

(2007) 02 JH CK 0005
In the Jharkhand High Court

State of Bihar (Now Jharkhand) and Others

APPELLANT

Vs

Mumtaz Ahmad

RESPONDENT

Date of Decision : 22-02-2007

Acts Referred:

Citation : (2007) 3 JCR 502

Hon'ble Judges : M. Karpaga Vinayagam, C.J;Permod Kohli, J

Bench : Division Bench

Judgement

1. On the face of it, we are of the view that the remand order dated 2nd August, 2004, passed by the learned Single Judge suffers from infirmity. In fact, there is no dispute in the fact that the enquiry officer gave a finding that all the three charges have been proved. The disciplinary authority inflicted punishment of dismissal from service mainly on the 3rd charge, namely, the constable-delinquent having illicit relationship with another lady-constable. The learned Single Judge was under impression that the punishment of dismissal was given for the charge that the constable-delinquent married another lady while his marriage with first wife is already subsisting, without obtaining permission from the department.

2. From the enquiry report as well as the report of the disciplinary authority and the appellate order it is clear that the 3rd charge only relates to illicit relationship of the constable-delinquent with another lady and punishment was given only for that charge. Therefore, in our view, the order of the learned Single Judge, remanding the matter for giving appropriate punishment instead of dismissal for the above charge, is not proper.

As a matter of fact, we are of the considered opinion that the punishment of dismissal was appropriate in respect of the charge, framed by the enquiry officer in relation to the constable-delinquent having illicit affairs with another lady and as such order of learned Single Judge is liable to be set aside.

However, the learned Single Judge admittedly has not considered the matter on

merits of various other contentions urged by the learned Counsel for the respondent herein both in the writ petition with regard to the violations of natural justice and failure on the part of the authorities to give proper opportunity to the constable-delinquent to defend the case.

3. As these points were not considered by the learned Single Judge, it would be proper for this Court to remand the matter to the learned Single Judge for considering other points. Accordingly, the order dated 2nd August, 2004, passed by the learned Single Judge in C.W.J.C. No. 756 of 1994 (R) is set aside and the matter is remitted to the learned Single Judge where both the counsel will advance their arguments in respect of other points, referred to above. The learned Single Judge will decide the matter in accordance with law. It is made clear that the finding given in respect of 3rd charge will not stand in the way of deciding the other points by the learned Single Judge.