

(2012) 08 PAT CK 0037
In the Patna High Court
Case No : CWJC No. 2091 of 2003

Shyam Deo Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 4 PLJR 929

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Ram Hriday Prasad and Binay Kumar Singh, for the Appellant; Jay Shankar Barnwal, for the Respondent

Final Decision : Allowed

Judgement

Chakradhari Sharan Singh, J.—As per pleadings in the writ application particularly with reference to paragraph-1, quashing of Annexure-3 has been sought. Annexure-3 is the order dated 17.11.1998, whereby the disciplinary authority i.e. the Senior Superintendent of Police, Patna maintained the earlier order of discharge of the petitioner. This order dated 17.11.1998 was passed on remand by this Court to reconsider the quantum of punishment, keeping in mind the gravity of charge. Annexure-3, quashing of which has sought in the writ application has already been quashed by the order dated 28.1.2002 passed by this Court in CWJC No. 7209 of 2000 (Annexure-5). This Court while quashing the order dated 17.1.1.1998 had remanded the matter back again to the Senior Superintendent of Police, Patna to reconsider the matter on the question of quantum of sentence. Pursuant to this order dated 28.1.2002 (Annexure-5), the Senior Superintendent of Police, Patna has passed the order dated 26.3.2002 (Annexure-6), again maintaining the order of discharge passed earlier against the petitioner. I, thus, find an error, clerical in nature, in paragraph-1 of the writ application in which instead of Annexure-6, Annexure-3 has been mentioned and I mould the relief prayed for by the petitioner by treating this writ application for

quashing of Annexure-6 dated 26.3.2002, in view of the pleadings in the writ application as also the facts and circumstances of the case. The petitioner was a constable in Patna District Police. He was charged of remaining absent for 22 days unauthorizedly without any permission from the higher authorities. A departmental proceeding was initiated as regards the aforesaid charge against the petitioner and a conducting officer was appointed. The Conducting Officer submitted his report holding the petitioner guilty of the charge. In course of the said domestic enquiry the petitioner is said to have not participated. On the basis of the report of Conducting Officer, the Senior Superintendent of Police, Patna the disciplinary authority vide his order dated 17.3.1987 discharged the petitioner from service for his unauthorized absence for 22 days.

2. The said order dated 17.3.1987 was challenged before this Court by the petitioner vide CWJC No. 6012 of 1992. This Court disposed of the writ application by an order dated 6.8.1998 and held punishment to be shocking to the conscience of the Court and remanded the matter back to the disciplinary authority, i.e. Sr. Superintendent of Police, Patna to reconsider the quantum of punishment imposed upon the petitioner. The said order dated 6.8.1998 passed by this Court is reported in Shyam Deo Singh Vs. The State of Bihar and Others, . For quick reference paragraphs 16 and 17 of the said judgment are quoted hereinbelow as the observations and direction have bearing on the adjudication of the present writ application:-

16. Considering all these views which are not very consistent in nature, this Court is of the opinion that in a case like this where a person has been dismissed from service for absence from duty for 22 days, the punishment imposed has been rather disproportionate compared to the gravity of the misconduct. But this Court does not quash the dismissal order. This Court feels that ends of justice will be sufficiently met if the following directions are passed.

17. Learned counsel for the respondent has categorically stated that the impugned order has not been passed considering any other delinquency of the petitioner concerned. Therefore, the sole reason for passing the impugned order is one of absence of 22 days. In the facts of this case, this court feels that justice and equity of this case demands that the quantum of punishment imposed upon the petitioner deserves reconsideration. So without quashing the impugned order of dismissal passed against the petitioner, this Court remands it to be Senior Superintendent of Police, Patna (respondent No. 6), who has passed the impugned order of dismissal to reconsider the quantum of punishment imposed upon the petitioner in the light of the observation made in this judgment. Since the matter is an old one, the order of dismissal having been passed on 17.3.1987, it is expected that the reconsideration by respondent no. 6 will be made within a period of three months from the date of receipt/service of a copy of this judgment upon respondent no. 6.

3. This is to be noted that in the order dated 6.8.1998, this Court took note of the fact that the petitioner did not participate in issue of domestic enquiry in

paragraph 12 and rejected the petitioner's contention relating to his grievance against the conduct of such enquiry in paragraph 12 in following terms:-

12. This Court considering the rival contentions of the parties is of the opinion that the petitioner being a member of the disciplined force should have been present in the line and should have attended the enquiry. By not attending the enquiry he has lost any opportunity to defend himself, he should not blame the department rather he should blame himself for the same. Apart from that the question of non-furnishing of enquiry report being a disputed question as would appear from the averment made in the writ petition and the counter affidavit, this Court cannot pass any order on the same.

4. Thereafter, vide order dated 17.11.1998, (Annexure-3) passed in purported compliance of this Court's order dated 6.8.1998, the Senior Superintendent of Police, Patna passed an order which is Annexure-3 to the present writ application. The Senior Superintendent of Police, Patna in his order dated 17.11.1998 (Annexure-3) recorded that the petitioner was rightly discharged in the said departmental proceeding bearing No. 192/83. Dealing with paragraph 17 of the judgment of this Court as referred to above, wherein it was mentioned that the sole reason for passing the order of discharge was absence of 22 days, the disciplinary authority this time recorded that the petitioner had not deserted and absconded only on one occasion and gave instances of the petitioner's unauthorized absence on several occasions.

5. The petitioner thereafter filed second writ application before this Court vide CWJC No. 7209 of 2000. The writ application was disposed of by an order dated 28.1.2002 with the following observation and direction:-

Prima facie, it appears that the disciplinary authority has not strictly resorted to the direction of this Court whereby and whereunder he was mandated to consider the case of the petitioner on quantum of sentence only. On remand, the disciplinary authority was required to see as to whether any alternative punishment was permissible in the facts and circumstances of the case and could have passed the order accordingly on quantum of sentence only. The order as contained in Annexure-3, in that view of the matter, must be held to be wholly without jurisdiction and contrary to the direction of this Court. Order impugned as contained in Annexure-3 is accordingly set aside and the matter is remitted back to the Senior Superintendent of Police, Patna respondent no. 5 to reconsider the matter only on the question of quantum of sentence and pass necessary orders in accordance with law within a period of eight weeks from the date of receipt/production of a copy of this order.

With this direction/Observation, this application is disposed of.

6. This Court had thus, vide order dated 28.1.2002 quashed Annexure-3 to CWJC No. 7209 of 2000 being the order dated 17.11.1998. It is added here that the records of CWJC No. 7209 of 2000 were called for by me by an order dated 1.8.2012 passed in this case and thus I had the benefit of perusing the records

of the said case. Pursuant to the said order dated 28.1.2002, the Senior Superintendent of Police, Patna passed the order dated 26.3.2002 (Annexure-6), again upholding the punishment of discharge imposed on the petitioner. This is, thus the third time when the petitioner has approached this Court, challenging imposition of punishment of discharge from service through the present writ application.

7. Before I deal with the manner in which the orders were passed, I consider it proper to refer few contents of the counter affidavit sworn by Shri Sunil Kumar, the then Senior Superintendent of Police, Patna filed in this case. At page 6 of the counter affidavit the Senior Superintendent of Police, Patna has made statement to the following effect:-

In CWJC No. 6012 of 1992 Hon"ble Court did not appreciate the prayer of Senior Superintendent of Police, Patna and observed that desertion from duty was absence of 22 days. But, this was not the fact. From the above humble submission it is 100% clear that the petitioner was not fit for this disciplined force. His reinstatement and continuance is not in the police force interest.

The Senior Superintendent of Police, Patna ventured to make following statements at page 7 of the Court affidavit:-

Sr. S.P., Patna again submitted his submission in CWJC No. 7209 of 2000 in which petitioner was ex-constable Shyamdeo Singh. In this writ petition against Sr. S.P., Patna made his submission that petitioner was a habitual deserter, as police constable. Sr. S.P., Patna had rightly removed the petitioner from services.

It is stated that it is well within the preview of the Hon"ble Court to strike down any particular rule/law if in its opinion the said order/rule/law is not sustainable whether the Hon"ble Court may kindly decided as to what the rule/law on the subject in question ought to be--the petitioner a constable who had absconded and deserted from police duty on 11 occasions. As such the petitioner had been removed from police force by Sr. S.P., Patna pursuant to the Hon"ble Court's order dated 28.1.2002 in CWJC No. 7209 of 2000, Sr. S.P., Patna examined the entire chain of facts and was of the considered view that, the petitioner was habitual absconder and deserter from duty and on 11 occasions committed serious breach of discipline by deserting police duty and thus discharged the petitioner w.e.f. 17.3.1987.

8. The order impugned in the present writ application, i.e. order dated 26.3.2002 (Annexure-6), however, does not refer to any other event of the petitioner's unauthorized absence from duty and it is based on the sole ground of petitioner's unauthorized absence for 22 days which fact was considered by this Court in CWJC No. 6012 of 1992 in its order dated 6.8.1998.

9. To say the least, the statements as referred to hereinabove, made in the counter affidavit by the then Senior Superintendent of Police, Patna constitute contempt of this Court. However, I don't chose to initiate any contempt

proceeding but instead would issue a note of caution to the officials swearing affidavits in this Court and learned counsel preparing it, that such irresponsible comments on the orders passed by the Court may entail very serious consequences.

10. Now coming to the impugned order dated 26.3.2002 (Annexure-6), I am of the view that the said order is in teeth of the order passed by this Court dated 6.8.1998 in CWJC No. 6012 of 1992 as also the order dated 28.1.2002 passed in CWJC No. 7209 of 2000. This Court in its order dated 6.8.1998 specifically held that in a case like this where the petitioner had been dismissed from service for absence from duty for 22 days, punishment of discharge was rather disproportionate compared to gravity of misconduct. This Court maintaining the self-imposed restraint in exercise of power of judicial review under Article 226 of the Constitution of India, thought it appropriate not to quash the order of dismissal while remanding the matter back to the disciplinary authority. It is apparent that this Court expected the disciplinary authority to exercise its discretion by imposing some alternative punishment on rational basis, in view of the clear observation of this Court that the punishment imposed was shocking to the conscience of the Court. Further, again vide order dated 28.1.2002, this Court held that the second order upholding the order of discharge was wholly without jurisdiction and contrary to the direction of the Court. In view of the settled law that the court in exercise of power under Article 226 of the Constitution of India should normally not substitute its own opinion in place of opinion of the disciplinary authority in the matter of imposition of punishment, this Court again remanded the matter back to the disciplinary authority to consider the matter afresh only on the question of quantum of punishment.

11. Pursuant to an earlier order dated 14.7.2009, learned counsel for the State-Respondent has produced before the Court the original records of the departmental proceeding. I have perused the records and I have seen the documents available therein including the order dated 17.3.1987. There is absolutely no mention of any consideration other than petitioner's absence for 22 days for imposing the punishment of discharge in the original records of Departmental Proceeding No. 192/83. I also find that the orders passed by the disciplinary authority after matter was remanded by this Court on two occasions as noted above are not there in the said original records.

12. The order dated 26.3.2002 as contained in Annexure-6, whereby for the third time the disciplinary authority upheld the order of discharge initially passed does not contain any fact with regard to any other previous misconduct on the part of the petitioner. The only consideration, which the disciplinary authority had, while passing the order, as would appear from the impugned order itself, was petitioner's 22 days unauthorized absence. Though in the counter affidavit other instances of petitioner's misconduct have been mentioned, in my view such statement cannot supplement the impugned order dated 26.3.2002 as the said order has to be tested on the basis of the contents therein and not on the basis

of reasoning put forth in the counter affidavit.

Reference may be made in this regard to Constitution Bench judgment of the Supreme Court in case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, laying down the law that an administrative order is to be judged by reasons stated while making the order and supplementary reasons in form of affidavit must be excluded. Paragraph 8 of the judgment reads thus:-

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, (at p. 18):

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.

13. Accordingly, I quash the order dated 26.3.2002 as contained in Annexure-6 as illegal, beyond jurisdiction and contrary to the orders passed by this Court dated 6.8.1998 in CWJC No. 6012 of 1992 and 28.1.2002 passed in CWJC No. 7209 of 2000. The consequences of quashing of this impugned order shall follow.

14. In peculiar facts and circumstances of the case I consider it fit in exercise of power under Article 226 of the Constitution of India to direct the Director General-cum-Inspector General of Police to exercise his power vested in Rule 853A of the Bihar Police Manual and pass an appropriate orders in the facts and circumstances of the case on the question of quantum of punishment within two months from the date of receipt/production of a copy of this order.

15. This writ application is allowed accordingly with a cost of Rs. 10,000/-(ten thousand) to be paid by the State of Bihar to the petitioner. Let original records of the departmental proceeding No. 192/83 be returned to learned Standing Counsel No. 1.