
(2000) 12 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Special Appeal No. 1194 of 2000

Om Prakash

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 19-12-2000

Acts Referred:

Citation : (2001) 2 RLW 1219 : (2000) 4 WLC 700 : (2007) 2 WLN 325

Hon'ble Judges : Sunil Kumar Garg, J;B.J. Shethna, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.J. Shethna, J.—Issue notice to the respondents. Learned counsel Shri Anand Purohit, who appeared before the learned Single Judge for the respondents was directed to accept notice.

2. Having regard to the facts and circumstances of the case, the matter is heard today as it is relating to denial of back wages to the appellant petitioner.

3. The appellant petitioner was earlier appointed as Police Constable on probation by an order dated 19.6.1990. During probation he had quarrel with another trainee constable Ram Chandra on 20.9.1991. By an order dated 24.1.1992 (Annex. 1 to the writ petition) he was discharged from service on the aforesaid charges without holding regular enquiry into the matter. The translated version of the impugned order of termination dated 24.1.1992, which was reproduced by the learned Single Judge in his impugned order at page 20 reads as under:

Shri Om Prakash, Constable No. 1679, was appointed as temporary. Constable vide order dated 19.6.1990 and was sent for training in Rajasthan Police Training Centre, Jodhpur on 15.1.1991. The constable picked up quarrel with constable Ram Chandra on 20.9.1991 at the time of parade and pointed the rifle towards him, they were separated by the other recruits and Drill Inspector who were present at that time. After returning from the parade, Om Prakash Constable caused injuries to Constable Ram Chandra. The preliminary enquiry of the said

incident was got conducted by the Commander, Rajasthan Police Training Centre, Jodhpur, through Police Inspector Shri Atru Rehman. Medical examination of constable Ram Chandra was also got conducted. In the preliminary enquiry, it was found that constable Om Prakash had not only indulged in the incident of "Marpeet" with Ram Chandra but also indulged in indiscipline and violated the rules of the training centre. It amounts to moral turpitude. Police Force is a disciplined force. Thus, maintenance of discipline is necessary. The Constable had shown the indiscipline during his training period. Therefore, it cannot be expected that after training he will remain in discipline Continuation of such a Constable in police force is not in the public interest and it will also have bad effect on other trainees of the Centre. Thus, in view of the Standing Order No. 2 dated 13.3.1976 issued by the Inspector General of Police, Rajasthan, the recruit is held guilty and discharged from service with immediate effect.

4. The above order of discharge from service dated 24.1.1992 was challenged by the petitioner in appeal before the Deputy Inspector General of Police under Rule 23 of the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958 (for short "the Rules") as well as by way of writ petition No. 2227/92. Stay petition was filed in that writ petition and on stay petition mandatory interim order was passed by this Court directing the respondents to appoint him provisionally. Accordingly, he was reinstated in service by an order dated 9.9.1992 (Annex. 2 to the writ petition). During the pendency of the writ petition as well as appeal he was served with the charge sheet dated 24.12.1992 in respect of the same incident which took place on 20.9.1991 for which he was discharged from service. Reply was submitted to that on 12.1.1993 and after concluding the enquiry the disciplinary authority converted the enquiry under Rule 17 and by its order dated 28.2.1994 imposed the punishment of withholding of one annual grade increment without cumulative effect for two years.

5. It is interesting to note that during the pendency of appeal and the writ petition, the respondent authority confirmed the petitioner on the post of Police Constable by its order dated 2.11.1993 (Annex. 5) w.e.f. 15.10.1993. Earlier writ petition No. 2227/92 came up before the Single Judge on 12.3.1996. At that time, an objection was raised by the learned counsel appearing for the respondents that this Court should not entertain the writ petition as the petitioner had already availed alternative remedy of appeal, which was pending before the appellate authority. Therefore, the appellate authority i.e. Deputy Inspector General of Police, Bikaner Range, Bikaner was directed to decide the appeal of the petitioner against the order of discharge in accordance with law on or before 31.5.1996.

6. The said appeal was dismissed on 15.5.1996 (order at Annex. 7 to the writ petition) and the order of termination from service dated 24.1.1992 was upheld. Therefore, the appellant petitioner by way of writ petition No. 3067/97 challenged the order of discharge dated 24.1.1992 (Annex. 1) and the order dated 15.5.1996 (Annex. 7) dismissing his appeal. The said writ petition was

allowed by the learned Single Judge by judgment and order dated August 4, 2000 and it is held that petitioner shall be deemed in continuous service for all purposes, however, back wages from the date of termination till 31.7.2000 were denied. This part of the order denying back wages to the petitioner has been challenged in this special appeal by the appellant.

7. It is stated at the bar by the learned counsel for the parties that after the petition was allowed by the learned Single Judge on 4.8.2000, the appellant petitioner was once again reinstated in service and the respondents have accepted the order of learned Single Judge.

8. If, the appointing authority had already reinstated the petitioner back in service under the interim order passed by this Court in earlier writ petition and later on confirmed him on the post in 1993 then in our considered opinion, the earlier order of discharge, which is stated to be an order of discharge simplicitor, would automatically go. Once that order does not survive then appeal against that order would also not survive.

9. In earlier writ petition No. 2227/92 filed by the petitioner, the appellate authority was only directed to decide the appeal in accordance with law. Whether the appeal was maintainable or not? Whether the appeal should have been entertained or not by the appellate authority? Those questions were to be decided by the appellate authority. But, without considering the same if the appellate authority proceeded to decide the appeal on merits and confirmed the order of discharge by dismissing the appeal then it cannot be said that the Court passed the order without considering the law in correct perspective.

10. When the appellant had actually served under the interim orders of the Court and that the learned Single Judge himself found that the impugned orders were not sustainable and the petition was allowed by him then there was no reason to deny the back wages to the petitioner from the date of termination i.e. 24.1.1992 till 31.7.2000.

11. Before parting, we must state that Judicial discipline and judicial propriety demand that the Judges should be more careful and circumspect at the time of passing orders and making observations. In our considered opinion the observations made by the learned Single Judge in first four lines of his judgment and order dated 4.8.2000 that "the instant writ petition is a unique example wherein neither the Statutory Authorities nor the Court had ever passed the order considering the law in correct perspective." (emphasis supplied) are neither proper nor called for. We are really shocked to read such observations. We must state that one may like or may not like the orders passed by the coordinate Bench, but that is no ground to make such observations in the judgment.

12. In view of the above discussion, this special appeal is allowed and it is ordered that appellant petitioner is also entitled for back wages from the date of termination till he was reinstated in service.