(2014) 6 ADJ 449 : (2014) 105 ALR 351 : (2015) 1 AWC 474 : (2014) 3 UPLBEC 2522

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 36894/2004

Deen Bandhu Paswan	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision: May 30, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 21, 229, 309
- Criminal Procedure Code, 1973 (CrPC) - Section 107, 116, 151

Citation: (2014) 6 ADJ 449 : (2014) 105 ALR 351 : (2015) 1 AWC 474 : (2014) 3 UPLBEC 2522

Hon'ble Judges: Rajan Roy, J

Bench: Single Bench

Advocate: Santosh Kumar Pandey and Ram Kumar Verma, Advocate for the Appellant

Final Decision: Partly Allowed

Judgement

Rajan Roy, J.

By means of this writ petition, the petitioner is challenging the order dated 16.7.2004 passed by the District Magistrate, Ballia u/s 10 of the North Western Provinces Village and Road Police Act, 1873, whereby his services, as village policeman/chaukidar in Village Maritar, Police Station Bansdeeh, Ballia, have been dispensed with by an order of dismissal. On 27.11.2003, the petitioner was served with a show cause notice asking him to show cause as to why he be not dismissed from service u/s 10 of Act No. XVI of 1873 read with section 36 of the Act No. 18 of 1876. The petitioner submitted his reply to the aforesaid show cause notice on 6.12.2003. Thereafter, the impugned order of dismissal was passed by the District Magistrate, Ballia on 16.7.2004.

2. The contention of the petitioner is two-fold. Firstly, he was appointed to a post, i.e., village chaukidar, in connection with the affairs of State of U.P., as would be evident from

the duties assigned u/s 34 of the Act of 1876. It was contended that as no detailed procedure has been prescribed in the U.P. Police Regulations or Oudh Laws Act, 1876 for conducting the disciplinary proceedings against a village chaukidar/police-man and as the said post comes within the definition of the U.P. Government Servant (Discipline and Appeal) Rules 1999, as such, his services were governed by the said Rules. Accordingly, the punishment of dismissal from service could only have been imposed after following the due and proper procedure of holding a regular inquiry after issuance of a charge-sheet under the Rule 7 of the aforesaid Rules of 1999 and this not having been done, the impugned order was not sustainable.

3. Secondly, it was contended that in view of the reply submitted by the petitioner to the show cause notice, the impugned order was not, at all, justified. A perusal of the reply discloses that some dispute with certain "pattidars" regarding some land had been going on for long, the said pattidars had been raising some dispute or the other, from time to time, which led to the proceedings under sections 151/107/116, Cr.P.C. A civil dispute was also pending adjudication vide Suit No. 487 of 2003 before the Civil Judge, Junior Division with the pattidars. One Sri Raghunath Pandey was siding with the pattidars and it is on his instigation, that unnecessary dispute was being raised. It is Sri Pandey, who submitted complaint against the petitioner after the murder of his son. The complaint was actuated by mala fide and the petitioner had nothing to do with the murder. The petitioner did not have any criminal history, nor he had any connection with criminals nor he had been involved in any criminal activity. The petitioner had nothing to do with the protest by the villagers, which was clearly on account of the murder of a local person. The villagers nor any other local person had made any complaint against the functioning of the petitioner except Sri Raghunath Pandey, who was acting out of malice. The complaint and the proceedings with respect thereto were initiated on cooked up facts. The petitioner further annexed therewith character certificates issued by the Gram Pradhan and various members of Zila Panchayat, Ballia, all of whom had vouched for the integrity and good character of the petitioner.

4. Based on the aforesaid, it was submitted that the show cause notice, as also the impugned orders were passed on frivolous grounds and same were absolutely unreasonable, therefore, liable to be quashed.

5. Violation of Articles 14, 16 and 21 of the Constitution of India and principles of natural justice was also alleged.

6. On the other hand, learned Standing Counsel submitted that the charges against the petitioner were of complicity with criminals and, therefore, his continuance as village chaukidar was not acceptable. The In-charge Inspector of Police Station Bansdeeh submitted a report on 1.10.2003 against the petitioner. Based thereupon, the Superintendent of Police, Ballia recommended the dismissal of the petitioner vide his letter dated 10.11.2003. Consequently, the District Magistrate has passed the impugned order, which does not require any interference. The documents submitted by the

petitioner alongwith the reply appear to be an afterthought and same appear to have been manipulated by him. No full-fledged inquiry is required under the U.P. Government Servant (Discipline and Appeal) Rules, 1999 before dismissing the petitioner from service as he does not hold any such post so as to attract the aforesaid provisions.

7. I have heard learned Counsel for the petitioner, as also the learned Standing Counsel and have also perused the records.

8. The following questions arise for consideration in this case:

(i) Whether a full-fledged inquiry is required, as per law, before dismissing a village chaukidar/police-man u/s 10 of the North Western Provinces Village and Road Police Act, 1873?

(ii) Whether the impugned order of dismissal of the petitioner is justifiable in the facts and circumstances of the case and is it sustainable in law?

9. A bare perusal of the impugned order of dismissal discloses that the same has been passed u/s 10 of the Act No. XVI of 1873. The appointment of village police-man or chaukidar is made under the aforesaid Act as also the Oudh Laws Act, 1876. Their duties are defined u/s 8 of the Act of 1873, section 36 of the Act of 1876 and the provisions of the U.P. Police Regulations. The provision for dismissal is contained in section 10 of the Act of 1873 and section 36 of Act of 1876.

Sections 10 of the Act No. XVI of 1873 read as under:

"10. Dismissal of village or road police-man.--The Magistrate of the district may dismiss any Village Policeman or Road Police-man for any misconduct or neglect of duty."

10. Similar provisions exist in the Act XVIII of 1876. Section 36 of the said Act reads as under:

"36. Dismissal of village or road police-man.--The Magistrate of the District may dismiss any village police-man or road policeman for any misconduct or neglect of duty.

Where any village police-man is guilty of neglect of duty or other misconduct, the person authorized to nominate to his office may report him for dismissal to the Magistrate of the district; and such Magistrate shall dismiss him accordingly, unless the Magistrate has reason to think that such dismissal would be improper."

11. u/s 13 of the Act of 1873, statutory remedy was available before the Commissioner but the same was not exhausted by the petitioner, instead he filed this writ petition in the year 2004 challenging his dismissal. Normally, in such a matter, the Court would have relegated the petitioner to file statutory alternative remedy, however, considering the fact that this writ petition has remained pending before this Court for past 10 years, it would

be unfair to relegate him before the Commissioner at this stage.

12. The first contention raised by the learned Counsel for the petitioner, that full-fledged inquiry should have been conducted by issuance of a proper charge-sheet before dismissing him from service, as he was holding a post in connection with the affairs of the State, therefore, he was covered by the definition of "Government servant" under U.P. Government Servant Act, 1999, does not appear to be tenable. In this context, reference may be made to a decision by a Single Judge of this Court in Civil Misc. Writ Petition No. 4997 of 2007, decided on 30.10.2009, 2010 (78) ALR 61 . The relevant extracts are being quoted hereinbelow:

"1. The petitioner has been terminated by the District Magistrate vide order dated 16.7.2004 in exercise of power u/s 10 of Village and Road Police Act, 1873 (hereinafter referred to as "Act, 1873"). He filed an appeal against the said order of termination, which has also been rejected by the Commissioner vide order dated 26.5.2007. Learned Counsel for the petitioner submitted that no charge-sheet was issued to the petitioner and no regular enquiry was conducted against him before passing the impugned order of termination and, therefore, the same is illegal.

2. The submission is thoroughly misconceived. Village Chowkidar is a Police-man and is a village servant. His chief duty is to watch and ward the village in his charge. He is required to carry reports to the village Headman, to assist him in tracing offenders and to make arrest as authorized by law. He is responsible to the District Magistrate for due performance of his duties. He is not a whole time employee though is a village servant. He is not prohibited from cultivating land. However, he must reside in one of the villages, for which he is responsible and cannot be employed on menial duties by members of constabulary force. He is required to attend police station twice a month on fixed dates for the purpose of reporting births and deaths. The duties of Village Chowkidar are provided in Chapter IX, Regulations 89 to 96-A of the Police Regulations besides Regulations 129, 181, 190, 257, 266, 322 and 366. Besides, for showing good conduct, the provision has been made to award "good conduct stripes" and "allowance" to Village Chowkidar under Regulation 476.

3. His service conditions are governed by the U.P. Village and Road Police Act, 1873 (U.P. Act No. XVI of 1873) (hereinafter referred to as "Act, 1873"). Section 10 thereof confers power of dismissal of Village Police-man upon the District Magistrate and section 13 provides that an order passed u/s 10 would be revisable before the Commissioner. The impugned order has been passed by the District Magistrate u/s 10 of the Act, 1873 and, therefore, it would be expedient to reproduce the same as under:

"10. Dismissal of village or road policeman.--The Magistrate of the district may dismiss any village policeman or road policeman for any misconduct or neglect of duty."

4. Besides section 14 confers power upon the State Government to frame rules in respect to the discipline of the Village and Road Police etc. and reads as under:

"14. Pozoer to make subsidiary rules.--The State Government may from time to time frame rules--

(a) for the discipline of the village and road police;

(b) for regulating their numbers, location and duties; and

(c) for carrying out generally the purpose of this Act."

5. Learned Counsel for the parties could not place any rule framed u/s 14 of the aforesaid Act by the State Government A perusal of the provisions of the Act and the Police Regulations makes it clear that even though a Village Chowkidar/Police-man is entitled to do his own work of agriculture etc. even after his nomination/appointment as Village Chowkidar, but he is holder of a civil post and in the matter of discipline, he is controlled by the State Government. Salary is also paid by the State Government. Act 1873 has continued by virtue of Article 372 of the Constitution. After the enforcement of the Constitution, the provisions of the Act insofar as they provide for dismissal of Village Chowkidar have to be read consistent with the provisions of the Constitution. I have no hesitation in taking a view that in respect to dismissal of the a Village Chowkidar even u/s 10, the provisions of Article 311 would be attracted and if there is a violation thereof, the dismissal would be illegal. However, what would be the procedure for taking action against a Village or Road Police-man is the moot question. In the absence of any rules framed u/s 14 of the Act, 1873, in order to read the above provisions of Act, 1873 consistent with the various provisions of the Constitution of India, after independence, it has to be held that an action u/s 10 cannot be taken in violation of the principles of natural justice. The procedure of compliance of principles of natural justice in the absence of rules may not be elucidated in detail but suffice it to say that if the concerned Village Chowkidar is given an adequate opportunity to explain his conduct before passing the order of dismissal, in a given case, it may be sufficient compliance of the principles of natural justice for the reason that considering the nature of the duties of the Village Chowkidar, continuance of a crooked and wicked character person even a short time would be extremely injurious to the village under his charge and, therefore, the nature of proceeding has to be such so as to take the minimum possible time. If in a given case, it is found that the show cause notice was issued to the concerned employee and he had sufficient opportunity to explain his conduct, if the order of dismissal is passed thereafter, it need not necessarily be said that there is any violation of principle of natural justice particularly if the employee concerned is not able to show that any prejudice has caused to him.

6. .....The only ground taken by the petitioner in the case in hand is that the dismissal order is non speaking and a departmental inquiry by issuing a regular charge-sheet has

not been conducted against him. Learned Counsel for the petitioner could not place any statutory provision, which provide such procedure applicable to the case of a Village Chowkidar."

13. In the aforesaid case, the petitioner was an accused in a criminal case and criminal history was not disputed.

14. A similar issue came up for consideration before a Division Bench of this High Court in Ghanshyam v. State of U.P. and others Special Appeal No. 994(d) of 2010, wherein this Court after taking note of the judgment in Hridayanand''s case (supra) categorically held as under:

"5. Having heard learned Counsel for the parties we find that the provisions of the Oudh Laws Act, 1876 do not require a full scale enquiry and the only requirement by the District Magistrate is to give a reasoned order. It is for this reason that the principles of natural justice were read into section 36 of the 1876 Act, and vide judgment dated 19th July, 2006 the matter was remanded back to the District Magistrate. Neither the provisions of section 36 nor any other provisions of the 1873 Act, or the Police Regulations do require the holding of a regular enquiry in relation to a village policeman. Learned Counsel for the appellant has been unable to point out any such provision which may require the invoking of this principle.

6. At this stage it may be pointed out that this Court in the case of 2010 (78) ALR 61 after examining the provisions in relation to the dismissal of a village or a road police-man as contained in section 10 of the 1873 Act came to the conclusion that the rules of natural justice have to be complied with. It was also held that in a given case it would be sufficient compliance if a show cause notice has been given and an opportunity to explain the conduct has been afforded to a delinquent. If such a procedure has been followed, then it cannot be said that there was any violation of principles of natural justice."

15. The Rules of 1999 have been made by the Governor of U.P. under the proviso to Article 309. They apply to Government servants under the rule making power of the Governor under the proviso to Article 309 of the Constitution except the officers and servants of the High Court at Allahabad covered under Article 229 thereof.

16. The question is whether the village chowkidar appointed under the Act of 1873 read with Act of 1876 is covered by the rule making power under the proviso to Article 309.

17. Under Article 309, subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services, and posts in connection with the affairs of the Union or of any State. The proviso to Article 309 comes into play when provision with regard to recruitment and condition of service of such persons has not been made by or under an Act of the appropriate legislature under the Article and any rules so made under the proviso to Article 309 shall have effect subject to the provision of any such Act.

18. In the case of a village chowkidar/policeman, the terms and conditions of service are governed by the Act No. XVI of 1873, Act No. XVIII of 1876 and the provisions contained in the U.P. Police Regulations made under the Police Act, 1961. The said Acts and statutory Regulations contain a provision for dismissal also. They are complete codes in themselves. The said Acts do not provide for holding of a full fledged inquiry before passing an order of dismissal. The said Acts have continued to be in operation, even after the framing of the Constitution of India by virtue of Article 372 of the Constitution of India, as they have not been altered, or repealed or amended by the legislature.

19. Under Rule 14 of the Act of 1873, the State Government has the power to frame Rules for the discipline of the village and road police. Rule 14 reads as under:

"14. Power to make subsidiary rules.--The Local Government may from time to time frame rules--

(a) for the discipline of the Village and Road Police,

(b) for regulating their numbers, location and duties, and

(c) for carrying out generally the purposes of this Act."

20. The field with regard to ''condition of service'' of village chowkidar/police-man already being ''occupied'' by the aforesaid Act, the Rules made under the proviso to Article 309 shall not apply.

21. As noted in the Haridayanand''s case village chowkidar is not a whole time employee. His role in the security and safety of the village is such that, as held in the Haridayanand''s case, the nature of the proceedings for dismissal has to be such as can be completed in a short time.

22. In view of the above, the contention of the petitioner that full-fledged inquiry was required as per the Rules of 1999 before dismissing him from service is misconceived and the same is rejected. The question No. (i) as framed above is answered in the negative.

23. So far as the other question is concerned, a perusal of the material on record reveals that the Incharge Inspector of P.S. Baansdeeh, District Ballia submitted a report on 1.10.2003 in respect of the petitioner addressed to the District Magistrate alleging that the petitioner had relations with criminals, he was involved in criminal activities, and that there were several complaints in the area against him, that there was lot of agitation amongst locals with regard to his roll in the murder in the village Maritar, on account of which protests were held and the local police had to face a lot of discomfort on account of his activities, that there was a possibility of some grave incident happening in future, which would sully the reputation of police. In the circumstances, the Incharge Inspector made recommendation for dismissal of the petitioner. Based thereon, the Superintendent of

Police, Ballia also made the same recommendation by his letter dated 10.11.2003 reproducing verbatim the averments made by the Incharge Inspector.

24. The District Magistrate on his part passed the following order of dismissal on 16.7.2004:

25. The petitioner in his reply had submitted that there were no criminal cases pending against him, that he was not involved in any criminal activity, that one Sri Raghunath Pandey, whose son had been murdered and who was close to the pattidars of the petitioner, with whom a civil dispute was going on for the past several years, submitted a false complaint, based on which the impugned action had been initiated and taken against him. In the writ petition, it has been contended that he had been the village chaukidar for past more than 20 years but there was no complaint against him regarding his functioning. The necessary averments in this regard have been made in paragraphs 2 to 4 in the writ petition, which have not been denied by the opposite parties in paragraph-4 of their counter-affidavit.

26. A perusal of the report of Incharge Inspector shows that vague averments had been made therein, unsupported by details of any incident or proof, whether oral or documentary, as to the complicity of the petitioner with criminals. Neither the name of any criminal has been mentioned therein nor any such criminal activity has been mentioned in which the petitioner could be said to have been involved.

27. It is not the case of the respondents that any criminal case is pending against the petitioner. So far as his alleged role in the murder as referred in the report of Inspector Incharge is concerned, it is not the case of the respondents that he was an accused in the said case nor his alleged role is mentioned clearly.

28. The concerned Superintendent of Police has merely reproduced the averments of the Incharge Inspector in his recommendation on 10.11.2003.

29. The order of the District Magistrate merely states that on an examination of the report of Superintendent of Police and the documents available on record, the petitioner is dismissed from service.

30. The impugned order of dismissal does not disclose any other reason nor it contains any discussion of the facts of the case and the reply submitted by the petitioner to the show cause notice nor does it contain any "satisfaction" of the District Magistrate about the "unsuitability" of the petitioner to continue as village chaukidar. No doubt u/s 10 of the Act, District Magistrate has the power to dismiss a village chaukidar/police-man but said power has to be exercised in a fair and reasonable manner after due and proper application of mind. The least that was required was that the reply submitted by the petitioner to the show cause notice should have been considered. This is the minimal requirement of the principle of natural justice and fair play in administrative action. The District Magistrate while passing any order u/s 10 is bound by the obligations imposed

upon the authorities of the State under Articles 14 and 21 of the Constitution of India.

31. This Court in the case of Haridayanand (supra) has already held that a village chaukidar/police-man holds a civil post, his salary is paid by the State Government and he is controlled by it in the matter of discipline and that after the enforcement of the Constitution of India, the provisions of the Act of 1873 have to be read in consonance with the provisions of the Constitution and also with the provisions of Article 311, and also that with respect to dismissal of a village chaukidar even u/s 10, the provisions of Article 311 shall be attracted and if there is a violation thereof the dismissal would be illegal. The said decision has been noticed with approval by a Division Bench in the case of Ghanshyam (supra).

32. The very fact, that a show cause notice was issued to the petitioner, shows that it was to elicit his response in the matter and to give him a fair opportunity to defend himself, this should have been taken to its logical end, by considering his reply to the show cause notice while passing of the order of dismissal. This has not been done. Issuance of show cause notice cannot be reduced to a mere formality. The impugned order has penal and civil consequences.

33. The allegation of complicity with criminals and involvement in criminal activity are serious allegations, which would disentitle any person from being appointed or continuing as village chaukidar/police-man, but there has to be some tangible information or material to support the aforesaid allegations, which in the instant case is wanting.

34. The manner in which the impugned order has been passed is not in consonance with the law declared by this Court in the cases of Haridayanand (supra) and Ghanshyam (supra), relevant extracts of which have already been quoted above. The impugned action is not sustainable as per the provisions contained in Articles 14, 21 and 311 of the Constitution of India.

35. The question No. (ii) as framed above is also answered in the negative.

36. In view of the above, impugned order is hereby quashed. Normally quashing of an order of dismissal from service is followed by reinstatement. However, in view of passage of ten years period since passing of the said order, the District Magistrate is directed to reconsider the case of the petitioner and take fresh decision as per the law regarding his engagement as village Chowkidar/police-man within a period of three months after verifying his antecedents and satisfying himself with regard to his suitability for such appointment. The District Magistrate shall specifically verify as to whether the petitioner has any criminal antecedents or has relations with criminals or is involved in any criminal activity. In the event, the District Magistrate decides the matter in favour of the petitioner, he shall be entitled to reinstatement, which shall be treated as a fresh appointment. The petitioner shall not be entitled to reinstatement unless a decision is taken by the District Magistrate as aforesaid. It is made clear that any authority other than the District

Magistrate is empowered to make such appointment, the aforesaid exercise shall be made by such authority. Subject to the above, the writ petition is allowed.