
(2015) 04 JH CK 0037

In the Jharkhand High Court

Case No : Writ Petition (S) No. 715 of 2013

Shyam Sundar Murmu

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 04 JH CK 0037

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : K.K. Mishra, for the Appellant

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties.

2. The petitioner, who was serving as a Constable under Jharkhand Armed Police No. IV was proceeded against in a departmental inquiry bearing No. 3/2011 vide Charge-sheet dated 27th March, 2011 issued by Commandant, J.A.P-IV with the allegation that during his posting at Camp-Ked Picket Barwadih Police Station, Latehar under C-Company on 2nd March, 2011 at 2.30 P.M. during day time he entered into the house of a local villager and abused Poonam Devi wife of Anil Saw and also misbehaved with her. This incidence was reported by the victim Poonam Devi, whereupon the departmental action has been recommended. His action depicted lack of indiscipline, dereliction in duty and negligence which has lowered down the image of the police. He was placed under suspension on 24th March, 2011 vide Annexure-1 and thereafter the inquiry proceeded.

3. The petitioner faced the inquiry but refused to cross-examine the prosecution witnesses. Four witnesses were examined, namely, Poonam Devi P.W. 1; Anil Saw her husband P.W.2; Officer in Charge Birendra Kumar Ram P.W.3 and Sub Inspector Joham Mundu P.W. 4. Based upon the findings of guilt on the inquiry report furnished by Inquiry Officer, Ramdeo Prasad Inspector vide Annexure-F to

the counter affidavit, the disciplinary authority i.e. Commandant J.A.P-IV has passed the order of punishment of dismissal from service w.e.f. 30th September, 2011, Annexure-3 after due issuance of second show cause notice on 30th August, 2011, to which he did not submit his reply. The dismissal order is under challenge in the present writ application as also the order passed in appeal by Inspector General of Police, Ranchi dated 9th November, 2012, Annexure-5 to the writ petition. The appellate authority though has discussed the merit of the petitioner's case but has dismissed the appeal on the ground of delay.

4. Counsel for the petitioner submits that there is no previous allegation of such misconduct against the petitioner and the entire allegation made by Poonam Devi are not supported during the course of inquiry as would be evident from the inquiry report itself. However, despite the fact that the findings are not based upon any sustainable material evidence, the disciplinary authority has imposed the maximum punishment of dismissal from service upon the petitioner, which is highly disproportionate to the alleged misconduct. The Appellate Authority also has not considered this aspect of the matter and confirmed the order in appeal while rejecting the same also on the ground of delay.

5. Learned counsel for the Respondent-State on the basis of averment made in the counter affidavit submits that on the fateful day i.e., 2nd March, 2011, there was also a report of absence of petitioner conveyed through memo No. 123 dated 10th April, 2011 by the Company Commander to the Commandant between the period 13:50 hrs. to 14:40 hrs. in respect of which the alleged incidence was reported. He submits that the complaint was under the thumb impression of the lady and her sister Anita Devi (Annexure-A), which appears to have been received on 3rd March, 2011 in the office of Superintendent of Police and was forwarded to the office of Commandant-J.A.P.-IV. In the preliminary inquiry the complainant supported the allegation whereafter the proceeding was initiated and conducted as per the procedure laid down in law. The petitioner also participated, but did not cross-examine the witnesses and based upon the materials during the course of inquiry findings of guilt were arrived at in a proper manner which is the basis for issuance of the impugned order of dismissal after due service of show cause notice upon the petitioner as well. The petitioner however failed to submit his written statement of defence before the Inquiry Officer also and did not respond to the second show cause notice as well. Therefore in a police force, if such finding is arrived at for misconduct of entering into the house of a villager and misbehaving with a women, the order of punishment is not disproportionate to the established misconduct. Therefore, the impugned order requires no interference.

6. I have heard learned counsel for the parties and gone through the relevant materials on record including the impugned order. The allegation appears to be of abuse and misbehavior as is born out from the complaints made by Poonam Devi and Anita Devi, Annexure-A to the counter affidavit received on 3rd March, 2011 in respect of incidence of 2nd March, 2011, said to have been taken at 2.30 P.M.

However, strangely during the course of inquiry the complainant, Poonam Devi has not supported any such incidence. Her husband also has completely denied any information about such incidence rather stated that the petitioner is a good boy. The other two witnesses were not witness to the incidence. They were the officer-Incharge, who received the complaint under joint signature of two ladies and one sub inspector, Joham Mundu, who submitted the report to the Commandant, J.A.P. It therefore appears that though the allegations were of a serious nature but remained unsubstantiated by the complainant and her husband themselves. If the allegation of such serious nature of misbehavior is made by a lady and is not established to the hilt, then findings of guilt arrived at by the Inquiry Officer which is the basis of the order of dismissal does not seem to be proper in the eye of law. Though under exercise of power of judicial review, sufficiency of evidence is not to be weighed by this Court but if the evidence does not at all support the allegations of misconduct, then findings of guilt arrived at suffer from serious error in law which are also violative of principle of Wednesbury reasonableness. The findings are not supported by any material evidence on record during the course of departmental inquiry. The other allegations that the petitioner was absent for the said period does not seem to be part of the charge-sheet and no finding on that either was arrived at by the Inquiry Officer as well.

7. In such circumstances, when the petitioner has served police force without any serious complaint earlier reportedly, then the order of dismissal from service appears to be shocking to the conscience of the court and is excessive in nature. In the circumstance, the punishment imposed by the disciplinary authority is wholly disproportionate to the misconduct as per the ratio laid down by the Hon"ble Supreme Court rendered in the case of Dev Singh Vs. Punjab Tourism Development Corporation Ltd. and Another, AIR 2003 SC 3712 : (2003) 3 LLJ 823 : (2003) 7 SCALE 122 : (2003) 8 SCC 9 : (2003) SCC(L&S) 1198 : (2004) 1 UJ 220 : (2003) AIRSCW 4222 : (2003) 6 Supreme 482 thereof is quoted herein below:-

Para: 6: A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceeding will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellant authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the abovenoted judgments of this Court, if the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case.

8. In the instant case, as has been found hereinabove the charges against the

petitioner are not even established on the basis of the material evidence adduced by the Inquiry Officer. Therefore, the punishment of dismissal is wholly unjustified.

9. The impugned orders therefore suffers from serious errors based on the aforesaid erroneous findings in the inquiry even if petitioner may not have submitted his reply or written statement of defence. The principle of doctrine of proportionality is a well recognized one, the writ court can interfere in the quantum of punishment if it is on the face of it disproportionate to the misconduct and shocks the conscience of the Court. In the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, AIR 1964 SC 477 : (1964) 5 SCR 64 , the Hon"ble Supreme Court on the extent of jurisdiction of High Court to issue writ of certiorari, held as follows. Paras 7 and 8 thereof are quoted herein below:-

Para 7: The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court of Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said findings, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned findings. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned findings. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised.

Para 8: It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an, error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court of Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.

10. In such circumstance, this court is inclined to interfere with the order of dismissal against the petitioner in Departmental Proceeding No. 3/2011 impugned vide order dated 30th September, 2011 (Annexure-3) and the order of Appellate Authority vide Memo No. 1516 dated 9th November, 2012 (Annexure-5). They are accordingly quashed. The petitioner should be reinstated in service forthwith with continuity in service along with other consequential benefits of seniority etc. except 50% of the back wages.

11. Accordingly, the writ petition is allowed in the aforesaid manner.