
(2020) 01 JH CK 0176
In the Jharkhand High Court
Case No : Writ Petition (S) No. 947 Of 2016

Police 806, Dharmu Oraon	Vs	APPELLANT
State Of Jharkhand And Ors		RESPONDENT

Date of Decision : 14-01-2020

Acts Referred:

Police Manual, — Rule 852(Kha)
Constitution Of India, 1950 — Article 20(2)

Citation : (2020) 01 JH CK 0176

Hon'ble Judges : Dr. S.N.Pathak, J

Bench : Single Bench

Advocate : Niraj Kishore

Final Decision : Allowed

Judgement

1. By filing the instant writ petition, the petitioner has approached this Court for reinstatement in service with all consequential benefits after

quashing/setting aside the order dated 18.08.2015 (Annexure-9) as contained in memo No. 867/Go. by which the representation dated 09.03.2015

made by the petitioner pursuant to the order dated 03.12.2014 passed by this Court in W.P.(S) No.6092/2012 has been rejected without any speaking order.

2. As per factual matrix, the petitioner was appointed as a Police Personnel and has been performing the duties at various places since 2003 onwards.

A departmental enquiry was conducted by Sub-Inspector and Enquiry Officer submitted a report on 09.07.2010. Without considering the defence of

the petitioner, the respondent No.4 i.e. Superintendent of Police passed an order terminating the service of the petitioner with effect from 10.08.2010

on the ground of absence of 12 days from the duties. The petitioner preferred

appeal and the same was rejected mechanically on the ground that appeal did not contain the required documents as per the statutory provisions envisaged in Rule 852 (Kha) of the Police Manual. Aggrieved by the said order, the petitioner moved this Court in W.P.(S) No.6092/2012 and the Court after hearing the parties at length remanded the matter back for reconsideration. The petitioner preferred a representation before the Appellate Authority along with a copy of this order for reconsideration pursuant to the order dated 03.12.2014 and the same was rejected mechanically and hence this writ petition.

3. Learned Counsel appearing for the petitioner assiduously argues that the appellate authority has not taken into consideration the observation made by this Court in W.P.(S) No.6092/2012 and has mechanically rejected the representation of the petitioner. Further it has been argued that absence of the petitioner was not intentional or wilful rather it was due to compelling circumstances and the same has not at all been appreciated by the Enquiry Officer or the disciplinary authority and neither has been reconsidered by the appellate authority in spite of the direction of the Honâ??ble Court and mechanically the earlier order has been affirmed. Learned Counsel further argues that the earlier order of punishment regarding unauthorized absence cannot be a ground for holding the petitioner guilty of charges and passing the capital punishment of dismissal which amounts to snatching away livelihood of an employee. Learned Counsel submits that 12 days absence due to compelling circumstances which was unavoidable because of the fatherâ??s death, does not amount to gross misconduct so as to invite order of dismissal and hence order dated 18.8.15 passed by the appellate authority which is totally non-speaking, cryptic and mechanical order is fit to be quashed and set aside.

4. Per contra counter-affidavit has been filed.

5. Learned Counsel for the State vehemently opposes the contention of the learned Counsel for the petitioner. Learned Counsel justifying impugned order submits that police force is a disciplined force and in a disciplined force this type of constables cannot be allowed to continue in service. Their continuance would state a wrong trend in the department and it would be better to get rid of the dead wood as early as possible. The petitioner was habitual offender and was punished for unauthorized absence of 21 occasions

earlier and this time also he was charged with unauthorized absence of 12 days and hence rightly the order of dismissal has been passed. No interference is warranted in the instant writ petition and is fit to be dismissed in limine.

6. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that case of the petitioner needs consideration for the following facts and reasons:-

i. Earlier the petitioner has moved this Court in W.P.(S) No.6092/2012 which was disposed of on 03.12.2014 and the observation made by this Court has not at all been considered by the appellate authority while disposing of the representation.

ii. The appellate authority without showing any consideration to the observation of this Court, just has affirmed its earlier order adopting the language employed by the disciplinary authority. The order of statutory authority should reflect intense application of mind with reference to the material available on record.

7. The Honâ??ble Apex Court in case of â??Chairman Life Insurance Corporation of India and others vrs. A. Masilamaniâ?, reported in (2013) 6 SCC 530, para 19 relevant wherein it has been held that:

â??19. The word â??considerâ? is of great significance. The dictionary meaning of the same is, â??to think overâ?, â??to regard asâ?, or

â??deem to beâ?. Hence, there is a clear connotation to the effect that there must be active application of mind. In other words, the term

â??considerâ? postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by statutory authority should reflect

intense application of mind with reference to the material available on record. The order of the authority itself should reveal such

application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority and proceed to affirm its order.â??

8. Further the Honâ??ble Apex Court in case of â??Krushnakant B. Parmar vrs. Union of India & Anr., reported in (2012) 3 SCC 178 has observed that:

â??17. If the absence is the result of compelling circumstances under which it

was not possible to report or perform duty, such absence

cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does

not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling

circumstances beyond his control like illness, accident, hospitalization, etc., but in such case the employee cannot be held guilty of failure of

devotion to duty or behaviour unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to

prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.

9. In the instant case 12 days absence was due to compelling and unavoidable circumstances. The petitioner was at his native place because of

ailment of his father who ultimately died and after performing last rites, he resumed his duty after 12 days hence in absence of any finding whether

unauthorized absence was wilful, the petitioner cannot be held guilty of the charges inviting order of dismissal. The petitioner received information that

his father was in death bed and as such he had no option except to proceed to his native place where his father died. After his death, being the only

son to perform last rites of his father remained at his native place and immediately after conclusion of the last rites petitioner reported to the office on

01.05.2010 i.e. after 12 days and the said absence cannot be held to be wilful inviting order of dismissal. Regarding earlier absence on 21 occasions,

the petitioner was punished and on the same charges he cannot be punished twice which amount to violation of Article 20 (2) of the Constitution of

India which deals with double jeopardy.

10. In the instant case, the petitioner was dismissed on the ground of habitual offender which cannot be a ground for dismissing the petitioner for the

charges of 12 days unauthorized absence which was due to compelling circumstances and was not wilful or intentional. The appellate authority

without considering any aspect of the matter and the observation of this Court passed earlier, has affirmed the earlier order mechanically and as such

the order is fit to be quashed and set aside.

11. As a sequel to the aforesaid observation, guideline, judicial pronouncements,

order dated 18.08.2015 (Annexure-9) as contained in memo No.

867/Go is hereby quashed and set aside with a direction to the respondents to reinstate the petitioner in service from the date of dismissal with 50%

back wages within 8 weeks from the date of receipt/production of a copy of this order.

12. Accordingly, this writ petition stands allowed.