
(2011) 01 AHC CK 0334
In the Allahabad High Court
Case No : Writ Petition No. 108 (SB) of 2011

State of U.P.

APPELLANT

Vs

Ganesh Kumar and another

RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 — Rule 14(1)

Citation : (2011) 131 FLR 200

Hon'ble Judges : Satish Chandra, J; D.P. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dr. Satish Chandra, J.—By this petition, the petitioner i.e. the State has assailed the order dated 6th October, 2010 passed by the State Public Services Tribunal, Lucknow in Claim Petition No. 1289/2007.

The brief facts of the case are that the private respondent was a constable posted at 28th Battalion P.A.C., Etawa. On 23rd March, 2007, the respondent was called to the Head-Quarter but when he appeared, he was under intoxication. In medical examination, it was revealed that he had consumed the alcohol. So, disciplinary proceedings were initiated against him under Rule 14(1) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. During the inquiry, he has accepted the guilty and submitted that he was mentally upset due to death of his two brothers and prayed for mercy. On admission, finally, he was dismissed from the service vide order dated 13.6.2007. Being aggrieved, he has moved a representation before the competent authority, which was also rejected vide order dated 31.8.2007. Being not satisfied, the respondent has challenged the same before the Tribunal. The Tribunal has allowed the claim of the petitioner vide its impugned order and set aside the dismissal order dated 13.6.2007 and reinstated the respondent in service but it was observed that he will get only 25% of the back-wages from the

date of his dismissal to the date of reinstatement. Now, feeling aggrieved, the petition is before this Court.

2. With this background, Sri Anuj Kudesia, learned Additional Chief Standing Counsel submits that the impugned order passed by the Tribunal is absolutely erroneous. He further submits that the Tribunal has exceeded its jurisdiction by issuing the direction for giving continuity in service as the same relief has not been sought by the respondent in the Tribunal. He also submits that the respondent preferred an appeal before the appellate authority which was rejected by a reasoned and speaking order dated 31.8.2007. He further submits that the respondent has committed a great offence by consuming the liquor, when he was asked at the P.A.C. Head-Quarter by superior. The inquiry officer has given full opportunity of hearing to the respondent to defend himself and conducted the inquiry in accordance with rules. Lastly, he made a request that the impugned order may kindly be set aside.

3. In the absence of learned Counsel for the respondent, we have heard learned Counsel for the petitioner and perused the pleadings.

4. From the record, it reveals that the Tribunal has followed the ratio laid down in the case of Radha Krishna Pal v. State of U.P. (Claim Petition No. 715 of 2007) decided on 18.3.2009 wherein on the identical circumstances and on similar facts, the dismissal order was set aside.

5. It may be mentioned that this Hon''ble Court in identical circumstances, in the case of Sahdev Singh Vs. U.P. Public Service Tribunal and Others, observed that:-

In these circumstances, we are of the opinion that a lenient view should be taken against the petitioner and some lesser punishment should be given to him as Portia said in Shakespeare''s, Merchant of Venice'', justice should be tempered with mercy. In the circumstances, we are of the opinion that the although the petitioner does deserve some punishment but the punishment of dismissal is too harsh.

6. Similar views were expressed in the case of Girwar Singh Tomar v. Union of India and others, 2007 (3) LBESR 185 (ALL) where the constable driver in the C.R.P.F. consumed liquor and caused an accident. This Hon''ble Court observed that by punishment of dismissal from service was too harsh and totally disproportionate to the charges proved against him.

7. In the light of the above discussions, it appears that ultimate punishment of dismissal is too harsh which effects not only the respondent but also his family members. In the instant case, the petitioner has accepted his guilty and prayed for mercy by stating that he was mentally upset due to death of his two brothers. So, we are of the view that the punishment for dismissal from the service is too harsh and the same is not desirable. The Tribunal has already reinstated the respondent with a condition that he will get only 25% back-wages from the date of his dismissal to the date of reinstatement. In the facts and circumstances of

the case, the same appears reasonable. Therefore, we decline to interfere with the impugned order passed by the Tribunal. The same is hereby sustained along with the reasons mentioned therein.

The writ petition filed by the State is dismissed.