

(2013) 04 JH CK 0140
In the Jharkhand High Court
Case No : WP (S) No. 6414 of 2005

Birendra Kumar

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Citation : (2013) 2 JLJR 511

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : S.N. Pathak and Binod Kumar, for the Appellant; Saket Upadhyay for the State, for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—Aggrieved by order dated 5.9.2005 passed by the Inspector General of Police whereby the earlier order dated 18.6.2005 has been recalled, the petitioner has filed the present writ petition. The brief facts of the case are that, initially the petitioner was appointed as Constable on 1.12.1986 and in the year 2003, he was transferred to Jamshedpur. On 20.10.2003, a charge-memo was served upon the petitioner on the charge that he was found drunk while on duty. In this regard Kuchu Munda, the Head Constable gave a written complaint. However, in spite of repeated warning, the petitioner did not improve himself. The officer-in-charge gave a written complaint upon which the petitioner was suspended with immediate effect. The suspension of the petitioner was revoked by an order dated 14.11.2003. It appears that with respect to complaint dated 28.9.2003, a requisition was given to the medical officer to examine the petitioner whether he was drunk or not. The medical officer accordingly, examined the petitioner at 10.25 pm on 28.9.2003 and found that the petitioner was fully oriented and there was no bad breath of alcohol from his mouth. After a departmental inquiry", the petitioner was initially removed from service by order dated 15.7.2004. The petitioner submitted his appeal to the Deputy Inspector General of Police which was dismissed by order dated

17.12.2004. Thereafter, the petitioner submitted his appeal Memorial to the Inspector General of Police, which was allowed on 18.6.2005 and the order of dismissal from service was quashed and the petitioner was reinstated in service. It appears that the Superintendent of Police, the respondent No. 5 wrote a letter to the Inspector General of Police stating that although the order of dismissal from service has been quashed, no punishment has been imposed upon the petitioner for the charges levelled against him. The Inspector General of Police passed the impugned order dated 5.9.2005 recalling order dated 18.6.2005 and consequently dismissed the appeal Memorial preferred by the petitioner.

2. A counter-affidavit has been filed on behalf of the respondent No. 5 denying that the inquiry was not conducted in accordance with the law and without observing the principles of natural justice. After receiving the report from the inquiry officer the petitioner was given an opportunity to give his last explanation to which the petitioner submitted his explanation which was found unsatisfactory and thereafter, the impugned order of dismissal was passed against the petitioner.

3. Heard learned counsel for both the parties at length and perused the documents on record.

4. Dr. S.N. Pathak, learned senior counsel appearing on behalf of the petitioner has raised a contention that it was not open to the Inspector General of Police, the respondent No. 3 to recall earlier order dated 18.6.2005 and pass the impugned order dated 5.9.2005. He has submitted that the order dated 18.6.2005 could not have been reviewed and recalled by the same Authority and therefore, the impugned order dated 5.9.2005 is liable to be interfered with by this Court. Learned counsel for the petitioner has relied on the judgments reported in AIR 1937 27 (Privy Council) : AIR 1958 MP 413 : (2004) 2 PLJR 291.

5. On the other hand, Mr. Saket Upadhyay, J.C. to A.A.G. appearing for the respondents has submitted that when it was found that no punishment was awarded to petitioner for his misconduct, respondent No. 5 wrote a letter to the respondent No. 3-Inspector General of Police, whereupon the impugned order has been passed by the respondent No. 3. There is (sic) in the order passed by the Inspector General of Police and therefore, no interference is required by this Court in this matter.

6. A perusal of the record of the case would disclose that the Inspector General of Police accepted the appeal Memorial preferred by the petitioner and quashed the order of dismissal from service of the petitioner. It was further ordered that the period between the dismissal from service and reinstatement in service would be adjusted on account of earned leave/half earned leave. It is also not in dispute that on an application dated 16.8.2005 by the respondent No. 5 for reconsideration of order dated 18.6.2005, the respondent No. 3-Inspector General of Police recalled the earlier order dated 18.6.2005 without giving any notice to the petitioner. The ground taken by the Inspector General of Police in the impugned order dated 5.9.2005 for reviewing the earlier order dated

18.6.2005 is that, the earlier decision was perhaps taken in a haste. I am of the view that neither such a power is vested in the Inspector General of Police to recall the earlier order dated 18.6.2005 nor such a plea that the earlier order was passed in a haste, is available in law to the Inspector General of Police for recalling order dated 18.6.2005.

7. Adverting to the contention raised on behalf of the petitioner that the Inspector General of Police has no power to recall the earlier order dated 18.6.2005, I find that the law in this behalf has been settled since 1937 by a judgment of the Privy Council in AIR 1937 27 (Privy Council) Privy Council 27, wherein it has been held that:--

In a case in which after Government Officials, duly competent and duly authorised in that behalf, have arrived honestly at one decision, their successor in office, after the decision has been acted upon and is in effective operation, cannot purport to enter upon a reconsideration of the matter and to arrive at another and totally different decision.

8. In " State of Orissa and Others Vs. Commissioner of Land Records and Statement, Cuttack and Others, , the Hon''ble Supreme Court has held that the order of delegate is to be treated as order of principal (sic) and therefore, principal cannot revise order of the delegate. The Hon''ble Supreme Court has held as under:--

30. In the light of the above, it is therefore clear that the Board of Revenue which never heard the case cannot review the order of the Commissioner, its delegate, passed u/s 15 of the 1958 Act. In fact, if it does so, that will amount to the exercise of an indirect power of revision by the Board which is not permissible in the light of the rulings in Roop Chand case and the case in Behari Kunj Sahkari Awas Samiti referred to above.

9. In " Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, , where question for consideration before the Hon''ble Supreme Court was whether in exercise of powers u/s 62 of the Andhra Pradesh Panchayat Samithis and Zila Parishads Act (35 of 1959) the Government has power to cancel or suspend the resolution of a Panchayat Samithi, the Hon''ble Supreme Court has observed as under:--

13. The learned counsel for the State then contended that the order dated April 18, 1963, could itself be sustained under S. 62 of the Act. Reliance is placed upon S. 13 of the Madras General Clauses Act, 1891, whereunder if any power is conferred on the Government, that power may be exercised from time to time as occasion requires. But that section cannot apply to an order made in exercise of a quasi-judicial power. Section 62 of the Act confers a power on the Government to cancel or suspend the resolution of a Panchayat Samithi, in the circumstances mentioned therein, after giving an opportunity for explanation to the Panchayat Samithi. If the Government in exercise of that power cancels or confirms a Resolution of the Panchayat Samithi, qua that order it becomes functus officio.

Section 62, unlike S. 72 of the Act does not confer a power on the Government to review its orders. Therefore, there are no merits in this contention.

In view of the aforesaid discussion, I am of a considered opinion that the earlier order dated 18.6.2005 passed by the Inspector General of Police could not have been reviewed/recalled by order dated 5.9.2005 passed by the Inspector General of Police as the said authority is not vested with a power to recall/review his own order while exercising quasi-judicial function. The impugned order dated 5.9.2005 cannot be sustained in law and accordingly, it is quashed. The writ petition is allowed.