking permission from any authority and remained so for about four years till his death on 04.03.2010. It has further been submitted that the respondents have taken all efforts including publication of notice in the news paper to procure the attendance of husband of the petitioner for conducting departmental proceeding but he did not turn up. It has further been submitted that the respondents-authorities have never been informed either in writing or otherwise about the illness of the husband of the petitioner or his whereabouts. Learned counsel for respondents submitted that when the husband of the petitioner did not resume his duty, vide memo dated 08.12.2005 he was reminded to report, again vide memo dated 30.01.2006 he was directed to report for duty and lastly on 27.04.2006 notice was published in the news paper to report, failing which, ex parte proceeding shall be taken towards his dismissal from services. Hence, the husband of the petitioner been rightly been dismissed from services after affording all possible opportunity to the deceased constable-employee.

6. On perusal of the records, it is quite evident that there has been no procedural irregularity from the initiation of disciplinary proceeding till its culmination as the petitioner has been found guilty of the charges. The Hon'ble Apex Court in the case of State of U.P. and others Vs Raj Kishore 4 Yadav and Another as reported in (2006) 5 SCC673at paragraph 4 has held that:

4. It is a settled law that the High Court has limited scope of interference in the administrative action of the State in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, and, therefore, the findings recorded by the enquiry officer and the consequent order of punishment of dismissal from service should not be disturbed.....

7. Under the circumstances, when there is no procedural irregularity in conducting the departmental proceeding, the moot question which falls for determination by this Court is as to whether the impugned order of punishment can be interfered with by this Court on the ground of doctrine of proportionality or in other words on the question of quantum of punishment.

8. The Honble Apex Court in the case of Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T. Murali Babu as reported in (2014) 4 SCC108 has been pleased to hold that it is not an absolute proposition in law that whenever there is long unauthorized absence, it is obligatory on the part of disciplinary authority to record finding of wilful absence even when employee failed to show compelling circumstance for remaining absent. It is also not necessary to plead habitual absenteeism. Absence of determination by disciplinary authority that long unauthorized absence was wilful, inconsequential and further held that unauthorized absence of employee as a misconduct cannot be put in straitjacket formula for imposition of punishment which depends on various factors. In the said case, the Honble Apex Court held that respondent was unauthorizedly absent for one year and seven months and had exhibited adamant attitude in not responding to repeated communications from employer. Hence, punishment of dismissal was not disproportionate to gravity of misconduct and doctrine of proportionality was not remotely attracted. The punishment is not shockingly disproportionate. The Honble Apex Court quoting a passage from Government of India & Anr Vs. George Philip in (2006) 13 SCC1 held that this kind of conduct cannot be countenanced as it creates a concavity in the work culture and ushers in indiscipline in an organization.

9. Applying the aforesaid principles of Hon'ble Apex Court, as indicated herein above, I find no reason to interfere with the impugned order as there has been no procedural irregularity nor the punishment imposed is disproportionate or excessive so as to shock the conscience of this Court.

10. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, I am of the opinion that the petitioner has not been able to make out a case for interference by this Court. Accordingly, the writ petition is dismissed, being devoid of any merit. (Pramath Patnaik, J.) Alankar/-

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