
(2004) 08 JH CK 0108
In the Jharkhand High Court
Case No : CWJC No. 756 of 1994 (R)

Mumtaz Ahmad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-08-2004

Acts Referred:

Citation : (2005) 3 SLJ 257 : (2005) 104 FLR 731 : (2004) 4 JCR 469

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : M.S. Anwar, for the Appellant; Pradip Modi, G.P. I, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Heard Mr. Mr. M.S. Anwar, learned Senior Counsel for the petitioner and Mr. Pradip Modi, learned G.P. I for the State- respondents.

2. The petitioner in this case has challenged the order of dismissal from service passed on 28.10.1992 as contained In Annexure 10 by reason whereof he was dismissed with effect from 01.12.1992. The petitioner also challenges the order of the appellate authority passed on 27.06.1993 as contained in Annexure 11, by reason whereof the appeal filed by the petitioner against the aforementioned order dated 28.10.1992 was rejected,

3. The fact. which are necessary to be taken note of in the instant case are that while he was in service having been employed as Constable in Ranchi, a departmental proceeding was initiated upon service of a charge-sheet (Annexure 1), whereby and whereunder the following charges were leveled against him :-

(i) On 13.09.1990 the petitioner was supposed to have escorted a VIP from the Ranch! Railway Station, but he absented himself as a result of which some body else had to be deputed in his place;

(ii) On 14.09.1990 the petitioner came to the Office in the morning and when he was asked as to why he had not attended to his duties, he gave a very rude

reply;

(iii) Upon an inquiry it was found out that the main reason as to why the petitioner did not attend his duties was on account of his having an affair with one Arti Anita Toppo who was also a lady constable and that his own -wife Smt. Naseema Praveen had also complained about his behaviour towards her and had referred to the illicit relationship of the petitioner along with the said Anita Toppo.

A true copy of the aforementioned charge-sheet is Annexure I to the writ petition.

4. It is not necessary for this Court to deal with the other factual aspects in relation to the progress of the departmental proceeding save and except to observe that it appears from the pleading made in paragraph 6 of the writ petition that Anita Toppo had embraced Islam voluntarily and the petitioner had married her on 15.06.1990, i.e. two years prior to the initiation of the departmental proceeding.

The petitioner relies upon Annexure 3 series in relation to this claim that he was married to Anita Toppo.

5. The petitioner was placed under suspension on 30.04.1991 for the afore mentioned charges but was released from suspension on 18.05.1992 vide Annexure 4. Therefore, it appears that a detailed inquiry was conducted and the petitioner was found guilty of the charge.

6. The petitioner had filed a supplementary affidavit on 01.07.2004 in which he has stated that his first wife had no objection to the marriage and that he has no child out of the first marriage, but he has two daughters and one son from his second marriage.

7. In support of the aforementioned contention that from his first wife, the petitioner did not have any objection, the petitioner has brought on record an affidavit sworn by the first wife. Annexure 14, which is dated 18.11.1991. The petitioner has also stated that his first wife also remarried after the petitioner and she were separated by divorce on 14.01.1996 and in support of the aforementioned contention, the petitioner relies on Annexure 13.

8. These are all subsequent developments which have taken place after initiation of the departmental proceeding. It is also from clear from these documents that at the time when the departmental proceeding was initiated, the petitioner was already married and the divorce, according to the petitioner himself and as is evident from his own document brought on record vide Annexure 13, took place on 14.01.1996. To that extent therefore, it cannot be said that the petitioner was totally innocent.

9. Taking into consideration the aforementioned facts, this Court is of the opinion that the initiation of the proceeding as against the petitioner on the basis of misconducts committed by him cannot be said to be either irregular or illegal. However, what does not appear to be justified to this Court, is the quantum of

punishment. The petitioner's affair with another lady constable is a very personal matter and some times such conducts are guided more by the heart than by the head. If two such individuals one of whom is a married person falls in love with another and gets married, it is undoubtedly a misconduct as per service rules. It is for the prevention of such offences that the State has framed rules to regulate its employees so that such facts do not become a problem for the Society or do not become a social evil. However, in the facts of the instant case the misconduct is not so gross that it calls for the extreme punishment and/or penalty of either dismissal or removal from service. From the facts pleaded, it is found that ultimately the lady constable with whom the petitioner was said to have an illicit relationship got married to the petitioner, whereafter children were born out of this wedlock. Taking these facts into consideration, this Court feels that the punishment of dismissal is extremely harsh and disproportionate.

10. For the aforementioned reason, this Court allows the writ application and sets aside the impugned order of punishment dated 28.10.1992 as contained in Annexure 10 as also the appellate order dated 27.06.1993 refusing to interfere. However, setting aside the orders does not mean that the petitioner is being given a completely clean chit. He definitely committed a mistake and/or misconduct and for which he has to be punished, but the punishment should not, in the facts of the case, be in the nature of removing him or dismissing him from service. Consequently, this Court remands the matter to the concerned disciplinary authority only for purposes of reconsidering the matter in relation to the quantum of punishment. This Court, however, makes it clear that this order shall not prevent the authorities from entering the misconduct in the service records of the petitioner. The writ petition is, therefore, allowed in the manner indicated above.

There shall however, be no order as to costs.