
(2021) 02 JH CK 0199

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1012, 2334 of 2018

Panchanand Pandey

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 25-02-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 341, 354

Citation : (2021) 02 JH CK 0199

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Diwakar Upadhyay, Gaurav Abhishek

Final Decision : Dismissed

Judgement

Heard Mr. Diwakar Upadhyay, learned counsel for the petitioners and Mr. Gaurav Abhishek, learned counsel for the respondents-State.

These writ petitions have been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising

due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been

heard.

The petitioners have preferred these writ petitions for quashing of order dated 26.08.2014 whereby punishment of reversion to the basic salary for a

period of two years with immediate effect has been imposed upon the petitioners.

In both the cases, identical facts and questions of law are involved that is why both the writ petitions was heard together and with consent of parties

both the writ petitions are being disposed of by the common order.

Petitioner-Panchanand Pandey and petitioner-Balmiki Shukla were appointed as a

Police Constable in JAP-4, Bokaro on 20.05.2005 and 18.05.2005

respectively. After appointment the petitioner-Panchanand Pandey and petitioner-Balmiki Shukla were allotted Bras No.676 and 604 respectively and

they were posted in JAP-8, Lesliganj, Palamau. Petitioners were working with the said Police Force. Petitioners were posted in 'C' Company

Picket, Giridih wherein charges against the petitioners were levelled that the petitioners along with other Police personnel on the day of Holi Festival

i.e. on 18.03.2014 at about 9.00 Hrs. poured colour upon the informant Rinki Devi at a public hand pump. Resultantly, an FIR was lodged bearing

Bhelwaghati Case No.10/14 registered under Sections 341/323/354/34 of the Indian Penal Code. Charge sheet was submitted against the petitioners.

On the basis of aforesaid charge, a departmental proceeding was initiated against the petitioners and first show cause was issued against the

petitioners. The petitioners filed reply to the show cause. After conclusion of departmental proceeding punishment of reversion to the basic salary for

a period of two years with immediate effect has been imposed upon the petitioners. The petitioners preferred appeal which was also dismissed.

Thereafter, the petitioners have approached this Court.

Mr. Diwakar Upadhyay, learned counsel for the petitioners submits that considering the witnesses and the materials, the Enquiry Officer submitted the

report where charges against the petitioners have been proved. Second show cause has also not been served upon the petitioners and the enquiry

report has been submitted along with punishment order. Subsequently, the petitioners have been acquitted in the criminal case. He submits that in view

of well settled proposition of Hon'ble Supreme Court in the case of ECIL v. B. Karunakar reported in 1993 4 SCC 727 enquiry report was

required to be served. On these grounds, he submits that impugned order requires to be interfered.

Mr. Gaurav Abhishek, learned counsel for the respondents-State submits that the punishment in question is minor. He submits that in the departmental

proceeding allegation against the petitioners have been proved. He refers to Rule 824 of Police Manual and submits that in view of this Rule, the

punishment order has been passed. He further submits that the appeal has been preferred belatedly and the case of the petitioners is fit to be rejected

in view of the judgment rendered by Hon'ble Supreme Court in the case of

Bharat Barrel and Drum Mfg. Co. Ltd. v. ESI Corpn. reported in 1971

2 SCC 860. He submits by way of acquittal in criminal case, the case of the petitioner has not been improved in view of the fact that both the

proceedings proceed on different parameters. According to him on settlement the petitioner has been acquitted. To buttress his argument, he relied on

the judgment in the case of Union of India & Another Versus Purushottam reported in (2015) 3 SCC 779. Para 14 the judgment is quoted

hereinbelow.

14. In R.P. Kapur v. Union of India the question before the Constitution Bench was that the petitioner therein had been suspended owing to the

pendency of criminal proceedings against him which was challenged on the anvil of Article 314 of the Constitution. Thus, this decision is not of much

relevance for the resolution of the legal nodus before us, save for the observations that (AIR p. 792, para 9) "if the trial of the criminal charge

results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted, even in case of acquittal proceedings may

follow where the acquittal is other than honourable". However, on this aspect of the law we need go no further than the recent decision in Inspector

General of Police v. S. Samuthiram, since it contains a comprehensive discourse on all the prominent precedents. This Court has concluded, and we

respectfully think correctly, that acquittal of an employee by a criminal court would not automatically and conclusively impact departmental

proceedings.

14.1. Firstly, this is because of the disparate degrees of proof in the two viz. beyond reasonable doubt in criminal prosecution contrasted by

preponderant proof in civil or departmental enquiries.

14.2. Secondly, criminal prosecution is not within the control of the department concerned and acquittal could be the consequence of shoddy

investigation or slovenly assimilation of evidence, or lackadaisical if not collusive conduct of the trial, etc.

14.3. Thirdly, an acquittal in a criminal prosecution may preclude a contrary conclusion in a departmental enquiry if the former is a positive decision in

contradistinction to a passive verdict which may be predicated on technical infirmities. In other words, the criminal court must conclude that the

accused is innocent and not merely conclude that he has not been proved to be

guilty beyond reasonable doubt.â??

Having heard learned counsel for the parties, the Court has gone through the materials available on record. So far as the contention of the petitioners

that the nature of punishment is major under the Statute is concerned Rule-824 of the Police Manual is relevant to be quoted herein below :-

â??824. Description of departmental punishments.-- The following punishments which are sanctioned under Section 7 of Act V of 1861 may be

inflicted departmentally on a police officer of and below the rank of Inspector :--

- a. Dismissal
- b. Removal
- c. compulsory retirement
- d. reduction in rank
- e. forfeiture of last increment(s) or future increment(s),
- f. black mark or marks
- g. censure
- h. confinement to quarters for a period not exceeding 15 days
- i. punishment drill
- j. extra guard or fatigue duty

Provided that the punishments mentioned in Clause (h) and (j) shall be imposed only on members of rank of constables/Havildars and that in clause (i)

shall be imposed only on constables.

The petitioners are Constable. Hence, they cannot be lowered down in rank.

In view of above mentioned position and considering the Rule 832, the petitioners being a Constable, no order of reversion can be passed against them.

Thus, the authorities have passed the order in accordance with the provision as contained in Rule-832(a) of the Police Manual which provides as

follows :-

â??832. Order of reduction.-- (a) Every order reducing an officer to a lower post or to a lower stage in his time scale, or withholding an increment,

shall state the period for which it shall be effective.â??

The competent authority has passed the order of punishment by reverting the petitioners to lowest pay scale for a period of two years. Thus, in

compliance of Rule-832 of the Police Manual, as indicated herein above, the order of punishment has been passed which is minor in nature and, as

such, the authorities, with all conscious mind, have passed the order. The appeal has been rejected rightly in the light of the judgment relied in case of

Bharat Barrel and Drum Mfg. Co. Ltd. v. ESI Corpn. (supra). Minor punishment has been inflicted upon the petitioners and no prejudice has been

caused to the petitioners. The enquiry report has been served along with punishment order. The petitioners have not been able to show what prejudice

has been caused to them due to non-service of enquiry report. Since there is concurrent finding of the authorities, this Court under Article 226 of the

Constitution of India cannot disturb the finding arrived at on the basis of the evidence produced before them as has been held by the Hon'ble Apex

Court in case of State of U.P. vs. Man Mohan Nath Sinha reported in (2009) 8 SCC 310 wherein at paragraph-15 Hon'ble Apex Court held as follows

:-

“15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making

process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to reappraise and reappraise the evidence led

before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions. “|.....”

In the manner the petitioners have been acquitted on the basis of settlement and this aspect of the matter has been considered by the Hon'ble

Supreme Court in the case of Union of India & Another Versus Purushottam (supra).

In the light of above discussion and considering the allegation against the petitioners who are the members of discipline Force and sufficient

opportunity have been provided to the petitioners by following due processes, no relief can be extended to the petitioners.

Accordingly, the writ petition is dismissed.