
(2010) 04 AHC CK 0047
In the Allahabad High Court

State of U.P. and Others

APPELLANT

Vs

Raj Kumar and Another

RESPONDENT

Date of Decision : 16-04-2010

Acts Referred:

Citation : (2010) 04 AHC CK 0047

Hon'ble Judges : Uma Nath Singh, J;Devendra Kumar Arora, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This writ petition has been preferred by State being aggrieved by a judgment and order dated 04.02.2009, passed by U.P. Public Services Tribunal in Claim Petition No. 98/V/1993, modifying the punishment of dismissal of opposite party No. 1 from service and in stead substituting the same with a punishment of stoppage of five increments with cumulative effect.

2. Briefly narrated the facts of this case giving rise to filing of this writ petition are that opposite party No. 1 was posted as a Constable in Civil Police on the date of incident i.e. 30.06.1992. On the said date at 11.45 p.m. in the night, opposite party No. 1 was found to be lying near the gate of Police Kotwali in an intoxicated state, thus, he was proceeded against for a departmental enquiry. Charge sheet dated 16.11.1992 was served upon him to which he submitted his reply on 30.11.1992. Upon submission of enquiry report, a show cause notice dated 16.03.1993 was issued to opposite party No. 1. At that stage itself, he filed a reference petition (No. 497/F/V/1991) along with one other person namely Shri Lalta Prasad. State Public Services Tribunal vide order dated 03.12.1991 directed the petitioners (herein) not to pass any final order in the matter. However, according to opposite party No. 1 despite that interim order of tribunal as above, the petitioners (herein) passed a punishment order on 28.03.1993 whereby he was dismissed from service.

3. Assailing the order of dismissal, opposite party No. 1 filed Claim Petition No.

98/V/1993, on two grounds namely: (i) that even in the face of an stay order, the petitioners (herein) passed the order of punishment of dismissal from service against opposite party No. 1, and (ii) that on the date of incident at relevant time, opposite party No. 1 was not on duty, therefore, he has not committed any misconduct. During the course of hearing of claim petition, on behalf of opposite party No. 1, a reference was also made to a judgment reported in 1983 (2) SLR 243 Ratan Lal v. The State of Haryana and Ors. in support of the plea.

4. The tribunal repelled the first submission by holding that the interim order of stay had been granted only till the next date of hearing i.e. 26.12.1991 and no document was produced before it to establish that it had been extended any further. However, regarding the second argument, the tribunal was of the view that the order of punishment was highly disproportionate and unreasonable.

5. We have heard learned Counsel for State and perused the pleadings of writ petition.

6. Learned Counsel for State submitted that the enquiry proceedings conducted against opposite party No. 1 does not suffer from any flaw or defect and the enquiry report is based on a well established evidence, including the medical report. Further, according to oral evidence of one police constable, opposite party No. 1 was found drunk.

7. The main thrust of arguments of learned Counsel for State is that the tribunal instead of modifying the order of punishment and imposing punishment of stoppage of five increments with cumulative effect, should have remanded the matter to the disciplinary authority for passing a fresh punishment order, after setting aside the punishment order.

8. Learned Counsel for petitionersState referred to two judgments of the Apex Court in support of his submissions namely:(i) (2006) 13 SCC 1 Government of India and Anr. v. George Philip, and (ii) B.C. Chaturvedi Vs. Union of India and others,

9. In both these cases, the Apex Court has held that the High Court has a limited jurisdiction to interfere with the order of punishment in service jurisprudence. The Court or Tribunal cannot interfere with findings of facts based on evidence and in stead substitute its own independent findings. Nor can a Court or Tribunal reappreciate the evidence for that purpose.

10. On due consideration of the submissions of learned Counsel for petitioners State and perusal of the pleadings of writ petition we are of the view that there is no quarrel with the settled legal position in that regard. Nonetheless, it also appears to be a settled position that within the limited scope of interference, if the punishment is shockingly disproportionate and the employee has shown some mitigating circumstance, the order of punishment can be interfered with by this Court or the Tribunal. In paras 9 and 10 of the impugned order, the tribunal has given detailed reasons for not remitting the case to disciplinary authority for

passing a fresh punishment order, and in stead, it has modified the order of punishment to save unnecessary harassment to opposite party No. 1.

11. Relevant portions of the judgment (paras 9 and 10) passed by tribunal on reproduction read as under:

9. In para3 of the reference petition specific averments were made by the petitioner that he was on duty upto 8. 00 p.m. and when the incident is said to have taken place, he was not on duty. There is no specific denial of this fact in the CA/WS by the opposite parties. Although the taking of the alcoholic drink by a police personnel in public view cannot be held to be appreciable yet the penalty of dismissal from service on this ground was not only harsh but in our opinion, the same is highly unreasonable and excessive. No doubt, the imposition of penalty is the discretion of the punishing authority but if, it is found that the punishment is highly disproportionate and unreasonable, an interference therewith may be justified. There may be two options now either to give a final quietus to the matter by modifying the punishment suitably or to remit the matter to the punishing authority. In case, we remit the matter to the punishing authority, it will prolong the life of the litigation causing the petitioner to further harassment, therefore, with a view to give a finality and to shorten the life of the litigation, we feel it just and proper to modify the sentence of dismissal from service to one of stoppage of five increments cumulatively.

10. Accordingly, we modify the punishment of dismissal from service of the petitioner to one of stoppage of five increments with cumulative effect which will be effective with effect from the date of joining of the service by the petitioner pursuant to this order. The opposite parties are directed to reinstate the petitioner in service but without any back wages. In case, opposite parties do not permit him to join within three months from today, the petitioner shall be entitled to get his salary with effect from the said date.

12. Thus, we find sufficient reasons for the tribunal to have passed the impugned order, and at the same time, we do not find any valid reasons to interfere therewith. Thus, this writ petition, being devoid of merits, is hereby dismissed.