

(2015) 06 MAN CK 0013

In the Manipur High Court

Case No : Writ Petition (C) Nos. 556 of 2010 and 468 of 2011

S. Birachandra Singh and Others

APPELLANT

Vs

The State of Manipur and Others

RESPONDENT

Date of Decision : 02-06-2015

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20(b)(i), 29, 60(3)

Citation : (2015) 06 MAN CK 0013

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J;Kh. Nobin Singh, J

Bench : Division Bench

Advocate : A. Mohendro and M. Hemchandra, for the Appellant; R.S. Reisang, Sr. Govt. Adv., Advocates for the Respondent

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J.—Heard Shri A. Mohendro, learned counsel appearing for the petitioner in W.P. (C) No. 468 of 2011 and Mr. M. Hemchandra, learned counsel appearing for the petitioner in W.P. (C) No. 556 of 2010 as well as Mr. R.S. Reisang, learned Sr. Govt. Advocate appearing for the State Respondents.

2. Both the writ petitions arise out of the similar set of facts and the same are being disposed of by this common judgment and order.

3.1. According to the petitioners, they were appointed as constables in the Manipur Police vide orders dated 10-11-1982 and 28-11-1973 respectively and had been rendering their services with diligence till when they were placed under suspension vide orders dated 20-04-1997 on the allegation that they were involved in a case under F.I.R. No. 4(4) 97 NBS-PS u/s. 20(b)(i)/29/60(3) ND and PS following arrest on 04-04-1997 by the Army personnel of 12th Sikh Light Infantry, Nungba Project Post for their alleged possession of contraband substance "Ganja"(or Marijuana) while coming from Imphal to Jiribam in a Maruti van.

3.2. The petitioners were informed about the charges leveled against them vide memorandum dated nil, issued by the Superintendent of Police, which was received by the petitioner, Shri S. Paka Singh on 16-06-1997 and in response thereto, they submitted their written statements of defence on 13-06-1997 and 19-06-1997 respectively denying the charge levelled against them. After having kept the Departmental Enquiry pending against them for a long time, the Enquiry Officer finally submitted a Report on 30-06-2002 and on receipt of the said Enquiry Report, the Superintendent of Police, Imphal East District, Manipur issued show-cause notices dated 06-07-2002 for imposing penalty against them. In spite of their written statements dated 18-07-2002, the Superintendent of Police, Imphal East District, Manipur issued the impugned orders dated 21-08-2002 dismissing them from their services. Being aggrieved by the said order of dismissal dated 21-08-2002, the petitioners submitted their representations dated 23-08-2002 to the Director General of Police, Manipur for setting aside the said order of dismissal issued by the Superintendent of Police.

3.3. In the meantime, the Judge, Special Court (ND and PS), Manipur passed an order dated 30-04-2007 acquitting the petitioners from the charge alleged to be involved in the said case under F.I.R. No. 4(4) 97 NBS-PS u/s. 20(b)(i)/29/60(3) ND and PS holding inter alia that the Prosecution had miserably failed to prove the charge against the petitioners. After the petitioners having been acquitted, they submitted their representations dated 04-01-2008 and 11-12-2007 to the Inspector General of Police (L/O. - I) praying that they be reinstated to their services following their acquittal by the Special Court. The wife of the petitioner, Shri S. Birachandra Singh also submitted a representation dated 20-02-2009 to the Hon"ble Chief Minister, Manipur who had directed the authorities concerned to examine and initiate the process for reinstatement as per rules as a special case.

3.4. So far as the petitioner, Shri S. Paka Singh is concerned, he preferred an appeal dated 08-01-2008 to the Inspector General Police (L/O. - 1), Manipur requesting for setting aside the order of dismissal. Being aggrieved by the order of dismissal dated 21-08-2002 and non-disposal of his appeal dated 08-01-2008, the petitioner filed a writ petition being W.P. (C) No. 735 of 2010 which was also disposed of by the Hon"ble Gauhati High Court, Imphal Bench on 23-11-2010 with the direction to the Deputy Inspector General of Police (Range - I) to consider and dispose of the said appeal. In compliance of the court's order dated 23-11-2010, the appellate authority i.e., the Dy. Inspector General of Police rejected the appeal dated 08-01-2008 vide its order dated 27-05-2011. The present writ petitions have been filed by the petitioners praying for quashing the orders of dismissal dated 21-08-2002 and the order dated 27-05-2011 rejecting the appeal preferred by the petitioner, Shri S. Paka Singh.

4. Although many grounds have been taken in the writ petitions, Shri A. Mohendra and M. Hemchandra, the counsels appearing for the petitioners, during the course of hearing, have confined their arguments mainly on two grounds and

have, accordingly, submitted that after the petitioners having been acquitted by the learned Judge, Special Court (ND and PS) in Special Trial Case No. 34 of 2004 from the charge, the petitioners ought to have been reinstated to their services and that the findings of the Departmental Enquiry are perfunctory and perverse as the same cannot be said to have proved the charge levelled against them. On the other hand, Shri R.S. Reisang, the learned Senior Government Advocate has submitted that there is no law or rule for compulsory reinstatement of the petitioners after their acquittal or being discharged from the charge in the criminal proceeding and that the Inquiry Officer, after examining the materials on record including the evidence of two witnesses, gave his finding that the charges levelled against them have been proved beyond any shadow of doubt as the petitioners were physically involved in carrying contraband Ganja.

5. It is no doubt true that the petitioners are not entitled to be reinstated automatically on their being acquitted by the learned Judge, Special Court (ND and PS) in Special Trial Case No. 34 of 2004 from the charge. But after the petitioners having been acquitted in the criminal case, the respondents ought to have considered their representations in terms of the law laid down by the Hon"ble Supreme Court in a catena of decisions including that of G.M. Tank Vs. State of Gujarat and Another, AIR 2006 SC 2129 : (2006) 3 CTC 494 : (2006) 11 JT 36 : (2006) 3 LLJ 1075 : (2006) 5 SCALE 582 : (2006) 5 SCC 446 : (2006) SCC(L&S) 1121 : (2006) 3 SCR 253 Supp : (2006) 3 SLJ 312 : (2006) AIRSCW 2709 : (2006) 4 Supreme 740 wherein appellant was, after holding departmental enquiry, dismissed from service for the offence of acquisition of movable and immovable properties disproportionate to his known source of income and the appellant was subsequently acquitted by the criminal court by holding that the prosecution failed to prove the charges levelled against him, the Hon"ble Supreme Court held:

"31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the acquittal should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceeding challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

It may be noted that in the present case also, the department proceedings and the criminal case are based on identical and similar set of facts and the charge in the departmental proceedings and that of the criminal court are almost one and the same. The witnesses to be examined, remain the same but only two have been examined in the departmental enquiry. The criminal court, on examination of six witnesses, came to the conclusion that the prosecution had failed to prove

the charge against the petitioners and moreover, the judicial pronouncement was made after a regular trial and on hot contest. Therefore, it would be unfair and unjust to uphold the findings of the enquiry report which is based only on two witnesses who are not witness to the seizure of the contraband Ganja from the possession of the petitioners.

6. As regards the other issue, the learned counsels appearing for the petitioners have submitted that the findings of the Departmental Enquiry are perverse as the same are based on no evidence. From the perusal of the report of the Inquiry Officer, it is clear that his findings are based only on the testimony of two State witnesses namely (a) Inspector L. Khullen Singh and (b) Inspector S. Raghumani Singh. In order to appreciate the rival contentions, this court perused the DE files produced before this court by the learned Senior Government Advocate and on perusal thereof we find that these two witnesses are not the eye witnesses to the seizure of the said contraband Ganja from the possession of the petitioners and they have made their statements on the basis of information received by them from their subordinates. Even the other witness namely Shri. S. Bhimchandra Singh, ASI, Nungba P.S. who registered the case under the said FIR on receipt of a written report from the Army personnel and re-seized the contraband Ganja, was not examined at all, leave alone Sub. Sucha Singh, Security Force, 12th Sikh Light Infantry who apprehended the petitioners and seized the contraband Ganja. The materials brought on record pointing out the guilt are required to be proved but the department has failed to prove the seizure of contraband Ganja from the possession of the petitioners. Therefore, the inquiry report can be safely held to be based on evidence to come to the conclusion that the charge levelled against the petitioners, has been proved and the same being perverse, the enquiry can be held to be vitiated. Considering the facts of the present case, this court is of the view that the order of dismissal, impugned herein, issued on the basis of the said inquiry report is not sustainable in law and is liable to be quashed and set aside.

7. With the above observations, the writ petitions being W.P. (C) No. 556 of 2010 and W.P. (C) No. 468 of 2011 are allowed and the orders of dismissal dated 21-08-2002, issued by the Superintendent of Police, Imphal - East, Manipur, are quashed and set aside with the following directions:

(a) From the materials on record, it is not clear as to whether the petitioner, Shri. S. Birachandra Singh has really attained the age of superannuation or not as on date, even though he was 55 years of age at the time of filing the present petition in the year 2010 and therefore, the respondents are directed to reinstate him to his service forthwith and allow him to continue in service as usual with monetary benefits w.e.f. 30-04-2007, if not attained the age of superannuation and if already attained the age of superannuation, he shall be formally terminated from service by issuing an order to that effect and thereafter, he shall be given all consequential monetary benefits w.e.f. 30-04-2007, pension and retiral benefits in accordance with law within a period of six months from the

date of receipt of a certified copy of this judgment and order;

(b) Since the petitioner, Shri S. Paka Singh has already attained the age of superannuation, the respondents are directed to reinstate him formally and issue an order terminating him from service and thereafter, he shall be given all consequential monetary benefits w.e.f. 30-04-2007, pension and retiral benefits in accordance with law within a period of six months from the date of receipt of a certified copy of this judgment and order. There shall be no order as to costs.