
(2001) 04 RAJ CK 0047

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1973 of 1999

Ashok Kumar Solanki

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-04-2001

Acts Referred:

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 16

Citation : (2002) 1 RLW 205 : (2001) 4 WLN 638

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : Bhanwar Bagri, for the Appellant; V. Lodha, for the Respondent

Final Decision : Allowed

Judgement

Verma, J.

(1). The petitioner within a short period of his joining as a Constable was discharged from service on 1.2.1994 for being absent from duty without information from 11.9.1993 to 16.12.1993.

(2). He had joined as Constable on 26.5.1993. He filed an appeal before the Deputy Inspector General of Police, the same was rejected. But the Director General of Police had accepted the appeal. The petitioner was allowed to be reinstated. The period from 11.9.1993 to 16.12.1993 was regularised by sanctioning him extraordinary leave without pay; But he was issued a memorandum of charge-sheet dated 27.7.1996 for initiating disciplinary proceedings against him under the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 on the allegations that he was wilfully absent from 11.9.1993 to 16.12.1993 for 95 days. The allegations were denied; The enquiry officer was appointed. Witnesses were produced against the petitioner and even the petitioner had produced certain defence. Enquiry report was submitted against the petitioner vide Annexure-2. Show cause notice was issued and ultimately vide impugned order dated 31.3.1998 (Annex.4) the petitioner

was removed from service. Appeal was filed against such an order which was dismissed vide Annexure-6. review application was also dismissed in December, 1998 and being aggrieved against the orders Annexure-4, 6 and 8, the petitioner submitted the present writ petition.

(3). The only contention being raised by the petitioner is that his period of absence had been regularised and that such period was considered to be leave without pay and once the absence had been condoned, the very misconduct did not survive for which misconduct in Annexure-4 that the period of absence from 11.9.1993 to 16.12.93 for 95 days was treated as leave and extra ordinary leave was also sanctioned. For the said proposition reliance is being placed on the judgment of the Apex court in the case of State of Punjab and Ors. v. Bakshish Singh (1) wherein the finding of the trial Court and the lower appellate court to the effect that once the period of absence from duty having been regularised and converted into leave without pay, it was held that the charge of absence from service did not survive. It was observed as under:

"It will thus be sent that the trial Court as also the lower appellate court had both recorded the findings that the period of absence from duty having been regularised and converted into leave without pay, the charge of absence from duty did not survive. Once it was found as a fact that the charge of unauthorised absence from duty did not survive, we fail to understand how the lower appellate Court could remand the matter back to the punishing authority for passing a fresh order of punishment."

(4). The record was called and perused. There is entry on the recprd made in April, 1996 to the effect that the leave from 11.9.93 to 13.12.93 has been sanctioned as extra ordinary leave, vide order dated 26.2.96.

(5). When the leave had already been regularised and misconduct, if any, had been condoned there was no cause of action left with the respondent to have served the charge-sheet dated 27.7.96 for the misconduct of absence for the period in question. Even in the order of termination the said leave period in question has again been regularised that is an entry of the same had also been made on 31.3.98 stating therein that even though the petitioner has been removed from service but his leave period has been regularised and sanctioned as extra ordinary leave. It has also been admitted in para No.4 of the written statement that before issuing the charge sheet and leave period in question was sanctioned;

(6). In view of the above said fact and law laid down it is held that the leave period in question once had been condoned, the petitioner could not have been charge sheeted for the misconduct of absence.

(7). For the reasons mentioned in above the impugned order of termination and all consequent orders are hereby set aside. The petitioner shall be entitled for rein statement with all consequential benefits, which may be accrued to him, as if no termination order is passed.

(8). With the above direction, the writ petition is allowed, The petitioner shall be entitled for the cost, which is assessed as Rs. 1000/-.