
(2011) 04 SHI CK 0102
In the High Court Of Himachal Pradesh
Case No : CWP No. 7569 of 2010

Ashish Kumar

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Probation of Offenders Act, 1958 — Section 12

Citation : (2011) 04 SHI CK 0102

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Judgement

Sanjay Karol, J.—It appears that while passing the impugned order dated 13.9.2010 (Annexure P-25), there is not only non-application of mind by the Respondent-authorities but in fact total non-compliance of the earlier orders passed by this Court in CWP No. 1569/2008, titled as Ashish Kumar v. State of H.P. and Ors., wherein following directions were issued.-

10. I have been taken through the orders passed by Respondent No. 2 rejecting the revision petitions instituted by each of them praying for leniency and reinstatement in service. I do not find from a bare reading of these orders that they can be sustained more especially when a criminal Court has come to the conclusion that the apportionment of blame is not greater in the case of the Petitioners than the other officials" involvement.

11. I am alive to and aware of the principle of law that the police is a disciplined uniformed force which requires a strict degree of discipline and devotion to duty dereliction of which cannot ordinarily call for any interference from the Court. At the same time, this Court cannot shut its eyes to the fact that out of police personnel involved, it is only the Petitioners have been dismissed from service. The inquiry report also indicates that it was the joint contributory negligence of all the officials and not of the Petitioners alone.

12. In these circumstances, these writ petitions are allowed and the order of

dismissal of the Petitioners in each of the cases is quashed and set aside. A direction is issued to the Director General of Police, Himachal Pradesh to reconsider the case of the Petitioners afresh in accordance with law only so far as the quantum of punishment is concerned. Needless to say that he will keep in mind the judgment passed by learned Chief Judicial Magistrate, Una, convicting all the twelve police personnel, all were given benefit of the Probation of Offenders Act and out of whom nine have been reinstated in service by giving them the benefit of Section 12 of the "Act".

13. Since the incident relates to the year, 2006 and the Petitioners have already suffered for a considerable period of time, it is but expected that the entire proceedings shall be disposed of within a period of four months from the date when the Petitioners first present this order before the Director General. The Petitioners be granted personal hearing in the matter, if they so desire in order to substantiate their claims. This order shall not be construed as reinstating the Petitioners in service nor an opinion of this Court on the quantum of punishment to be inflicted on the Petitioners. The writ petitions are disposed of. There shall be no order as to costs. Let a copy of this judgment be placed on the file of each writ petition.

2. It is not in dispute that the aforesaid judgment has attained finality. Even though in the impugned judgment Respondent No. 2 has partly reproduced the aforesaid findings but nonetheless, he is conspicuously silent with regard to the imposition of lesser penalty in favour of the remaining (8) similarly situated persons who, in fact were leniently let off whereas marching orders stand issued in favour of the Petitioner. In my considered view, before passing the impugned order, directions issued by this Court ought to have been adverted to and the order complied with, in letter and spirit.

3. Consequently, the impugned order dated 13.9.2010 (Annexure P-25) is quashed with the directions to Respondent No. 2 to pass a fresh order by complying with the directions issued by this Court in Ashish Kumar (supra) in letter and spirit. While doing so, the authority shall also take into account the ratio of law laid down by the Apex Court in State of U.P. and Ors. v. Raj Pal Singh 2010 (5) SCC 783. Liberty granted to the Petitioner to place additional material before the authority, which shall also be considered and adverted to while passing the order. Needless to add, liberty of hearing shall also be afforded to the Petitioner. Needful shall be done within a period of two months from today.

4. With the aforesaid observations, the present petition is disposed of, so also the pending application, if any.