

(2013) 05 AHC CK 0186

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 35696 of 2008

Constable 49 Civil Police Gabbar
Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: May 23, 2013

Acts Referred:

- Constitution of India, 1950 - Article 311(1), 311(2)
- Penal Code, 1860 (IPC) - Section 201, 302, 364
- Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 - Rule 8(2)(b)

Hon'ble Judges: Sunita Agarwal, J

Final Decision: Allowed

Judgement

Sunita Agarwal, J.

Heard Sri Anoop Mishra, learned counsel for the petitioner and learned standing counsel.

Challenge in the present writ petition is the dismissal order dated 26.6.2007 and the appellate order dated 27.3.2008 dismissing the services of the petitioner under the U.P. Police Officers of Subordinate Ranks(Punishment and Appeal) Rules, 1991(hereinafter referred to as the "Rules, 1991").

The facts of the case in brief are that petitioner while working as constable in Pilibhit was dismissed by order dated 26.6.2007 passed by the Superintendent of Police, Pilibhit invoking power under Rule 8(2)(b) of the Rules. It was indicated in the order of dismissal that case crime no. 668 of 2006 under sections 364, 302, 201 I.P.C. has been registered by the petitioner's son against him and three other persons. Petitioner was arrested and sent to district jail, Pilibhit. The charge sheet no. 201/2006 dated 19.10.2006 was filed in the court. On the basis of these criminal charges initially petitioner was suspended vide order dated 3.9.2006 and later on

after submission of charge sheet and arrest he was dismissed by order dated 26.6.2007. The charge against the petitioner was that he murdered his own daughter with the help of three other persons.

Petitioner filed appeal dated 19.9.2007 against the dismissal order dated 26.6.2007 before the Deputy Inspector General of Police, which was dismissed on 27.3.2008. In the meantime, the trial court i.e. Upper Sessions Judge, Court No.1, Pilibhit by judgement and order dated 20.7.2007 acquitted the petitioner on the ground that prosecution had miserably failed to prove the charges levelled against all the accused including the petitioner. It has further been brought on record that by communication dated 13.11.2007 sent by the Special Secretary to the District Magistrate, Pilibhit, it was informed that State Government had decided not to file Government Appeal against the acquittal of the petitioner by order dated 20.7.2007. The order passed by the Sessions Court dated 20.7.2007 in S.T. No. 564 of 2006 was brought before the appellate authority. However, appellate authority did not consider the same and dismissed the appeal.

Learned counsel for the petitioner challenging the order contended that invocation of power under Rule 8(2)(b) of the Rules by the disciplinary authority is unjustified in as much as no reasons have been recorded for dispensing/holding inquiry under Rule 8(2) (b) of the Rules.

Learned counsel for the petitioner placed reliance on judgement of this court in 2006(8) ADJ 570 (Narendra Prasad Rai Vs. State of U.P. and others); 2006(4) ESC, 2303 (All.) (Bhupat Singh Yadav Vs. State of U.P. and others); Ravindra Raghav Vs. State of U.P. and others reported in 2005 (2) ESC (All.), 1229 and Division Bench judgement reported in 2006 (1) ESC 374 (All.) (State of U.P. and others Vs. Chandrika Prasad).

Learned counsel for the petitioner further submits that Division Bench of this court while considering the scope of powers under Rule 8(2) (b) of the Rules observed that Rule 8 is *Pari materia* with Article 311(1) and (2) of the Constitution of India. The normal rule is that no punitive action entailing consequence of dismissal, removal or reduction in rank would be taken without holding a disciplinary enquiry in order to deprive a person of the aforesaid Constitutional protection and in order to bring the same within the ambit of exception provided in the Constitution. Heavy burden lies upon the State to show that the order has been passed strictly within the four corners of the Statute and all the relevant ingredients have been taken into account.

Learned Standing Counsel on the other hand defending the order passed by the disciplinary authority submits that petitioner was found involved in criminal proceedings and was arrested, it was, therefore, not reasonably practicable to hold inquiry. In view thereof the order dated 26.6.2007 invoking provision of Rule 8(2) (b) of the Rules was rightly passed. The reasons have been recorded in the order by the disciplinary authorities, in view thereof order cannot be said to be bad.

A perusal of the dismissal order dated 26.6.2007 shows that disciplinary authority has nowhere mentioned that holding of disciplinary inquiry is not reasonably practicable. On the other hand it appears that order has been passed treating the petitioner guilty of offence alleged to have been committed by him. The disciplinary authority has stated in the order that on the basis of report of Circle Officer, Pilibhit dated 19.10.2006, the heinous act of the petitioner would impair the image of entire police force. The question mark is raised on the integrity of entire police force, in case, the petitioner is not penalised and there is every likelihood of occurrence of indiscipline amongst other members of police force. It has further been recorded that petitioner has been found guilty of heinous and inhumane conduct and person of such criminal mentality is not a fit person to be retained in police force. Police force is a disciplined force and keeping the petitioner in the department will also be against the public interest and discipline of the force. While recording all these findings Superintendent of Police, Pilibhit in one paragraph of dismissal order had stated that It is empowered to remove the petitioner in exercise of powers conferred under Rule 8(2) (b) of the Rules, if it is found not practicable to hold disciplinary inquiry against the delinquent and in the concluding part of the order Superintendent of Police, Pilibhit observed that in exercise of power under Rule 8(2) (b) of the Rules having found petitioner guilty of charges and unsuitable for police force, he is liable to be dismissed.

Before proceeding further in the matter it would be appropriate to reproduce the Rule 8(2) (b) of the Rules which provides for dismissal and removal

"8(2) (b) Where the authority empowered to dismiss or removal a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry."

The words "some reasons to be recorded in writing that it is not reasonably practicable to hold enquiry" means that there must be some material for satisfaction of the Disciplinary Authority not to hold enquiry. The subjective satisfaction of the authorities is to be based on certain objective facts so as to justify dispensation of the inquiry.

The reasons as indicated in the order for not keeping the petitioner in service any more, are (1) First ground was that he was held guilty of the criminal offence in which only charge sheet was submitted at that stage that too on the report of the Circle Officer, Pilibhit, (2) Second ground was that in view of the act which was described as heinous and inhumane act of the petitioner, it would not be appropriate to allow him to retain in service as it would inculcate indiscipline amongst other police officer and (3) third ground was that it would affect discipline of police force and would be against the public interest.

The reasons assigned by the disciplinary authority for not holding disciplinary proceedings against the petitioner in the order dated 26.6.2007 cannot be sustained

for the reasons that none of them would satisfy subjective satisfaction which was required to be recorded for dispensing with the inquiry. Petitioner was already suspended from service on 3.9.2006 and disciplinary authority treated him guilty of criminal charges levelled against him of which trial was undergone. This approach of the disciplinary authority is against the principles as laid down by the Apex Court in case of Jaswant Singh Vs. State of Punjab and others (1991) 1 SCC 362 and therefore, order passed by the disciplinary authority cannot be sustained.

Before concluding the matter it may be relevant to state that criminal case filed against the petitioner was decided by the Sessions Judge by judgment and order dated 20.7.2007, the petitioner and other accused were honourably acquitted. As the petitioner was acquitted after consideration of prosecution evidences and prosecution had miserably failed to prove the charges levelled against him. Even complaint, which was alleged to have been made by his son, had clearly stated that he had never lodged any complaint. The sessions court in its judgment and order dated 20.7.2007 recorded the finding that language of the complaint clearly shows that it could not have been written by son of the petitioner, who was 17 years old at the relevant point of time, it appears that it was written on the dictation of some policeman. All other prosecution witnesses were declared hostile as they refused to accept the prosecution case that recovery of dead body and other materials were recovered in their presence and hence no reliance on the prosecution story of recovery can be placed. There was no independent witness. The case set up by the police that petitioner had admitted the offence was found not proved. The trial court recorded finding that no disclosure statement was recorded by the police and from their own records, it is apparent that there were various discrepancies in the case set up by the prosecution. After considering all the oral and documentary evidences petitioner was acquitted which will be termed as honourable acquittal. Surprisingly the appellate authority in its order dated 27.3.2008 did not consider the acquittal order dated 20.7.2007 rather rejected the plea taken by the petitioner on the ground that there was report of Circle Officer, Pilibhit dated 22.1.2007 against the petitioner and charge sheet has been filed. The said approach of the appellate authority is illegal. Moreover in view of the above discussion it is clear that power exercised by the Superintendent of Police, Pilibhit under Rule 8(2) (b) of the Rules is contrary to the requirement as laid down in the said Rules. The order of dismissal does not fulfil the requirement of the aforesaid Rule and, therefore, cannot be sustained. The appellate order also cannot survive. Both the orders dated 26.6.2007 and 27.3.2008 are hereby quashed.

As suspension order dated 3.9.2006 merged in the order of dismissal order dated 26.6.2007, the dismissal order is set aside. The petitioner shall be reinstated in the service forthwith with all consequential benefits. It is, however, open to the respondent to hold disciplinary enquiry against the petitioner in accordance with law.

The writ petition succeeds and is allowed.