

(2005) 10 AHC CK 0093

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 30647 of 2003

Prem Chand

APPELLANT

Vs

The State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 07-10-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 497, 498
Uttar Pradesh Government Servants (Conduct) Rules, 1956 — Rule 29, 3

Citation : (2006) 5 AWC 4324

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Ashok Khare, V.S. Gupta, Shyamji Gaur and V.K. Gupta, for the Appellant; Jai Krishna Tewari and Surendra Kumar Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—While the petitioner was posted as a constable in Bilhaur in District Kanpur Nagar in the year 2000, a First Information Report was registered against him u/s 498 IPC for enticing a married women with the intention of having an illicit relationship. Based on the registration of the case, the petitioner was suspended, and subsequently by another order dated 22.5.2001, the suspension order was revoked subject to the continuation of the enquiry proceedings. The petitioner was charge sheeted. He submitted a reply which was not found satisfactory and an Inquiry Officer was appointed to conduct a domestic enquiry. The Inquiry Officer, after giving full opportunity to the petitioner, submitted an enquiry report. Based on the enquiry report, a show cause notice Was issued by the Disciplinary Authority. The petitioner submitted his reply and the Disciplinary Authority after considering the enquiry report, and the reply of the petitioner, passed an order dated 17.7.2002 dismissing the petitioner from the service.

2. Aggrieved, the petitioner filed writ petition No. 32856, of 2002 which was dismissed on the ground of alternative i remedy. Consequently, the petitioner preferred an appeal which was also rejected by an order dated 30.11.2002, and thereafter, the revision of the petitioner was also dismissed by an order dated 25.1.2003. The petitioner has now filed the present writ petition for the quashing of the aforesaid orders and for the reinstatement in the service.

3. Heard Sri Ashok Khare, the learned Senior Counsel assisted by Sri V.S. Gupta, the learned counsel for the petitioner and Sri Jai Krishna Tewari, the learned Standing Counsel appearing for the respondents.

4. The learned counsel for the petitioner submitted that against the same charge, criminal proceedings were initiated, in which a final report was submitted which was accepted by the Criminal Court, and therefore, the charge against the petitioner u/s 498 IPC was not proved in the criminal proceedings and that the petitioner was exonerated of the charges. Since the charges were purely criminal in nature, consequently, the said charges could not be made the subject matter of a departmental action against the petitioner. The petitioner further submitted that the lady in question had also given an affidavit and her statement was recorded u/s 164 of the Criminal Procedure Code, in which she denied having any kind of a relationship with the petitioner. The learned counsel for the petitioner submitted that the statement and affidavit has not been considered by the Inquiry Officer,

5. The learned counsel for the petitioner further submitted that the conduct of the petitioner, being a government servant, is governed by the U.P. Government Servant Rules 1956 and that the allegations levelled against the petitioner, even assuming it to be correct, at best, constitute a charge against the petitioner for having cohabited with a married lady with her consent and such a conduct was not prohibited under any provision of the U.P. Government Servant Conduct Rules 1956. The learned counsel for the petitioner further submitted that Rule 29 of the aforesaid Rules of 1956 prohibited bigamy whereas, the petitioner had not committed bigamy and, therefore., had not misconducted himself. In support of the aforesaid admission, the learned counsel has placed reliance in the case of *Pravina Solanki v. State of U.P. and Ors.*, 2001(2) ESC 719 and in the case of *Shahjahan Khan v. State of U.P. and Ors.*, 2002(46) ALR 741 , in which it was held that if an employee does some act in his private life which does not interferes in his official duties, then such an act could not be termed as a misconduct. The learned counsel for the petitioner further submitted that the misconduct should be such a conduct which was prohibited and that an unspecified conduct which does not come under the purview of the Conduct Rules of 1956, could not be made a basis of a departmental action treating such unspecified conduct, as a misconduct. In support of his submission, the learned counsel for the petitioner placed reliance in the case of *Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others*, , in which the Supreme Court held that a misconduct must have a causal connection with the

place of work and that the misconduct should be committed within the establishment and during the duty hour.

6. On the other hand, the learned counsel for the respondents submitted that the petitioner has an efficacious remedy of filing a claim application before the Public Service Tribunal, and therefore, this Court should not exercise its discretion under Article 226 of the Constitution. Learned Counsel for the respondents further submitted that the punishment awarded commensurated with the misconduct which does not require any interference in a writ jurisdiction. The learned Counsel for the respondents further submitted that the relationship of the petitioner with the lady was -adulterous and promiscuous and that the charge of abduction was also proved and therefore, the action of the petitioner was unbecoming -,.of a government servant, since, the ingredients of Sections 497 and 498 IPC were proved in the domestic enquiry. The learned counsel further submitted that the action of the petitioner lowered the prestige and dignity of the department. Further the petitioner was required to maintain absolute integrity and devotion to duty and was required to regulate his behaviour as per specific or implied orders of the Government which was not done. Consequently, the petitioner was not entitled to any relief.

7. In *Abhai Raj Singh Vs. Bank of Baroda and Another*, held-

" It is well settled principle of law that the degree, of proof required in a departmental inquiry is vastly different than the degree of proof required to prove a criminal charge. In the departmental inquiry the finding can be recorded in preponderance of probabilities and it is not necessary that the charge must be proved to the hilt. The departmental proceedings and the criminal proceedings are entirely different in nature. They operate in different fields and they have different objectives. The materials or the evidence in the two proceedings may not be the same and, in some cases, at least, materials or evidence which would be relevant or open for consideration in the departmental proceedings, may be irrelevant or open for consideration in the departmental proceedings, may be irrelevant in the criminal proceedings. The Rules relating to the appreciation of the evidence in the two inquiries may also be different. The standard of proof, the mode of enquiry and the rules governing the enquiry and the trial in both the cases are entirely distinct and different.

The law is well settled that the Inquiry Officer can come to a different conclusion than arrived at by a Criminal Court and that it is immaterial whether the charges were identical or the witnesses were the same, as long as the power exercised by the Criminal Court and the inquiry under the relevant law and the service law was distinct and separate. There is no bar for holding a disciplinary proceedings during the pendency of the trial though the basis may be one and the same. It is for the disciplinary authority to decide as to whether in a given case it should keep the domestic inquiry pending till the outcome of the criminal trial or not."

8. In view of the aforesaid, the disciplinary authority was competent to initiate a

domestic enquiry. The contention of the, learned counsel for the petitioner that having being exonerated in a criminal proceeding, the domestic enquiry could not be initiated is wholly erroneous and misconceived. A first information report was lodged and it is alleged that a final report was submitted. However, no proof has been filed to show as to whether the report was accepted by the criminal court or not. In any case, the degree of proof required in a departmental enquiry is totally different than the degree of proof required in a criminal proceedings. Therefore, the contention of the learned counsel for the petitioner that since the petitioner was subjected to a criminal proceeding in which he was exonerated is not correct and, in any case, such exoneration, if any, cannot compel the departmental authorities not to proceed in the domestic enquiry proceedings.

9. The contention of the learned counsel for the petitioner that (he petitioner had not committed, any misconduct under the U.P. Government Servants Conduct Rules, 1956 is patently erroneous. Rule 3 of the aforesaid Rules of 1956 states as follows:-

" 3. General- (1) Every Government servant shall at all times maintain absolute integrity and devotion to duty.

(2) Every Government servant shall at all times conduct himself in accordance with the specific or implied orders of Government regulating behaviour and conduct which may be in force."

10. Before proceeding any further, it is necessary to know what actually is a misconduct. Misconduct has been defined in Black's Law Dictionary, 6th Edition, as:

Misconduct. A transgression of some established and Definite rule of action, a forbidden act, a dereliction from duty, Unlawful behaviour, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness

and further defines " misconduct in office as :

" Misconduct in office. Any unlawful behaviour by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office holder, had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act. See also Malfeasance; Misfeasance."

11. In Government of Andhra Pradesh v. P. Posetty 2002(2) SCC 220, the Supreme Court held that the charge of abuse of his official position activated by corrupt motives amounted to a violation of the Conduct Rules.

12. The said principle of law is squarely applicable to the present case.

13. In State of Punjab and Others Vs. Ram Singh Ex. Constable, the Supreme Court held:

"Thus it could be seen that the word, "misconduct" though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject " matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The Police service is "a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

14. In the present case, the petitioner was charged for abducting a married women with the intention of having an illicit relationship. The Inquiry Officer has given a finding that the petitioner had enticed and abducted a married women and was cohabiting with a married lady. The Inquiry Officer further found that on account of the action of the petitioner, the image of the department had been lowered in the eyes of the public. In my opinion, the petitioner is guilty of committing adultery, as admittedly, he was cohabiting with a married lady without the consent of the husband of the lady. In my opinion, the charge which has been proved in the domestic enquiry proceedings is of such a kind of a conduct which violates the mandate given in Rule 3 of the Conduct Rules of 1956, which indicates, that a government employee shall at all times maintain absolute integrity and devotion of duty and shall conduct himself at all times in accordance with the specific or implied orders of the government regulating the behaviour and conduct of a Government employee. In my opinion} the petitioner has not maintained absolute propriety or integrity or discipline. The conduct of the petitioner was unbecoming of a government employee and he had misused his position and had brought an embarrassment to the department and lowered the image of the department. Similar view was held by a Division Bench of this Court in State of U.P. v. B.N. Singh AIR 1989 All. 359.

15. In view of the aforesaid, the contention of the petitioner that the petitioner having cohabited with a married lady with her consent does not amount to a misconduct is patently erroneous. Consequently, the judgement cited by the learned counsel for the petitioner has no application and is also distinguishable to the present facts and circumstances of the case.

16. It is relevant to state here that a police service is a disciplined force and demands strict adherence to the rules and procedure more than any other department.

17. In view of the aforesaid, the impugned order does not require any interference from this Court. The writ petition fails and is dismissed. However, there shall be no order as to cost.