

Jamila and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jun-01-2001

Reported in : 2002(2)WLC453; 2001(4)WLN255

Judge : J.C. Verma, J.

Acts : Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 - Rule 16; [Constitution of India](#) - Articles 14 and 16

Appeal No. : S.B. Civil Writ Petition No. 6758 of 1997

Appellant : Jamila and ors.

Respondent : State of Rajasthan

Advocate for Def. : M.R. Naredi, Adv.

Advocate for Pet/Ap. : P.P. Singh, Adv. on behalf of; P. Balwada, Adv.

Judgement :

Verma, J.

1. The petitioner Sirajuddin was working as Constable having so appointed on 18.9.1976 and when he had put in about 20 years of service he developed heart disease and was treated in Govt. Hospital at Jaipur and the pace maker was installed. The petitioner was refunded the amount of Rs. 43,000/- spent by him for

operation vide order dated 21.9.94 (Ann. 1). He was advised for complete rest. The petitioner was deputed at the residence of Addl. Supdt. of Police Police Line, Jaipur to perform his duties, where according to petitioner he felt some difficulty because of previous heart disease and continued to be under treatment till July, 1995, as per medical certificates (annexure 2 to 8).

2. Even though the petitioner states that he had informed the respondents about his sickness and for extension of leave, but still the department issued the charge sheet to petitioner for remaining absent, without information as alleged w.e.f. 1.11.94 and joined only on 17.6.95. The charge sheet was issued under Rule 16 of Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958 for having remained wilful absent 1.11.94 to 16.6.95. The Enquiry Officer was appointed; the prosecution evidence was recorded; the petitioner filed reply. The Enquiry Officer submitted the report on 30.11.95 stating therein that the charge stood proved and ultimately the petitioner was removed from service vide order dated 6.8.96 (ann. 15). The period of absence was treated as leave without pay i.e. Extra Ordinary Leave vide annexure-15 by the competent authority.

3. The petitioner states that he was not given proper and effective opportunity, nor he was given chance to produce evidence, but on the basis of statement P.W.7 Girdhari Lal he had been removed from service. It is also one of the ground that the petitioner had put in about 20 years service, and there was nothing against the petitioner during that period, in such situation if at all the charges were so proved, it was a case where lesser punishment could have been imposed. The petitioner submits that neither the Competent Authority, nor the appellate authority had applied its mind, therefore, the impugned orders annexure 15, 16 and 17 are likely to be struck down.

4. During pendency of the writ petition, the petitioner Sirajuddin had died and legal representatives of petitioner i.e. his widow and children have been brought on record. It is not denied that the petitioner had been operated upon because of heart disease and even the expenses for such operation had been refunded by the department- The petitioner has placed on record medical certificate for the period in question when he is said to have been remained absent, which medical

certificates had been issued by a Govt. Doctor. The Competent Authority, has not believed the medical certificates and had reached the conclusion vide order 6.8.96 (ann. 15) that the petitioner had remained absent for the period from 1.11.94 to 16.6.95. This period of absence has even been regularized by treating it extra ordinary leave. The appeal filed by delinquent has also been dismissed vide order dated 16.1.97 (ann. 16). Even the review application has also been dismissed vide order dated 21.10.97 (ann. 17).

5. The fact is not in dispute that the petitioner had remained absent, but the petitioner was only justifying his absence because of heart disease. The delinquent official had died on 16.10.2000. The delinquent official had put in long service of about 20 years, but while imposing the punishment, the competent authority has not considered the length of service either specifically or impliedly. It is further submitted that the petitioner had sufficient and justified reason for his absence. He had undergone heart operation, for which even medical expenses of about Rs. 43,000/- had been refunded by Govt.; he was undergoing treatment and had developed certain post operation complications and ultimately he died at the age of 45 years.

6. Reliance has been placed on the judgment in case of Mahipal Ex. Constable v. State of Haryana and ors. (1), in a case of absence from duty of constable, it was held that punishing authority or appellate authority ought to have considered the length of service either specifically or impliedly while awarding the punishment.

7. Reliance has also been placed on the judgment in case of Shri Bhagat Ram v. State of Himachal Pradesh and Ors. (2), wherein it was held that imposition of penalty disproportionate to the gravity of the misconduct of the delinquent employee amounts to violation of Article 14 of [Constitution of India](#). The court even, in the case of Government servant, imposed penalty of stoppage of two increments with future effect keeping in view the nature of misconduct of the employee,

8. For the reasons and discussion made above, in my opinion the punishment so awarded specially in the circumstances as narrated by the petitioner with regard to his heart disease, the punishment of removal from service vide order dated

6.8.1996 (ann. 15) is too harsh. In stead or removal from service, in my opinion, the stoppage of three increments with cumulative effect would have been the sufficient punishment to meet the interest of justice.

9. For the reasons mentioned above the impugned order dated 6.8.96 (Ann. 15) is hereby quashed along with the subsequent orders annexure-16 and 17. For the reason that the period of absence itself was regularised by treating it leave without pay, thereby misconduct could not survive in view of the judgment in case of State of Punjab v. Bakshish Singh (3). The respondents are directed to modify the punishment of delinquent official from dismissal to stoppage of three increments with cumulative effect.

10. Because of the reason that delinquent has since died, the widow and children of deceased delinquent shall be entitled to the benefits of pension etc. The family pension and other benefits of petitioner shall be calculated and paid to widow and children through their mother of deceased petitioner within a period of four months, from the date of receipt of certified copy of this order.

11. With the above observations, the writ petition is disposed of. No order as to cost.