

(1985) 03 AHC CK 0059

In the Allahabad High Court

Case No : Writ Petition No's. 440 and 681 of 1985

Munna Lal Tewari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-03-1985

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Penal Code, 1860 (IPC) — Section 161, 302, 330, 342

Citation : (1985) AWC 692

Hon'ble Judges : S.S. Ahmad, J;B. Kumar, J

Bench : Division Bench

Advocate : S.P. Shukla and A.K. Singh, for the Appellant;

Final Decision : Allowed

Judgement

S.S. Ahmad, J.—Munna Lal Tewari (Petitioner in Writ Petition No. 440 of 1985), who is a Sub-Inspector of Police has challenged the order dated 31st August, 1982 by which he has been placed under suspension. On the same date Rakesh Rai (Petitioner in Writ petition No. 681 of 1985), who is a constable, was also placed under suspension by a separate order and he has also challenged that order.

It may be stated that Munna Lal Tewari as also Rakesh Rai along with one Kunwar Pal Singh, another constable, are named accused in Crime case No. 501 of 1982 under Sections 342/302/330/161 of the Indian Penal Code, registered at P.S. Kotwali, Sitapur. The allegation against them is that they had committed the murder of one Gajendra Singh. The first information report in that "regard is contained in Annexure-1 to Writ. Petition No. 440 of 1985. This report is Annexure-2 in Writ Petition No. 681 of 1985.

2. Munna Lal Tewari had earlier filed Writ Petition No. 4468 in this Court which was summarily dismissed on 9-11-1982 by the following order:

We have heard the learned Counsel for the Petitioner at some length. We do not

find that it is a fit case for interference Under Article 226 of the Constitution. The petition fails and is dismissed.

3. It would be noticed that Munna Lal Tewari was placed under suspension as disciplinary proceedings were contemplated against him on the ground that he was a named accused in Crime Case No. 501 of 1982.

4. Constable Kunwar Pal Singh, who was also a named accused in the aforesaid crime case, was placed under suspension by a separate order passed on 31st August, 1982 on the same ground that a disciplinary inquiry was contemplated against him. He had filed Writ Petition No. 5029 of 1984 which has since been allowed by us by our judgment and order dated 22nd February, 1985. We have already held in that Writ petition that a case of suspension on the ground of contemplated disciplinary inquiry was not covered by the provisions of para 496 of the police Regulations. In this view of the matter, the Writ Petition tiled by Rakesh Rai, i.e. Writ petition No. 681 of 1985 has to be allowed as he is a co-accused with Kunwar Pal Singh in the above crime case and he has also been placed under suspension on identical ground that a disciplinary inquiry was contemplated against him.

5. So far as Munna Lal Tewari is concerned, ordinarily a second Writ Petition under Article 226 of the Constitution cannot be entertained. The principles akin to res-judicata and constructive res-judicata are applicable to writ petition. 11 a writ petition is disposed of by a speaking order in which reasons are indicated why the writ petition has been dismissed, a second petition on the same facts and cause of action would not lie--not even on a new ground which could or ought to have been raised in the earlier writ petition (See AIR 973 SC 974 ; AIR 1965 SC 1150 and Pearey v. Deputy Director of Consolidation 1983 LCD 376 decided by one of us (S. Saghir Ahmad, J.).

6. But if the earlier writ petition was dismissed in limine by a non-speaking order, the position would be different.

7. In the leading case of Daryao and Others Vs. The State of U.P. and Others, , it was laid down that if a petition under Article 226 of the Constitution is dismissed by the High Court in limine on the ground of laches In applying for the writ or on the ground of alternative remedy, then the dismissal would not constitute a bar to the subsequent petition under Article 32. This principle was re-affirmed in Virudhunagar Steel Rolling Mills Limited Vs. The Government of Madras, in which Daryao's case (supra) was also considered and explained. It was held that the dismissal of a petition in limine by a non-speaking order does not create a bar of res-judicata. In Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, , the ratio in Daryao's case was affirmed by the majority of Judges that the dismissal of a petition under Article 226 by a non-speaking order does not bar a subsequent petition under Article 32. A preliminary objection about the bar of res-judicata on similar grounds was negatived in P.D. Sharma Vs. State Bank of India, .

8. These cases were considered in *Hoshnak Singh v. Union of India* AIR 1979 SC 1328 in which it was laid down as under:

It must follow as a necessary corollary that a subsequent petition under Article 226 would not be barred by the principles analogous to *res-judicata*.

The Supreme Court further observed as under:

It is, therefore, incontrovertible that where a petition under Article 226 is dismissed in limine without a speaking order, such dismissal would not constitute a bar of *res-judicata* to a subsequent petition on the same cause of action...

9. In the above case of *Hoshnak Singh*, the earlier petition under Article 226 was dismissed on the ground of alternative remedy of revision which was availed of and after failure to get the relief the High Court was moved again. But the subsequent petition was dismissed on the ground of *res-judicata*. The Supreme Court held that the High Court was in error in dismissing the petition on this short ground.

10. A subsequent petition can, therefore, be entertained if it is covered by the principles laid down in *Daryao's case* (*supra*).

11. In the instant case, the earlier petition was dismissed in limine by a non-speaking order. Suspension is a continuing cause of action and it is open to an employee to challenge the order of suspension at any time, on the ground of inordinate and unreasonable delay in initiating the disciplinary proceedings. The disciplinary proceedings which, in 1982, were said to be contemplated against the present Petitioner (Munna Lal Tewari) have not yet started and a charge sheet has not been issued to him. The charge-sheet has not even submitted in Grime Case No. 501 of 1982, which is still under investigation. This apart, the order by which Kunwar Pal Singh (co-accused) was suspended has already been quashed by us.

12. We, in these circumstances, entertain his petition as well and since an identical suspension order has already been quashed by us in Kunwar Pal Singh's case, we allow his petition as well and quash the suspension order dated 31st August, 1982.

13. In view of the above, Writ petitions are allowed and the Impugned orders of suspension are hereby quashed.

14. No order as to costs.