
(2015) 02 JH CK 0001
In the Jharkhand High Court
Case No : Writ Petition (S) No. 6176 of 2009

Nagina Paswan

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 3 AJR 675 : (2015) 145 FLR 325 : (2015) 2 JLJR 203

Hon'ble Judges : Sujit Narayan Prasad, J.

Bench : Single Bench

Advocate : S.N. Pathak, for the Appellant

Final Decision : Dismissed

Judgement

Sujit Narayan Prasad, J.—Petitioner approached this Court inter alia for the following reliefs:

"(a) For issuance of writ in the nature of certiorari for quashing the order dated 13.04.2007 passed by appellate authority and the order dated 31.03.2004 passed by the Disciplinary Authority, respectively whereby and where under respondents have dismissed the petitioner from services and also quash the order dated 04.05.2009 passed in appeal memorial by Director General of Police cum Inspector General of Police, Jharkhand, Ranchi.

(b) For issuance of writ in the nature of mandamus commanding the respondents to reinstate the petitioner from the date of dismissal with all consequential benefits."

2. The brief facts argued by the learned senior counsel for the petitioner is that-Petitioner was appointed as Constable in the State of Bihar in the year, 1977 and was promoted to the post of Hawaldar in the year, 1987. While the petitioner was posted in Chaibasa, a charge sheet was served upon him alleging inter alia therein that petitioner started going in the residence of Miss. Elzina Badh, the resident of Hazaribagh Sadar by disclosing his identity as a father of Church. He

used to send letters by writing in the name of other person and started sending to the residence of Miss. Elzina Badh. Thereafter, subsequently he developed friendship with Miss. Elzina Badh. When the father of Miss. Elzina Badh, came to know about this, he scolded the petitioner on which the petitioner misused his official position by showing his Pistol. It has been alleged that Miss. Elzina Badh was also threatened by the petitioner by saying her to get the news published in the daily newspaper and also alleged that he used to demand Rs. 3 lakhs.

After developing relationship and friendship, he compelled Miss. Elzina Badh, to solemnize marriage with him. Second allegation is that one truck has been purchased in the name of son of the petitioner while petitioner was posted at Kumar Dungi, P.S. Mazhgaon, hence he used to give more attention towards the said Truck instead of giving attention towards his duty.

Third allegation is that wife of the petitioner has made a complaint that petitioner has not given proper attention towards them due to which they are facing financial difficulties.

3. Learned counsel for the petitioner submitted that on the basis of said memo of charge, a regular departmental proceeding had been initiated against him. The witnesses have been examined and cross-examined by the petitioner but merely on the presumption, the Enquiry Officer has come to a conclusion that the charge has been found to be proved against the petitioner.

4. It has been further submitted on behalf of petitioner that with respect to the first charge, no concrete evidence has been produced before the Enquiry Officer and merely on surmises and conjectures, the Enquiry Officer has come to the conclusion that charge has been found to be proved. With respect to second charge, it has been submitted on behalf of petitioner that the Truck in question has been purchased by his son and if the son has purchased the same and plies the same, petitioner in no way has committed any misconduct. So far as the third charge is concerned, the Enquiry Officer has come to the conclusion that the charge has not been proved.

After submission of the report by the Enquiry Officer, the disciplinary authority has accepted the same in its entirety and therefore passed the order of dismissal by way of order passed in this regard on 31.03.2004.

5. It has been submitted by counsel for the petitioner that the disciplinary authority has found the charge proved presuming all the charges have been found to be proved by the Enquiry Officer but that is not the correct position because the third charge has not been found to be proved by the Enquiry Officer. Hence the disciplinary authority in very perfunctory manner has passed the harsh punishment of dismissal from service.

6. It is submitted that even the appellate authority has not considered the entire aspects of the matter and without expressing any opinion by application of independent mind and merely adopting the word of the Enquiry Officer and the

disciplinary authority in one line replied stating the defence reply of the petitioner found to be unsatisfactory and thereby the order of dismissal has been upheld.

7. Learned counsel further submitted that petitioner even filed memorial before the competent authority, who is supposed to pass reasoned order by assigning specific reason while rejecting the memorial, but the authority, who passed the memorial, has not also applied its independent mind likewise the disciplinary authority or the appellate authority and passed the order totally relying upon the findings given by the Enquiry Officer. Although, the Enquiry Officer has found the Charge No. 3 as not proved, the disciplinary authority has upheld the order of dismissal presuming the fact that all the charges have been found to be proved hence it has been submitted that the impugned order is very mechanical and cannot be said to be in accordance with law.

8. On the other hand, counsel for the respondent-State has submitted that the petitioner has been provided with all opportunity of being heard. He was also provided with opportunity to cross examine the witnesses before the Enquiry Officer. Learned counsel for the State further submitted that considering the nature of allegation, the order impugned needs no interference. Since the petitioner has been provided with all opportunity to defend himself hence judicial review by this Court under Article 226 of Constitution of India is not warranted.

9. Heard the parties.

10. The enquiry had been conducted against the petitioner for the charge leveled against him with respect to misuse of his post having the post of Constable/Hawaldar in the District Police by giving threatening to one girl with ulterior motive and to solemnize marriage with her.

The other allegation that his son had purchased the Truck and petitioner used to give more attention towards the said Truck and was paying less attention towards his government duty.

The third allegation is on the basis of complaint of his wife wherein it has been stated that the wife and children of the petitioner have not been viewed properly due to which family of the petitioner is facing financial difficulties.

11. The Enquiry Officer conducted the enquiry, witnesses were produced. Petitioner has been provided with opportunity of cross-examining the girl. In course of enquiry the love letters which have been exhibited, sent by the petitioner through post in the name of Miss. Elzina Badh, from perusal of same it came to clear cut finding in the mind of Enquiry Officer that petitioner was in love with the said girl and wanted to marry with her in spite of being objected by the family members of Miss. Elzina Badh.

12. The Enquiry Officer has come to a definite finding in its opinion part of the inquiry report that the petitioner has misused his official position and fell in love with a girl and wanted to marry her. The Enquiry Officer has also taken into

consideration the gravity of first charge of exploiting a girl continuously for last two years in spite of protest having been shown by the family members of the said girl and put pressure upon them to marry her.

13. With respect to second allegation that petitioner used to ply the said truck for the purpose of earning profit, the Enquiry Officer on the basis of materials available on record found the second charge proved against the petitioner.

14. So far as third charge is concerned, the Enquiry Officer has given the finding that the application was not given by wife of the petitioner due to family dispute. However, the said charge is not found to be proved against him.

15. Hence the Enquiry Officer has come to definite finding that the petitioner being a member of disciplined force has done the act which is not supposed to be done by him. Considering the nature of duty, he is supposed to provide security to the people and society in general.

16. The disciplinary authority has accepted the finding given by the Enquiry Officer after providing an opportunity to reply to second show cause notice.

17. The disciplinary authority while considering these serious natures of allegations has come to finding that the petitioner is not fit to be retained in service. The disciplinary authority has also ignored the two other allegations considering the nature of allegation but however in the mind of disciplinary authority, the first allegation is very serious hence the order of dismissal from service has been passed.

18. The appellate authority and the revisional authorities have passed the order on the basis of findings given by the Enquiry Officer and the disciplinary authority.

19. So far as the contention advanced on behalf of petitioner that the appellate authority and revisional authority had passed the order without assigning any reason, in my view, it is not necessary for the appellate authority or authority who have passed the appeal memorial to give detail judgment, rather the authorities herein passed the order after perusal of enquiry report and order of disciplinary authority and relying on the principle of preponderance of probability which cannot be said to be incorrect as has been held by Hon'ble Apex Court in the case of High Court of Judicature at Bombay through its Registrar Vs. Udaysingh Nimbalkar and Others, which reads as under:--

"---the doctrine of proof beyond doubt has no application. Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct----." 20. In view of above decision based upon the preponderance of probability, the disciplinary authority had come to the conclusion and passed the order impugned.

21. The petitioner had been provided all opportunity of being heard before the authorities concerned. It is settled legal proposition that judicial review is not akin to adjudication on merits by re-appreciating the evidences as an appellate

authority. The only consideration the Court/Tribunal has in its judicial review, has to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence.

22. Considering the nature of allegation and also considering the concurrent finding of the authorities, judgment rendered by the Hon"ble Apex Court in the case of Nirmala J. Jhala Vs. State of Gujarat and Another, quoted hereinbelow:

"22. It is settled legal proposition that judicial review is not akin to adjudication on merits by re-appreciating the evidence as an appellate authority. The only consideration the Court/Tribunal has in its judicial review, is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. The adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings...." 23. Relying on the said principle as indicated hereinabove, if the facts of this case is seen, it is apparent that the Enquiry Officer has found the charge proved on the basis of deposition of witnesses and document produced before him, hence conclusion arrived at by the Enquiry Officer is purely on evidence.

24. In that view of the matter, I find no reason to interfere with the impugned order. Accordingly, the writ petition is dismissed being devoid of merit.