
(2017) 01 JH CK 0108
In the Jharkhand High Court
Case No : W.P.(S) No. 647 of 2006

Fuljharo Devi

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

Citation : (2017) 152 FLR 1070

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Mr. R.S.P. Sinha, Sr. Advocate M/s Rakeh Kumar Sinha, Amrita Kumari & Priti Kumari, Advocates, for the Petitioner; Mr. Chanchal Jain, J.C to A.A.G, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Pramath Patnaik, J.—In the accompanied writ application, the petitioners, who are legal heirs of deceased employee, have inter alia prayed for quashing order of dismissal and order as contained in memo dated 20.05.2004 issued by Superintendent of Police, Dhanbad, whereby he has requested the Superintendent of Police, Palamau to dismiss the deceased-employee with immediate effect and further prayed for quashing the appellate order dated 15.09.2004 and order passed in memorial dated 23.11.2005 and further prayed for full back wages with all consequential benefits.

2. The factual matrix, as revealed in the writ application, in a nutshell is that deceased employee was initially appointed on the post of constable on 01.08.1981. While continuing as such, a charge-sheet was served upon him alleging therein that while on duty, he was found under the influence of alcohol and during the spell of intoxication, he indulged himself in riotous conduct with the inhabitant of the locality. Basing on these charges, enquiry was conducted which culminated in dismissal of the deceased employee vide order dated 17.05.2004. Against the order of dismissal the deceased-employee moved before appellate as well as revisional authority but both stood dismissed.

3. Being aggrieved by the impugned order of removal from services, the appellate order and order passed in revision/memorial, left with no alternative, efficacious and speedy remedy, the deceased-employee has approached this Court invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for redressal of his grievances.

4. Learned senior counsel for the petitioner submitted that the departmental proceeding is fraught with procedural irregularity. Referring to the charge, learned senior counsel for the petitioner submitted that the main charge against the deceased-employee is that he was found under the influence of alcohol and during the spell of intoxication, he indulged himself in riotous conduct with the inhabitant of the locality but neither blood test nor urine test of the delinquent was conducted to prove the charge of intoxication as such it cannot be conclusively concluded that the petitioner was under the spell of intoxication. Learned senior counsel for the petitioner further submitted that one habitat, who is alleged to have got injury has not been examined. It has further been submitted that the all other prosecution witnesses were hearsay witness, hence, it has no evidentiary value. Furthermore, no opportunity was afforded to cross-examine these witnesses nor dates were informed by the respondents-authorities so as to enable the delinquent to cross-examine the witness, which renders the impugned orders vulnerable on the ground of violation of principles of natural justice. Learned senior counsel for the petitioners further submitted that the enquiry report was never served to the petitioner, which has caused great prejudice to the petitioner. It has further been submitted that reply submitted by the petitioner in his defense has not been considered by the respondents-authorities. Lastly, learned senior counsel for the petitioner submitted that the deceased-employee has served the department for about 24 years with full satisfaction and has unblemished service record and for the first time, departmental proceeding was initiated against the petitioner and the respondents-authorities while passing the impugned order of punishment have failed to take into consideration that it is a settled law that a person having unblemished service record his efficiency on personal characteristic cannot deteriorate so remarkably in short span of time.

5. Controverting the averments made in the writ application, learned counsel appearing for the respondents-State submitted that charge against the petitioner is that he used to drink regularly and used to abuse assault general public as well as BCCL workers. On 08.02.2003, while in intoxication, he brick batted as a result one women, Aasma Khatoon got injured and Station Diary Entry to that effect was made in the Police Station and in the enquiry, the allegations were found proved and only on the basis of proved charges, impugned punishment has been awarded. So far as contention that no blood or urine test has been conducted to prove the state of intoxication, it has been submitted that attempt was made to send the petitioner for medical check up but he remained absent from Out-post. It has further been submitted that the impugned punishment is in consonance with the proved charges. In support his contention, learned counsel

for the State referred to the decision rendered in the case of U.P. SRTC v. Ram Kishan Arora as reported in (2007) 4 SCC 627.

6. Having heard learned counsel for the parties at length and on perusal of the record, I am of the considered view that the petitioner has been able to make out a case for interference for the following facts, reasons and judicial pronouncements:

(i). On the allegation of petitioner being in intoxication condition used to abuse the persons of the vicinity and on the fateful day he brick-batted, as a result of one civilian got injured. But, there is no gainsaying that neither any medical test was conducted to prove the charge of intoxication nor the victim lady, who is alleged to have got injury, has been examined in the proceeding and furthermore, no eye witness to the alleged occurrence has been examined and no opportunity to cross-examine the witnesses have been given to the delinquent, which rendered the impugned order of termination from services vulnerable and brittle.

(ii). There is no quarrel over the law laid by the Hon'ble Apex Court in the case of Ram Kishan Arora (Supra), but in the facts and circumstances of the case, it is not applicable in this case as in the case at hand, there is flagrant violation of principles of natural justice, hence, the matter needs fresh consideration on the quantum of punishment.

7. In view of the aforesaid facts and reasons, as discussed in the foregoing paragraphs, coupled with judicial pronouncements, the impugned orders of punishment are hereby quashed and set aside and the matter is remitted back to the respondent authorities to consider the case of the petitioner afresh mainly on the question of quantum of punishment taking into account the observations made by this Court, within a period of twelve weeks from the date of receipt/production of copy of this order.

8. With the aforesaid observations and directions, the writ petitions stand disposed of.