
(2010) 10 PAT CK 0010
In the Patna High Court
Case No : CWJC No. 1299 of 1996

Smt. Shushma Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-10-2010

Acts Referred:

Citation : (2011) 59 BLJR 1621 : (2011) 129 FLR 987 : (2011) 2 PLJR 69

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Pranav Kumar, for the Appellant; A.C. to A.A.G.I., for the Respondent

Final Decision : Allowed

Judgement

A.K. Tripathi, J.—Original Petitioner Baban Singh who was a constable under the Respondents is no more. Matter is now being pursued by his wife as a legal representative. The so-called acts of omission and commission was committed by him and one Kaushal Kishore Singh on 30.1.1990 while being posted in the district of Nawadah. A departmental proceeding was initiated which led to dismissal of Baban Singh. Order of dismissal passed by the disciplinary authority is Annexure-1 dated 31.12.1993. Thereafter, the appeal and the memorial also have been rejected. Baban Singh died during the pendency of the writ application but the Court allowed the substitution petition because the wife wants to fight against the so-called injustice and for the restoration of undone the honour of her husband.

2. Besides the other submissions with regard to the punishment and the proceeding, learned Counsel for the Petitioner has now brought to the notice of this Court an order passed by the disciplinary authority in the matter of Kaushal Kishore Singh who too was proceeded against and charged for identical misdemeanor as the erstwhile Petitioner. For one reason or the other case of Kaushal Kishore Singh remained in the cold storage and dragged on for many a years. Final order in his case could not be passed. However, the disciplinary

authority vide order dated 4.11.2000 which has been brought on record as Annexure-10, taking a sympathetic view decided to impose a diluted kind of punishment which was to withhold three increments amounting to three black marks.

3. Contention of the learned Counsel is that two yardsticks adopted by the Respondents with regard to the same transaction or charge is a case of discrimination. If Kaushal Kishore Singh could be allowed to get away with a relatively minor punishment, then there is no reason as to why the husband of the Petitioner has been ordered to be dismissed on similar kind of findings or the charges. If withholding of annual increments for three years was good enough for Kaushal Kishore Singh for his act of indiscipline, then a similar view ought to be taken with regard to the husband of the Petitioner who was imposed the ultimate punishment of dismissal.

4. Learned Counsel for the State submits that the husband of the Petitioner never defended himself or participated in the enquiry. He chose to stone wall the issue and the Respondents have passed the order in question based on the outcome of the enquiry. There is indication that Kaushal Kishore Singh did co-operate and participate.

5. The Court has gone through the order passed in Annexure-10. It is not the case that the findings are not there so far as Kaushal Kishore Singh was concerned. It also cannot be a case of the State that mere non-cooperation of a delinquent is good enough to declare him guilty or impose punishment based on his non-cooperation or participation. The Respondents authorities still have a responsibility to prove the charges and then take a considered opinion on the outcome of the said enquiry and the evidence which could have been led in this matter.

6. Judging from the above parameters, the Court does get a feeling that the Respondents have been unduly harsh in the matter of Baban Singh and they have taken lighter view of the matter in the case of Kaushal Kishore Singh because by the time his proceedings ended, seriousness of the charge had died down a bit and the Respondents authorities were not as agitated about the issue as they may have been at the time when the initial order of punishment was imposed on Baban Singh.

7. Orders of punishment in a disciplinary proceeding is akin to sentencing in a criminal court. Proportionality of the punishment must commensurate with the evidence or the charge which is brought against the delinquent. If the Respondents could take holistic view in the matter of Kaushal Kishore Singh, then there is no reason why such magnanimity cannot be shown to the husband of the Petitioner, namely, Baban Singh.

8. The Court, therefore, does come to a considered opinion that the matter does require reconsideration. In view of the same, the punishment order passed in Annexure-1, the appellate order contained in Annexure-2 and the order passed in

memorial contained in Annexure-3 are hereby quashed. Matter is remitted back to the disciplinary authority for taking into consideration the order passed by him in relation to Kaushal Kishore Singh. He shall reconsider the kind of punishment which ought to be imposed on the husband of the Petitioner who is now dead.

9. Since it is an old matter which has dragged on for many years and had also remained pending for hearing before this Court for quite a while, the Court directs the disciplinary authority Respondent No. 5 i.e. Superintendent of Police, Nawadah to take a decision in the matter within a period of six months from the date of communication or production of a copy of this order.

10. This writ application is allowed to the extent indicated above.