
(2016) 04 JH CK 0216
In the Jharkhand High Court
Case No : W.P.(S) No. 229 of 2014

Police Constable 1151 Chandra Shekhar Prasad Yadav	APPELLANT
Vs	
State of Jharkhand	RESPONDENT

Date of Decision : 29-04-2016

Acts Referred:

Citation : (2016) 4 AIRJharR 688 : (2016) 3 JCR 536

Hon'ble Judges : Mr. Pramath Patnaik, J.

Bench : Single Bench

Advocate : Mr. Satish Prasad, Advocate, for the Petitioner; Ms. Nitika Agrawal, J.C. to A.G, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Pramath Patnaik, J.—In the instant writ application, the petitioner has approached this Court for quashing of the dismissal order dated 02.06.2003 passed by the S.P., Dhanbad-cum-Disciplinary Authority, which has been confirmed by the D.I.G., Bokaro, the appellate authority vide order dated 15.03.2004 as well as the revisional authority vide order dated 11.05.2011.

2. The brief facts, as delineated in the writ application, is that the petitioner joined as a Police Constable on 20.07.1971. While continuing, as such on 19.10.1997 the petitioner remained absent from duty. Departmental proceeding No.107/1999 has been initiated against the petitioner in the year 1999 and the inquiry proceeded ex parte and the impugned order of punishment was passed by the disciplinary authority-cum-S.P., Dhanbad on 02.06.2003. Being aggrieved by the impugned order of dismissal from services the petitioner submitted appeal before the D.I.G., Bokaro who vide order dated 15.03.2004 rejected the said appeal confirming the order of the disciplinary authority. Thereafter the petitioner submitted memorial/revision petition before the D.G.P., Jharkhand against the order passed by the appellate authority and the said revision was also rejected by the revisional authority. Thereafter, the petitioner submitted a mercy petition against the order of the D.G.P., to the Secretary, Home Department, Government

of Jharkhand.

Being aggrieved by the aforesaid orders, the petitioner left with no efficacious and alternative remedy has approached this Court, invoking extraordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievance.

3. Heard Mr. Satish Prasad, learned counsel for the petitioner and Ms. Nikita Agrawal, J.C. to A.G., appearing for the respondents.

4. Mr. Satish Prasad, learned counsel appearing for the petitioner has strenuously urged that the petitioner from the date of joining till his unauthorized absence i.e. from 20.07.1971 to 19.10.1997 has completed 26 years, 2 months and 29 days and is fully qualifying period of service for payment of pension including gratuity and other retiral benefits. Learned counsel for the petitioner further submits that Rules 56, 57, 58 and 59 of Jharkhand Pensions Rules entitles him for pension after rendering 15 years of service. Learned counsel for the petitioner further submits that the petitioner has served department nearly about 27 years and in view of the Jharkhand Service Rule 74, which says that a Government servant becomes entitle to get the pension and all retiral dues and benefit even though he voluntarily submits retirement. Learned counsel for the petitioner further submits that the petitioner ought to have been given compulsorily retirement instead of dismissal from service, which is shockingly disproportionate.

5. Learned counsel for the petitioner also submitted that in terms of completion of 10 years of regular service and due to the dismissal order dated 02.06.2003 the petitioner would be deprived of valuable benefit and the grievance of the petitioner shall be mitigated, if the matter is remitted to the respondent authority for considering grant of retiral benefits to the petitioner.

6. Per contra, a counter affidavit has been filed on behalf of respondent no.6, wherein at paragraph 8 and 9 it is stated as under:

"8. That when he left the place of posting for his treatment (medically) 19.10.1997 excluding 5 years 7 months 13 days, absent period till dismissal on 02.06.2003 and the dismissal order passed on 02.06.2003 by the S.P. Dhanbad-cum-Disciplinary Authority by District order no.1087/2003 which is later on confirmed subsequently by appellate authority i.e. D.I.G. Bokaro, the D.G., Jharkhand in Memorial/Revision petition and also the Secretary, Department of Homes Govt. of Jharkhand and all these confirmation of rejection order of representation of the petitioner are confirmed by different District Order of the S.P. Dhanbad, details are given below in para-4 of the writ.

9. That it is stated that it reveals from Annexure-1 to 4 of the writ petition especially Annexure-4 that petitioner left Bhuli O.P on 19.10.1997 for personal work at Dhanbad at 9.00 am and he did not return to his place of posting in Bhuli O.P. On the basis of the report of O/C Bhuli O.P. contained in memo no.445 dated 21.10.1997 it has been found that the petitioner absconding from his duty

without any intimation to the concerned authority and accordingly he was informed vide letter no.208 dated 22.01.1998 at his home address, but petitioner neither joined nor any intimation has been sent about his whereabouts. During Lok Sabha election 2009 he was also informed to assume his duty, but he failed and neglected to do so, which is violation of the terms and condition of service for such police constable. Thereafter, one departmental proceeding has been in against the petitioner after giving sufficient opportunity to file show cause. During the course of aforesaid departmental proceeding witnesses of the then O.P. I/C, Bhuli O.P. and Mohd. Rabbani I/C of leave section has been taken in which both the witnesses has admitted he unauthorized absconding of the petitioner from his duty. Petitioner filed explanation, stating that he lost his mental control and he is undergoing treatment under Dr. Ashok Prasad, specialised in Metal disease at Ranchi and petitioner only furnished cash memo relating to medicine worth Rs. 269/- only which goes to show that he has not been admitted in Mental Hospital and got his treatment through other outside Doctors. Thus, conducting officer has proved the charges of unauthorized absconding from duty by the petitioner. Conducting Officer has also informed the petitioner at his home address by registered post for filing final show cause and the petitioner has failed and neglected to file final show cause nor reported or joined in his duty as such recommended for dismissal of the service of the petitioner. Thereafter, dismissal order dated 02.06.2003 has been passed by the respondent no.6 and petitioner has filed appeal before the appellate authority which was also dismissed by the concerned appellate authorities as admitted in the writ itself."

7. Learned counsel for the respondents has supported the impugned orders reiterating the plea taken in the counter affidavit.

8. On perusal of the documents on record, I find that the petitioner absconded on 19.10.1997. Thereafter, due to his unauthorized absence proceeding was initiated and that was proceeded ex-parte and vide order dated 02.06.2003 disciplinary authority dismissed him from services. So far as disciplinary proceeding is concerned, there is absolutely no infirmity, so as to call any interference, but the petitioner from the date of initial appointment till he left the services i.e. from 20.07.1971 till 02.06.2003, put in 31 years 11 months 18 days i.e nearly 32 years of service. Since, he left the post on 19.10.1997 for his medical treatment, so actual period from 20.07.1971 to 19.10.1997 he completed 26 years, 2 months 29 days, which entitles him for retiral benefits.

9. After hearing the learned counsel for the parties at length and on having bestowed my anxious consideration to the documents on records, I find substance in the submission advanced by the learned counsel for the petitioner. The petitioner has served the department for more than 26 years prior to his unauthorized absence and it is nobody's case that on previous occasion the petitioner was guilty of unauthorized absence or he was a habitual absentee and neither the appellate authority nor the revisional authority have considered the

specific defence taken by the petitioner and the order passed by the appellate authority as well as the revisional authority do not disclose any application of mind so far as defence taken by the petitioner is concerned.

10. In this respect, it would be relevant to refer to the judgment of the Hon''ble Apex Court reported in (2013) 6 SCC 530 (Chairman, Life Insurance Corporation of India and Ors. v. A. Masilamani), wherein at paragraph 19, it has been held as under:

"19. The word "consider" is of great significance. The dictionary meaning of the same is, "to think over", "to regard as", or "deem to be". Hence, there is a clear connotation to the effect that there must be active application of mind. In other words, the term "consider" postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the 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 (Vide Indian Oil Corpn. Ltd. v. Santosh Kumar and Bhikhubhai Vithalabhai Patel v. State of Gujarat)."

11. In that view of the matter, the impugned order dated 02.06.2003 passed by the disciplinary authority being confirmed by the appellate authority vide order dated 15.03.2004, are quashed and set aside and the matter is remitted to the appellate authority for considering the matter afresh, in accordance with law so far as grant of post retiral benefits is concerned.

12. The writ petition is disposed of in the aforesaid terms.