

(2014) 11 CHH CK 0050
In the Chhattisgarh High Court
Case No : Writ Petition No. 194 of 2005

Ravi Kumar Shrivastava

APPELLANT

Vs

State of Madhya Pradesh (now Chhattisgarh)

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Citation : (2015) LabIC 1428

Hon'ble Judges : Navin Sinha, Acting. C.J.

Bench : Single Bench

Advocate : H.B. Agrawal, Sr. Advocate and Preeti Yadav, for the Appellant; B. Gop Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Navin Sinha, Actg. C.J.? Heard Learned Senior Counsel for the Petitioner and the State. The Petitioner was a Police Constable. He was served with a memo of three charges on 03.04.1989. Charge No. 1 alleged unauthorized absence from 21.10.1988 to 04-01-1989 for a total of 75 days reflecting gross negligence, lack of devotion to duty and indiscipline. Charge No. 2 stated that he did not reply to departmental query dated 09.02.1989 and on the contrary by letter dated 28.02.1989 used uncultured language indicative of indiscipline and gross dereliction of duties. Charge No. 3 stated that despite earlier punishments there had been no improvement in his conduct, including unauthorized absence in the past also.

2. An Inquiry Officer was appointed. Materials on basis of which the charge was to be proved were given to him along with sufficient opportunity to participate in the inquiry. Notwithstanding the same he never participated in the departmental inquiry leading to an ex parte finding of guilt against him with regard to charge Nos. 1 and 3 while he was exonerated of charge No. 2. The prosecution produced five witnesses and eight documents in support of the charge. A second show-cause notice for a difference of opinion with regard to exoneration of charge No. 2 was also given on 26.08.1989 duly replied by the petitioner, after which he was

dismissed from service by order dated 09.09.1989 for charge Nos. 1 and 3. For charge No. 2, one increment was stopped for one year effective from 01.10.1989 without cumulative effect.

3. Learned Senior Counsel for the Petitioner submitted that in O.A. No. 1012/1989 the Madhya Pradesh State Administrative Tribunal at Jabalpur on 19.06.1989 had directed to take a final decision on his leave case. Subsequent to the order of dismissal, the Superintendent of Police on 14.09.1989, after noticing the order of dismissal dated 09.09.1989, adjusted the period of unauthorized absence from 21.10.1988 to 04.01.1989 against unearned Leave. Once the period of unauthorized absence was regularized, the charge for unauthorized absence no more existed. Dismissal on that ground impliedly stood recalled and the Petitioner was entitled to reinstatement after which the authorities could deal with him in the manner desired. If the order of dismissal did not stand impliedly recalled the punishment on charge No. 2 was unworkable as the question of stopping any increment from a period after dismissal does not arise, the master servant relationship having come to an end.

4. Learned Counsel for the State has opposed the application submitting that though the petitioner did not participate in the departmental proceedings despite adequate opportunity notwithstanding his absence the ex parte proceedings has been conducted in accordance with law. Five prosecution witnesses were examined and eight documents exhibited. Proper second show-cause notice was also given along with grounds for difference of opinion on charge No. 2. There is no allegation of any illegality in conduct of the departmental proceedings: It was forcefully contended that by virtue of the order dated 14.09.1989, the misconduct proved in the departmental proceedings does not stand abrogated.

5. The Court has considered the submissions on behalf of the parties. There being no challenge to the conduct of the departmental proceedings it is not necessary to deal with the same.

6. There were three charges against the petitioner. One related to unauthorized absence of 75 days from 21.10.1988 to 04.01.1989. The second related to use of uncultured language in his reply and the third related to his being a repeated defaulter on issue for unauthorized absence despite earlier punishments imposed. Dismissal was ordered with effect from 09.09.1989 with regard to charge Nos. 1 and 3.

7. If dismissal has been ordered from 09.09.1989, the subsequent regularization of the period of unauthorized absence from 21.10.1988 to 04.01.1989 as unearned leave does not wash off the misconduct against the petitioner for being absent without authority of law. If the period was not adjusted against unauthorized leave it would have resulted in break in service for the petitioner from 21.10.1988. It gives him the benefit of service otherwise theoretically from 21.10.1988 to 04.01.1989 and onwards till dismissal on 09.09.1989.

8. The order dated 14.09.1989 relied upon to contend implied recall of dismissal

does not in any way affect the order for dismissal under charge No. 3. The language used in the order dated 14.09.1989 is only to regularize the period of unauthorized absence against unearned leave. The order dated 09.09.1989 though mentioned therein has not been recalled. In *Om Prakash Vs. State of Punjab and Others*, considering precedents on the issue it was observed as follows :--

"10. The next contention that is raised is that the period of absence of the appellant having been regularised, the aforesaid charge of unauthorised absence would fall through and, therefore, the order of punishment is required to be set aside and quashed. We are unable to accept the aforesaid contention as period of the unauthorised absence was not condoned by the authority but the same was simply shown as regularised for the purpose of maintaining a correct record."

9. That leaves the only question with regard to unworkable nature of punishment for charge No. 2. It is not considered necessary to deal with the same as even after severance thereof for which the Inquiry Officer had originally exonerated him, the punishment imposed is still sustainable under charge Nos. 1 and 3 applying the principle for bifurcation of a composite order segregating the good part and the bad part of the order and even after separation, the good part of the order still remains sustainable. In *R. Jeevaratnam Vs. The State of Madras*, it was observed as follows:--

"5.....The two parts of the order are clearly severable. Assuming that the second part of the order is invalid, there is no reason why the first part of the order should not be given the fullest effect. The Court cannot pass a new order of dismissal, but surely it can give effect to the valid and severable part of the order."

10. The petitioner was a member of a uniformed and disciplined force. The reliance by him on regularization for the period of absence is but an admission of unauthorized absence. The standards that will apply to him shall be different from that of a civil post. Discipline is the hallmark of an uniformed service. While a long period of absence for a civilian post may not have as serious consequence as a single day's absence can have for a uniformed force. If discipline crumbles in an uniformed service, the entire edifice of the service collapses. The Court is of the considered opinion that the aspect for discipline in a uniformed service should not be lightly interfered with by judicial orders unless there are grave and compelling circumstances for the same, which is not the case presently as the period of absence for 75 days stands established. In (2005) 13 SCC 709 (*Union of India v. Datta Linga Toshatwad*) it was observed as follows :--

"8.....Members of the uniformed forces cannot absent themselves on frivolous pleas, having regard to the nature of the duties enjoined on these forces. Such indiscipline, if it goes unpunished, will greatly affect the discipline of the forces....."

The writ petition is dismissed.