

(2002) 09 P&H CK 0115
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 14246 of 2002

Harvinder Singh, Process Server

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 05-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 LLJ 1098 : (2003) 133 PLR 150

Hon'ble Judges : S.S. Grewal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Sarwan Singh and N.S. Rapri, for the Appellant;

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The petitioner was working as a Process Server in the Court of Additional Civil Judge (Senior Division), Dasuya. In pursuance to a preliminary inquiry, he was served with a charge-sheet vide Memorandum dated 17th January, 2001. The allegation against the petitioner was that on the night of 10th April, 2000, he had joined hands with Dalip Kumar, the Court Chowkidar, who had "brought a woman in the Court Complex for immoral purposes". The petitioner submitted his reply. Thereafter the Disciplinary Authority appointed the Additional District Judge, Hoshiarpur, as the Inquiry Officer. Vide his report, a copy of which has been produced as Annexure P.6 with the writ petition, the Inquiry Officer found that on the night of 10th April, 2000, Dalip Kumar, Chowkidar had brought a woman for immoral purposes in the Court Complex at Dasuya and that Harvinder Singh, the present petitioner, had joined hands with him. The charge was, thus, held to be proved. The petitioner was served with a Show Cause Notice. A copy of the Inquiry Report was also supplied to him. The petitioner submitted his reply. Thereafter, he was given personal hearing. Then, the District & Sessions Judge, Hoshiarpur, passed the order dated 13th December, 2001. A copy of this order has been produced as Annexure P.9 with the writ petition. He found that as the Chowkidar and the petitioner were "over

busy in availing the service of a woman they had arranged for immoral purposes", a theft had taken place in the Judicial Complex on the night intervening 10th/11th April, 2000. After taking into consideration the gravity of misconduct, he held that dismissal from service would be "the only suitable punishment to be awarded to both the delinquent officials...".

2. Aggrieved by the order of punishment, the petitioner filed a Service Appeal. It was posted before an Hon"ble Judge of this Court. The petitioner was duly represented by a Senior Advocate. After hearing the counsel, the learned Judge dismissed the Appeal vide order dated 25th July, 2002. A copy of this order has been produced as Annexure P.11 with the writ petition. His Lordship found that the charge against the petitioner was duly proved. Hence this petition.

3. The solitary contention raised by Shri Sarwan Singh, Senior Advocate, is that there is no credible evidence to establish the charge against the petitioner. Learned counsel submits that the incident is alleged to have taken place at about 9 P.M. on 10th April, 2000. Raj Kumar, the only witness, on whose testimony reliance has been placed could not have seen any thing in the dark. Thus, the findings recorded by the Inquiry Officer as well as the Punishing and the Appellate Authorities cannot be sustained.

4. The contention as raised by the counsel seems to proceed on the assumption that the petition is an appeal against the order of the learned Judge. It is wrong. In proceedings under Article 226 of the Constitution the Court does not examine the evidence against the delinquent official as it does while hearing an appeal. The basic scope of exercise of power under Article 226 of the Constitution is to ensure that the prescribed procedure has been followed. The delinquent has been given a reasonable opportunity and that the punishment is just and fair. In the present case, not a word has been said about the procedure. Admittedly, a detailed inquiry was held. Every possible opportunity was given to the petitioner to produce evidence. He was given a Show Cause Notice. He had submitted a reply. The Punishing and Appellate Authorities had heard him. Thereafter, the impugned orders were passed. The petitioner having been given a full and reasonable opportunity, there is no ground to interfere with the order.

5. Shri Sarwan Singh contends that there is no legal evidence to prove the charge against the petitioner. Even this contention is wholly fallacious. This aspect of the matter has been thoroughly examined by the Disciplinary and the Appellate Authorities. It has been noticed that Raj Kumar was selling fish and chicken etc. in front of the Court Complex. The petitioner had gone to him. Thereafter, he (the witness) had come to the Court premises. He had even committed theft of Government property from the Nazir Khanna. But for his having been caught for theft, the misdeed committed by the petitioner and Chowkidar would have gone unnoticed. The petitioner had, admittedly, visited the Court premises. His Motor-cycle was there. Thus, there is no doubt about the presence of the petitioner in the Court premises at the dead of night. Nor about the deed which he performed.

6. Shri Sarwan Singh submits that Raj Kumar could not have noticed the presence of a lady in the darkness of the night. Even this contention is wholly fallacious. The witness has given the description of the lady. He has even mentioned the colour of her dress. This obviously indicates that he was able to see that a lady was present. His testimony has been believed by the Inquiry Officer, the Disciplinary Authority and a learned Judge of this Court. We find no ground for taking a different view.

7. Lastly, the counsel has contended that the lady could not have been identified in the darkness. Thus, the order of punishment cannot be sustained. The contention is wholly misconceived. The lady was facing no charge. Her identification was of no relevance. In any case, even if the particulars of the lady have been kept back for the purpose of saving her honour, the petitioner is entitled to no mercy.

8. No other point has been raised.

9. In view of the above, we find that there is no merit in this writ petition. It is, consequently, dismissed in limine.

Sd/- S.S. Grewal, J.