
(2016) 01 JH CK 0084
In the Jharkhand High Court
Case No : W.P.(S) No. 6734 of 2012

Vivekanand Yadav

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 120 B, Section 120B, Section 224, Section 225

Citation : (2016) 2 AIRJharR 768 : (2016) 2 JBCJ 437 : (2016) 2 JCR 11 :
(2016) 1 JLJR 740 : (2016) LIC 2510

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Ranjan Kumar Singh, Advocate, for the Appellant; Anshuman Kumar, J.C. to A.G., for the Respondent

Final Decision : Dismissed

Judgement

Pramath Patnaik, J.—1. In the accompanied writ application, the petitioner has inter alia prayed for quashing the order dated 15.09.2012 passed by the D.I.G., Kolhan Range, Chaibasa as well as the order dated 04.03.2011 passed by the Senior Superintendent of Police, East Singhbhum at Jamshedpur pertaining to dismissal from services.

2. Sans details, the facts as disclosed in the writ application, in brief is that the petitioner was appointed on 24.11.2008 on the post of Police Constable in the District Police at Jamshedpur and he continued to discharge his duties to the utmost satisfaction of his superior authorities. On 18.09.2010 an F.I.R. was lodged vide Sakchi P.S. Case No. 246 of 2010 in Sakchi Police Station, Jamshedpur against the petitioner along with other police persons under Sections 224, 225, 120 B of the Indian Penal Code and the statement was recorded that the petitioner helped an accused to escape from the Prisoner's Ward (M.G.M., Hospital Ward) in collusion with other police persons. On the basis of the said F.I.R., a departmental proceeding was initiated against the petitioner and the

petitioner was suspended vide order dated 18.09.2010. Thereupon, charge memo was filed wherein the petitioner was charged to have helped an accused to escape from M.G.M. Hospital, Prisoner's Ward. In pursuance to the charge, petitioner submitted his reply denying the allegations. Thereafter, the petitioner was proceeded departmentally and the enquiry officer was appointed. The enquiry officer after conducting enquiry, on perusal of documents, submitted his report holding the petitioner guilty of all the charges and the petitioner was asked to file his show cause. The petitioner filed his show cause reiterating his earlier stand and the disciplinary authority on perusal of the enquiry report passed an order of dismissal vide order dated 04.03.2011 as per Annexure-5 to the writ application. Being aggrieved by the order of dismissal, the petitioner preferred appeal before the appellate authority and the appellate authority vide order dated 15.09.2012 dismissed the appeal by confirming the order dated 04.03.2011.

Being aggrieved by the impugned order of dismissal dated 04.03.2011 and the order of the appellate authority dated 15.09.2012, the petitioner left with no alternative and efficacious remedy approached this Court under Article 226 of the Constitution of India, invoking extraordinary jurisdiction of this Court for redressal of his grievance.

3. Per contra, a counter affidavit has been filed on behalf of respondent No. 4 controverting the averments made in the writ application. In the counter affidavit, it has been inter alia submitted that the petitioner and other policemen who were deputed in M.G.M. Hospital, Prisoner's Ward, an information was received by the O/C Sakchi P.S. on 18.09.2010 that an under treatment prisoner Amlesh Singh has absconded from the prisoner's ward in M.G.M. Hospital and simultaneously the deputed Security Guards/policemen namely Police 1315 Vivekanand Yadav, Police 54 Hari Shankar Singh, Police 1231 Dinesh Kumar Yadav, Special Guard of Prisoner Amlesh Singh were also absconded leaving their all weapons and bullets and during enquiry Watchman Police 1762 Vimlesh Sharma told that the above mentioned three Policemen has gone outside the hospital with prisoner Amlesh Singh for his treatment and the guard register of M.G.M. Hospital was also produced by said police Vimlesh Sharma. In course of enquiry, a Mobile phone and Rs. 17,400/- were recovered from the physical possession of Police 54 Hari Shankar Singh and said Harishankar Singh, did not reply for keeping of such a big amount from his pocket. It is further submitted that the Police Dinesh Kumar Yadav suddenly entered from the main gate of the Hospital premises without the prisoner Amlesh Singh and after enquiry the petitioner could not give the satisfactory answer. In this regard, further it was revealed that with the help of the aforesaid Policemen, Prisoner Amlesh Singh has absconded from the M.G.M., Prisoner's Ward in the name of treatment without any permission by the concerned Medical Officer of the Hospital. It is further submitted that on the very next morning at 5.10 a.m the prisoner Amlesh Singh was arrested with petitioner (Police 1315 Vivekanand Yadav) on the road towards the court and further during enquiry the petitioner accepted his guilt and

further stated that previously on many occasions the deputed policemen took away the prisoner Amlesh Singh outside the hospital on some pretext and helped in his illegal works and for the said help the prisoner Amlesh Singh had given Rs. 22,000/- per month to the Security Guard, M.G.M. Hospital, each police have got Rs. 3,000/- per month and the special guards got Rs. 1000/- per month and the petitioner also told that the police Harishankar Singh and Dinesh Kumar Yadav brought Amlesh Singh outside the Hospital, and during these period said Amlesh Singh used to meet with his wife and other persons and visited in under construction Puja Pandal at Sidgora. It has been submitted by the said police that on several occasions prisoner Amlesh Singh brought outside the hospital and in the Hospital so many persons used to meet with said Amlesh Singh and the Security Guard never asked about the order of the Chief Judicial Magistrate to meet with said Amlesh Singh. During enquiry, it has been revealed that all the said Policemen were found in civil dress having no service arms and they all were with Amlesh Singh and as such a separate criminal case vide Sakchi P.S. Case No. 246 of 2010 under Section 224, 225, 120B of the Indian Penal Code was instituted against the petitioner and others. In the departmental proceeding, the petitioner was charged to help an accused to abscond from the M.G.M. Hospital, Prisoner's Ward in collusion with other police persons and the charges against the petitioner for indiscipline, carelessness in duty etc. were framed and the Deputy Superintendent of Police, Head Quarter-I, East Singhbhum after properly conducting the enquiry held the petitioner guilty of charges of inefficiency in duty, violation of order, dubious conduct and incapable of work as per Annexure-B to the counter affidavit. It has further been submitted that during course of trial in the departmental proceeding the concerned witnesses gave their evidences and the petitioner was cross examined. The witness Mr. Raj Kishore Prasad, Deputy Superintendent of Police (HQ-II), Jamshedpur and the petitioner himself denied to cross examine the other witness and in support of the said denial the petitioner duly signed on the depositions, hence the plea taken by the petitioner that the opportunity of cross examination of material witnesses was not given to the petitioner is not correct and the petitioner was given ample opportunity to defend his case, and therefore, respondent has rightly passed the order dated 04.03.2011 and dismissed the petitioner from police services. It has further been submitted that the Amlesh Singh is a convicted criminal and is also brother of famous gangster Akhilesh Singh, who is charge sheeted in 13 numbers of cases. The petitioner whose job was to work as a guard in M.G.M. Hospital of accused Amlesh Singh colluded with him in his activity and helped him in escaping from judicial custody. Fortunately, the said accused was caught outside the hospital at the right moment.

4. Heard Mr. Ranjan Kumar Singh, learned counsel appearing for the petitioner as well as Mr. Anshuman Kumar (J.C. to A.G.) appearing for the respondents.

5. During course of hearing, learned counsel for the petitioner has strenuously urged that the impugned order of punishment of dismissal from services is illegal and arbitrary and against the cardinal provisions of law and the same is

unsustainable, as principles of natural justice has not been followed in the departmental proceeding and also no relevant documents has been supplied. It has been submitted that petitioner was not on duty on the relevant date and since the guard register has not been produced which was asked for vide para-7 of Annexure-4 of the writ application, the same has not been supplied to the petitioner. Learned counsel for the petitioner further submits that the witnesses who have been examined in the enquiry are formal witnesses and the material witness has not been examined, so the entire enquiry is based on surmises and conjectures.

6. As against the submission of learned counsel for the petitioner, learned counsel for the State has vehemently submitted that the charges against the petitioner has been duly enquired into and the petitioner has been found guilty of the charges as the disciplinary authority basing on the enquiry report has passed the order of dismissal from services which has been affirmed by the appellate authority. So, absolutely there is no procedural irregularity nor the proceeding is based on no evidence hence no interference in the disciplinary proceeding is called for by this Hon"ble Court.

7. Having heard learned counsel for the respective parties at length and on perusal of the relevant documents, I am of the considered view that the petitioner has not been able to make out a case for interference by this Court in the impugned order of dismissal, which has been affirmed by the appellate authority due to the following facts reasons and judicial pronouncements:

"(I) Admittedly, a criminal case was instituted against the petitioner vide Sakchi P.S. Case No. 246 of 2010 under Sections 224, 225, 120 B of the Indian Penal Code, and simultaneously, a departmental proceeding was also initiated against the petitioner on the charges of helping an accused to abscond from M.G.M. Hospital, Prisoner's Ward in connivance with other police persons for the charges of indisciplined and carelessness in duty etc. The matter has been enquired into by the enquiry officer, who found the petitioner guilty of the charges and the disciplinary authority on scrutiny of the enquiry report has passed the order of dismissal from services which has been affirmed by the appellate authority. Therefore, absolutely there is no procedural irregularity from the date of initiation of proceeding till its culmination and so there is no scope to interfere with the impugned order of punishment.

(II) In the case in hand, in view of the seriousness of allegation and misconduct committed by the petitioner, the power of judicial review cannot be applied and moreover the fact finding given by the enquiry officer based on the material on record cannot be interfered with, as has been held by the Hon"ble Apex Court in the case of State of Uttar Pradesh and Another v. Man Mohan Nath Sinha & Another as reported in , (2009) 8 SCC 310, specially at paragraph 15, which is quoted herein below:

"15. The legal position is well settled that the power of judicial review is not

directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to reappreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions"

8. In that view of the matter, I find no reason to interfere with the impugned order, applying the aforesaid principles of Hon"ble Apex Court, as indicated hereinabove.

9. As a cumulative effect of the facts, reasons and judicial pronouncements and as a logical sequitur to the factual as well as the legal position, the impugned order of dismissal dated 04.03.2011 passed by Senior Superintendent of Police, East Singhbhum at Jamshedpur being affirmed by the appellate authority vide order dated 15.09.2012 do not warrant any interference of this Court.

10. Accordingly, the writ petition is dismissed being devoid of merit.