
(2009) 10 AHC CK 0138

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 49971 of 2007

Hridayanand

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-10-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 307, 324, 373

Citation : (2009) 10 AHC CK 0138

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—The petitioner has been terminated by the District Magistrate vide order dated 16.7.2004 in exercise of power under Section 10 of Village and Road Police Act, 1873 (hereinafter referred to as "Act, 1873"). He filed an appeal against the said order of termination, which has also been rejected by the Commissioner vide order dated 26.5.2007. Learned counsel for the petitioner submitted that no charge sheet was issued to the petitioner and no regular enquiry was conducted against him before passing the impugned order of termination and, therefore, the same is illegal.

2. The submission is thoroughly misconceived. Village Chowkidar is a Policeman and is a village servant. His chief duty is to watch and ward the village in his charge. He is required to carry reports to the village Headman, to assist him in tracing offenders and to make arrest as authorized by law. He is responsible to the District Magistrate for due performance of his duties. He is not a whole time employee though is a village servant. He is not prohibited from cultivating land. However, he must reside in one of the villages, for which he is responsible and cannot be employed on menial duties by members of constabulary force. He is required to attain police station twice a month on fixed dates for the purpose of reporting births and deaths. The duties of Village Chowkidar are provided in Chapter 9, Regulation 89 to 96A of the Police Regulations besides Regulations 129, 181, 190, 257, 266, 322 and 366. Besides, for showing good conduct, the

provision has been made to award "good conduct stripes" and "allowance" to Village Chowkidar under Regulation 476.

3. His service conditions are governed by the U.P. Village and Road Police Act, 1873 (U.P. Act No. XVI of 1873) (hereinafter referred to as "Act, 1873"). Section 10 thereof confers power of dismissal of Village Policeman upon the District Magistrate and section 13 provides that an order passed under Section 10 would be revisable before the Commissioner. The impugned order has been passed by the District Magistrate under Section 10 of the Act, 1873 and, therefore, it would be expedient to reproduce the same as under :

"10. Dismissal of village or road policeman. The Magistrate of the district may dismiss any village policeman or road policeman for any misconduct or neglect of duty."

4. Besides Section 14 confers power upon the State Government to frame rules in respect to the discipline of the Village and Road Police etc. and reads as under :

"14. Power to make subsidiary rules. The State Government may from time to time frame rules

(a) for the discipline of the village and road police;

(b) for regulating their numbers, location and duties; and

(c) for carrying out generally the purpose of this Act."

5. Learned counsel for the parties could not place any rule framed under Section 14 of the aforesaid Act by the State Government. A perusal of the provisions of the Act and the Police Regulations makes it clear that even though a Village Chowkidar/Policeman is entitled to do his own work of agriculture etc. even after his nomination/appointment as Village Chowkidar, but he is holder of a civil post and in the matter of discipline, he is controlled by the State Government. Salary is also paid by the State Government. Act 1873 has continued by virtue of Article 372 of the Constitution. After the enforcement of the Constitution, the provisions of the Act insofar as they provides for dismissal of Village Chowkidar have to be read consistent with the provisions of the Constitution. I have no hesitation in taking a view that in respect to dismissal of the a Village Chowkidar even under Section 10, the provisions of Article 311 would be attracted and if there is a violation thereof, the dismissal would be illegal. However, what would be the procedure for taking action against a Village or Road Policeman is the moot question. In the absence of any rules framed under Section 14 of the Act, 1873, in order to read the above provisions of Act, 1873 consistent with the various provisions of the Constitution of India, after independence, it has to be held that an action under Section 10 cannot be taken in violation of the principles of natural justice. The procedure of compliance of principles of natural justice in the absence of rules may not be elucidated in detail but suffice it to say that if the concerned Village Chowkidar is given an adequate opportunity to explain his conduct before passing the order of dismissal, in a given case, it may be

sufficient compliance of the principles of natural justice for the reason that considering the nature of the duties of the Village Chowkidar, continuance of a crooked and wicked character person even a short time would be extremely injurious to the village under his charge and, therefore, the nature of proceeding has to be such so as to take the minimum possible time. If in a given case, it is found that the show cause notice was issued to the concerned employee and he had sufficient opportunity to explain his conduct, if the order of dismissal is passed thereafter, it need not necessarily be said that there is any violation of principle of natural justice particularly if the employee concerned is not able to show that any prejudice has caused to him.

6. In the case in hand, the petitioner found indulged in criminal cases. The District Magistrate having received such information issued show cause notice to him and, thereafter, passed the impugned order. The Commissioner, while exercising revisional power, found the said order of dismissal justified. The only ground taken by the petitioner in the case in hand is that the dismissal order is non speaking and a departmental inquiry by issuing a regular charge sheet has not been conducted against him. Learned counsel for the petitioner could not place any statutory provision, which provide such procedure applicable to the case of a Village Chowkidar. However, he also could not dispute that he is a named accused in case crime no. 67 of 1997, under Sections 147, 148, 307, 324, 373, 504, 506 I.P.C. at Police Station Sahatwar District Ballia and in case crime no. 321 of 1999 under Sections 395/427 I.P.C., Police Station Sahatwar, District Ballia. He remained in jail from 24.11.2003 to 15.12.2003 in case crime no. 321 of 1999. When criminal history of the petitioner is not in dispute and learned counsel for the petitioner, as a matter of fact, has not refuted the allegations that he is involved in criminal activities and criminal cases are pending against him, exercising extraordinary equitable jurisdiction under Article 226 of the Constitution in such a case itself would be a travesty of justice. It would be against the interest of village under the charge of the petitioner. I, therefore, find no justification or reason to interfere with the order of the District Magistrate dismissing him under Section 10 of the Act, 1873 inasmuch it cannot be said that decision of the District Magistrate that such a person is not fit to continue as Village Chowkidar is incorrect or unjust. The order of District Magistrate, though short and not well reasoned, but it has to be read with the show cause notice issued to the petitioner. Besides, the Commissioner in the revisable order has considered all the aspects of the matter and the finding recorded therein about the criminal history of the petitioner has not been challenged by the petitioner to be incorrect. In these facts and circumstances, in my view, it is not a fit case warranting interference. This Court cannot be oblivious of the fact that in the rural areas, the security and safety of the village people is largely influenced by the Village Chowkidar but if he himself is indulged in criminal activities, the very purpose of appointment of village Chowkidar would be frustrated.

7. In view of the above discussion and in the facts and circumstances of the

case, in my view, this is not a fit case for interference. The writ petition is, therefore, dismissed in limine.