

(2009) 12 AHC CK 0317
In the Allahabad High Court

Prashat Kumar Chaudhary

APPELLANT

Vs

State of U.P. thr. Secy. Home and Others

RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 324

Citation : (2009) 12 AHC CK 0317

Hon'ble Judges : Sheo Kumar Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sheo Kumar Singh, J.—Heard Sri S.C. Tiwari, learned Advocate who appeared in support of this writ petition and learned Government side.

2. Challenge is to the order of dismissal dated 8.8.2007 passed by the Superintendent of Police, Baharich and the appellate order dated 31.12.2007 passed by the Deputy Inspector General of Police, Devi Patan Region, Gonda as contained in annexure No. 3 to the writ petition.

3. Although a counter affidavit was directed to be filed on 9.9.2009 but no counter affidavit is there. There appears to be no dispute about the facts, it is rightly submitted by the learned Counsel that keeping the matter pending will be futile exercise and thus the order which is being proposed to pass may not detain this Court in disposing of the writ petition finally.

4. For disposal of the writ petition, facts in brief will suffice.

5. Petitioner was selected as constable in civil police in the year 2005 and he was allotted district Baharich. A show cause notice was issued by the respondent No. 3? on 3.8.2007 by which on the charge that against the petitioner there was a case registered vide case crime No. 1159-A of 1999 under Sections 147, 148, 149, 307, 324, 504, 427 IPC , he is to be discharged from service. No reply appears to have been filed by the petitioner as the impugned order came to be

passed within couple of days i.e. 8.8.2007. Appeal was filed by the petitioner but that met with the same fate and thus petitioner challenges both the orders passed by the respondent No. ? 2 and 3.

6. Submission is that the impugned order passed by the respondents, besides being illegal, is also in violation of principles of natural justice. As no adequate opportunity of either filing the reply or enquiry was given? the impugned order is totally whimsical and thus is liable to be set aside on this ground alone.?

7. It is further submitted that on the facts also the very premises on which the order is passed is factually not acceptable as the case crime No. 1159-A of 1999, resulted into a final decision by order of the competent court dated 29.7.2005 and petitioner was honourably acquitted/discharged. Submission is that in fact it was a family dispute in respect to which compromise was filed which was also taken note by the competent court and both these things are brought on record of this Court along with the affidavit which has been filed in support of the disposal? application.

8. Lastly it is submitted that before the order of dismissal which can be? said to be the extreme punishment an opportunity has to be given and thus the shelter which has been taken by the respondent No. 3 of? Rule 8 (2) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 can be said to be of no application.

9. It is submitted that it has been decided in series of judgments of this Court that enquiry cannot be dispensed with unless the facts and circumstances and the contingencies so mentioned in the aforesaid rule exists.

10. Reference has been given to the decision given by this Court in the case of Constable 703 Keshav Nath Rai v. State of U.P. reported in (2009) 1 U.P.L.B.E.C. 914 and also the decision given by this Court in the case of Bishambhar Singh Bhadoria v. State of U.P. and Ors. reported in (2008) 3 U.P.L.B.E.C. 2357.

11. On a perusal of the rule noted above of which shelter has been taken for passing the impugned order? without holding the enquiry it is clear that the authority is empowered to pass the dismissal? or removal or reduction in rank only when for the reasons to be recorded in writing the authority found himself to be satisfied that the enquiry is not practicable.

12. Learned Government side rightly submits that as? there is no factual dispute about various aspects as has come on the record and on the admitted facts as no enquiry has proceeded, if the concerned authority is asked to get an enquiry conducted for passing appropriate orders within a time bound frame then both sides may get justice.

13. On a perusal of the order of the respondent No. 3 it is clear that no enquiry was proceeded. A show cause notice appears to have been given on 3.8.2007 and thereafter on 8.8.2007 the order was passed.

14. Petitioner has brought on record the judgment of the competent court and copy of the compromise from which it is clear that criminal case as referred to in the impugned order ended in favour of the petitioner.

15. Be as it may, neither on the facts, in the light of the material as has been brought on record the order is found to be prima facie justified nor otherwise on a perusal of the rules referred above the order is found to be justified.

16. Accordingly, this petition succeeds and is allowed. Order dated 8.8.2007 and 31.12.2007 passed by the respondents are hereby quashed. Respondent No. 3 is directed to give an opportunity to the petitioner in respect to charges and after completing enquiry within shortest possible time preferably within a period of three months from the date of receipt of certified copy of this order in accordance with law, he is to pass orders.