

**Anil Kumar Pandey Vs. State of Jharkhand and Ors**

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**Court :** Jharkhand

**Decided On :** Aug-12-2016

**Appellant :** Anil Kumar Pandey

**Respondent :** State of Jharkhand and Ors

**Judgement :**

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 6071 of 2014  
----- Anil Kumar Pandey, son of Sri Ven Narayan Pandey, resident of Village: Garsanda, P.O: Behra, P.S.: Mufassil, Dist: Bhojpur, Bihar. ... Petitioner Versus  
1.State of Jharkhand 2.Director General-cum-Inspector General of Police, Jharkhand, Ranchi, P.O & P.S.: Dhurwa, Dist: Ranchi, Jharkhand. 3.Deputy Inspector General of Police, Jharkhand Armed Police, Ranchi, P.O & P.S.: Doranda, Dist: Ranchi, Jharkhand. 4.Commandant, Jharkhand Armed Police-1, Ranchi, P.O & P.S.: Doranda, Dist: Ranchi, Jharkhand. . Respondents -----  
CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : Dr. S.N. Pathak, Sr. Advocate. For the Respondents : Mr. Mohan Kumar Dubey, J.C to A.G ----- C.A.V on 13..04.2016 Delivered on 12 /08/2016 Per Pramath Patnaik, J.: In the accompanied writ application, the petitioner has inter alia prayed for issuance of writ of certiorari for quashing order dated 02.11.2013 passed by respondent no. 4 pertaining to forfeiture of increment of six months, which is equivalent to one black-mark and also for salary of the period from 09.12.2003 to 26.10.2013 i.e. 9 years and 10 months and 17 days on the ground of 'no work no pay'.

2. Sans details, the facts as disclosed in the writ application, is that on 16.08.2003 a complaint was filed against the petitioner by one Raj Kumar Verma levelling the charges for not paying Rs. 30,000/- against the purchase of one second hand Ambassador Car. The matter was inquired into by the enquiry officer and the enquiry officer exonerated the petitioner from the charges and found him not guilty, as evident from Annexure 2 to the writ application, but the disciplinary authority differed with the finding of the enquiry officer and awarded the punishment of dismissal from services, against which, the petitioner preferred appeal, which was dismissed vide order dated 29.04.2012. Being aggrieved with the order passed by the appellate authority, the petitioner moved before the revisional authority, who affirmed the order passed by the disciplinary authority as well as by the appellate authority. Being aggrieved, the petitioner approached this Court in W.P. (S) No. 1073 of 2006 and this Court after hearing the parties disposed of the writ petition vide order dated 23.08.2013 quashed the impugned order and respondent no. 4 was directed to pass a fresh order within 12 weeks from the date of receipt of copy of order. In deference to the order passed by this Court, impugned order dated 02.11.2013 has been passed modifying the earlier order dated 08.12.2003 with the punishment as mentioned therein.

3. Being aggrieved by the impugned order of punishment, the petitioner has approached this Court under Article 226 of the Constitution of India for redressal of his grievances.

4. Dr. S.N. Pathak, learned senior counsel for the petitioner, during course of argument, has strenuously urged that the impugned order has been passed in total oblivious of paragraph 14 of the order passed in W.P. (S) No. 1073 of 2006, therefore, the impugned order is assailable being fraught with infirmities. It has further been submitted that the impugned order of punishment is excessive and disproportionate and not in commensurate with the gravity of wrong committed by the petitioner. Referring to 3 Annexure 8, learned senior counsel submits that withholding of six months increments amounting to one black-mark is a major punishment as per Rule 834 of the Police Manual and in awarding major punishment, the procedure for imposition of major punishment ought to have been followed.

5. In support of his contention, learned senior counsel submitted that punishment vide Annexure 9 is not legally tenable in view of the discussions made in paragraphs 10 and 12 of the order dated 23.08.2013 passed in W.P. (S) No. 1073 of 2006. It has further been submitted that since the petitioner was prevented from working so the principles of 'no work and no pay' is not applicable in the instant case.

6. In order to buttress his argument, learned counsel for the petitioner referred to the decision rendered in the case of Sharda Singh Vs. State of Uttar Pradesh & Ors. as reported in (2009) 11 SCC683 in particular paragraphs 10 and 12 and also in the case of State of Uttar Pradesh vs. Dayanand Chakrawarty & Ors as reported in (2013) 7 SCC595 In view of the judgments cited herein above, learned senior counsel submits that the petitioner is entitled to salary for the period from 09.12.2003 to 26.10.2013.

7. Per contra counter affidavit has been filed justifying the impugned order under Annexure 8 to the writ application. Mr. Mohan Kumar Dubey, learned counsel appearing for the respondents-State has reiterated the grounds taken in the counter affidavit. Learned counsel for the State has vehemently submitted that disciplinary authority after perusing the evidence available on 4 record passed the order dated 02.11.2013. It has further been submitted that if the petitioner is aggrieved by the said order, the petitioner could have preferred appeal against the said order, therefore, the writ petition is not maintainable as the petitioner has not exhausted the statutory appeal under the Police Manual.

8. On careful consideration of the aforesaid facts and documents available on record and after hearing the parties at length, I find that the petitioner has been able to make out a case warranting interference by this Court, due to following facts, reasons and judicial pronouncements: (I).On the complaint that the petitioner did not pay Rs. 30,000/- against the purchase of one second hand Ambassador Car, enquiry was conducted against the petitioner, in which, the Enquiry officer opined that for transaction between the parties regarding the purchase of the said car, there is no witness or agreement paper/document and further opined that in such circumstances, the delinquent can be given benefit of doubt. However,

differing with the findings recorded by the enquiry officer, the disciplinary authority dismissed the petitioner from services vide order dated 08.12.2003, which was affirmed by appellate as well as by revisional authority. Being aggrieved, the petitioner preferred W.P (S) No. 1073 of 2006, which was disposed of vide order dated 23.08.2013 and the impugned order was quashed and respondents were directed to pass a fresh order. In terms of the order, the respondents-authorities modifying the earlier order dated 08.12.2003 imposed the impugned order dated 02.11.2013. 5 (ii). From the facts aforesaid, it is crystal clear that it is not the case where the petitioner has been fully exonerated of the charges rather he has been given benefit of doubt. Be that as may be, this Court vide order dated 23.08.2013 in W.P. (S) No. 1073 of 2006 has passed an elaborate order considering all the facts and judicial pronouncements rendered by Hon'ble Apex Court and only thereafter quashed the impugned order of dismissal from services. Thereafter, the respondents authority imposed the punishment of withholding of six months increments amounting to one black-mark, which is a major punishment and procedure for imposition of major punishment has been given a complete go by. In such view of the matter, the impugned order dated 02.11.2013 is quashed to the extent of imposition of six months increments. (iii). So far as back wages for the interregnum period of termination till the date of reinstatement is concerned, since there is no straight jacket formula for grant of back wages, a balance has to be struck for grant of back wages between interregnum period and sufferings undergone by the petitioner for no fault on his part vis--vis principle of no work no pay and considering the principles laid down by the Hon'ble Apex Court in the case of Principal, Ayurvedic College and others Vs. Sushil Chandra Misra and Another as reported in (2006) 12 SCC703 and Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another as reported in (2002) 6 SCC41 I am of the considered view that for the ends of justice the petitioner is entitled to get 25 % back wages from the date of termination till the date of reinstatement.

9. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements and logical sequitur to the discussions made in foregoing paragraphs, the impugned order dated 02.11.2013 is quashed to the extent aforesaid and respondents are directed make payment of 25 % of the arrears of salary for the period from 09.12.2003 to 26.10.2013 within a period of twelve

weeks from the date of receipt/production of copy of this order. (Pramath Patnaik, J.) Alankar/-

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