
(2016) 03 JH CK 0019
In the Jharkhand High Court
Case No : W.P.(S) No. 4165 of 2007(D.B.)

Syed Mohd. Wasim

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 307, Section 323, Section 324, Section 341, Section 376, Section 493, Section 511
Scheduled Castes and the Sched

Citation : (2017) 2 AIRJharR 751 : (2016) 2 JCR 520 : (2017) 1 JLJR 348

Hon'ble Judges : Virender Singh, C.J. and S. Chandrashekhar, J.

Bench : Division Bench

Advocate : R. Krishna, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

1. Seeking quashing of order dated 13.11.2006 whereby, punishment of stoppage of three annual increments with cumulative effect has been awarded to the petitioner and, it has further been ordered that he is not entitled to get salary and allowances, except the subsistence allowance during the period of suspension, the petitioner has approached this Court.

2. The brief facts of the case are that, the petitioner was appointed as Munsif vide notification dated 28.10.1986 and he joined as probationer Munsif on 26.11.1986. After completion of probation period, the petitioner was confirmed on the post of Munsif. Subsequently, he was promoted to the cadre of Subordinate Judge and he was posted as Sub Judge-IV, Dumka. Additionally, vide notification dated 30.08.2002, he was conferred power of the Court of Sessions. In October, 2002, he was transferred to Jamtara as Sub Judge-1-cum-ACJM-cum-Assistant Sessions Judge, Jamtara. While posted at Jamtara, the petitioner was put under suspension on 21.11.2003 however, the order of suspension was revoked on 16.12.2004 and a departmental proceeding was initiated against him

by serving Memorandum of Charge dated 17.02.2005. The petitioner was awarded punishment of stoppage of three annual increments with cumulative effect vide order dated 13.11.2006. Against the said order, the petitioner made representation on 28.11.2006 however, the High Court rejected his representation and the decision of the High Court was communicated to him by the Registrar General vide letter dated 24.04.2007.

3. Heard the learned counsel for the parties and perused the documents on record.

4. Mr. Rajendra Krishna, the learned counsel for the petitioner submits that an order passed by a Judicial Officer in discharge of his judicial function cannot be a ground for initiating a departmental proceeding and inflicting a major penalty upon him. The learned counsel further contended that a copy of the enquiry report and other materials were not furnished to the petitioner, due to which the petitioner could not defend himself effectively.

5. As against above, Mrs. A.R. Choudhary, the learned counsel appearing for the High Court contended that the charges against the petitioner were very serious. During the annual vacation when the petitioner was under order of transfer, he passed several orders granting bail to the accused persons in the cases which were triable by the Court of Sessions which constitutes misconduct on his part. She further contended that the petitioner has failed to plead prejudice caused to him due to non-supply of the enquiry report and therefore, non-supply of enquiry report is inconsequential.

6. The Memorandum of Charge dated 17.02.2005 discloses that while posted as A.C.J.M, Jamtara, the petitioner was detained for dealing with urgent matters during the second part of annual vacation between the period from 18.10.2003 to 02.11.2003. The petitioner was though, under order of transfer to Garhwa as Sub-Judge. It appears that the petitioner dealt with Nala P.S. Case No. 49/2003, Nala P.S. Case No. 51/2003, Nala P.S. Case No. 61/2003, Nala P.S. Case No. 72/2003, Nala P.S. Case No. 73/2003, Nala P.S. Case No. 80/2003, Jamtara P.S. Case No. 119/2003, Jamtara P.S. Case No. 120/2003, Narainpur P.S. Case No. 80/2003 and Kundahit P.S. Case No. 60/2003, which were exclusively triable by the "Court of Sessions". It further appears that Jamtara P.S. Case No. 140/2003, Jamtara P.S. Case No. 171/2003, Jamtara P.S. Case No. 167/2003, Kundahit P.S. Case No. 56/2003 and Nala P.S. Case No. 79/2003 were also not triable by the petitioner however, he dealt with the bail petitions in the aforesaid cases and granted bail to the accused persons. A separate charge for granting bail to one Prabodh Mahto in Nala P.S. Case No. 51/2003 registered for the offences under Sections 376/511 IPC was also framed against the petitioner on the allegation that the case was under investigation and offence under Section 3(11) of the S.C & S.T (Prevention of Atrocities) Act was made out and thus, the case was exclusively triable by the "Special Judge", still he recorded a finding that the offences were non-bailable in nature and granted bail to the accused person.

7. The Memorandum of Charge specifically records that the aforesaid acts not only reflect the petitioner's ignorance of law, the same are also a reflection on his integrity and reputation amounting to misconduct and dereliction of duty. The statement of imputation of misconduct discloses that in several cases registered under Section 307 IPC including, a case registered under Sections 376/493 IPC, read with Section 4 of the Dowry Prohibition Act; a case registered under Section 307 IPC and a case registered under Sections 323/324/341/307 IPC, the petitioner granted bail to the accused persons. The petitioner has taken a defence that in support of the charges framed against him, the department examined only two witnesses namely, Sri Dilip Kumar Sinha, the then District and Sessions Judge, Jamtara and Shri Himanshu Shekhar Jha, C.J.M, Jamtara however, these witnesses have not made specific allegations against him. We find that in his reply dated 22.02.2006, the petitioner himself has admitted that the witness Himanshu Shekhar Jha deposed that the petitioner dealt with 61 bail petitions, out of which he granted bail in 50 cases and only 7 bail petitions were rejected by him. The District and Sessions Judge, Jamtara has also corroborated the said statement of Himanshu Shekhar Jha.

8. During the departmental proceeding, the petitioner was permitted to inspect the relevant records on 09.08.2005 and the request for supply of documents made by the petitioner was rejected vide order dated 28.06.2005. The said order was not challenged by the petitioner. It further appears that in his written statement the petitioner has referred to the enquiry report of the District and Sessions Judge dated 13.11.2007 and the fact finding report of the Registrar General. In the aforesaid facts, the plea of non-supply of documents appears to be baseless. In so far as, non-supply of enquiry report of the departmental proceeding is concerned, the learned counsel appearing for the High Court has rightly contended that the petitioner has not pleaded any prejudice caused to him due to non-supply of the enquiry report. The charges against the petitioner were framed on the basis of the orders granting bail passed by him, which the petitioner has not denied and rightly so. In "Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors.", reported in , (1993) 4 SCC 727, the Hon"ble Supreme Court has held that, "whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed it would be a perversion of justice to permit the employee to resume duty and to take all the consequential benefits." The Hon"ble Supreme Court has further observed: "the Court/Tribunal should not mechanically set-aside the order of punishment on the ground that the report was not furnished as is regrettable being at present. The courts should avoid resorting to shortcuts."

9. In the case of "Haryana Financial Corporation & Anr. v. Kailash Chandra Ahuja", reported in , (2008) 9 SCC 31, the Hon"ble Supreme Court taking note of the judgment in the case of "B. Karunakar" (supra) has observed as under,

"21. From the ratio laid down in B. Karunakar, , (1993) 4 SCC 727 it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer's report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside."

10. Considering the serious nature of imputations mentioned in the Memorandum of Charge served upon the petitioner, in our opinion, the petitioner, has been let off lightly. May be, there was no evidence of extraneous consideration for granting bail to the accused persons involved in serious offences, the fact remains that the petitioner granted bail to the accused persons in the cases which could not have been dealt with by him. If nothing else, this clearly shows lack of knowledge, devotion and negligence on the part of the petitioner. While considering the defence of the petitioner, it cannot be forgotten that the petitioner was appointed as Munsif in the year 1986, and even after about 18 years working as a Judicial Officer, if the petitioner granted bail in the cases exclusively triable by the Court of Sessions and the Special Court, the same definitely would be a pointer to some extraneous reason for granting bail. In the counter affidavit, the High Court has taken a stand that the Standing Committee of the High Court perused the case records and thereafter, the petitioner was put under suspension. The decision to inflict punishment of stoppage of three annual increments with cumulative effect has been taken by the Standing Committee of the High Court. The High Court has taken a stand that infliction of punishment of withholding three annual increments with cumulative effect is a minor punishment under Rule 11(iv) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and Rule 49(2) of the Civil Services (Classification, Control and Appeal) Rules, 1930, read with Rule 2(ii) of the Bihar and Orissa Sub-ordinate Services (Discipline and Appeal) Rules, 1935.

11. It is well settled that the question of punishment is exclusively within the jurisdiction of the departmental authorities and interference with the order of punishment is permissible only when it is found that the punishment imposed upon the delinquent shocks the conscience of the court or it is found that no reasonable employer could have inflicted such punishment for the charges framed and found proved against the delinquent officer. In "State of Meghalaya v. Mecken Singh N. Marak" reported in ", (2008) 7 SCC 580" the Hon"ble Supreme Court has held as under:

"14. In the matter of imposition of sentence, the scope of interference is very limited and restricted to exceptional cases. The jurisdiction of the High Court, to

interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review...."

12. In Apparel Export Promotion Council v. A.K. Chopra reported in , (1999) 1 SCC 759, the Hon"ble Supreme Court has observed as under:

"22. The High Court in our opinion fell in error in interfering with the punishment, which could be lawfully imposed by the departmental authorities on the respondent for his proven misconduct. The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty. The impugned order of the High Court cannot be sustained on this ground alone."

13. As a sequel to the aforesaid discussions, we find no merit in the writ petition and, accordingly, it is dismissed.