IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 2250 of 2021

[redacted] .... Petitioner

Versus

1. The State of Jharkhand
2. The Director General of Police-cum-Inspector General of Police, Jharkhand, Ranchi.
3. The Commandant, Jharkhand Armed Police (JAP) of Hazaribagh, Hazaribagh.
4. The Deputy Inspector General of Police, Jharkhand Armed Police (JAP), Ranchi.
5. The Inspector General of Police, Jharkhand Armed Police (JAP), Ranchi.

.... Respondents

CORAM : HON'BLE DR. JUSTICE S.N. PATHAK

For the Petitioner : Mr. Satish Prasad, Advocate
For the Resp-State : Mr. Gaurav Abhishek, AC to AG

11/ 19.06.2024 Heard the parties.

2. The petitioner has been constrained to knock the door of this Court for quashing of the order contained in Memo No. 09 dated 11.02.2021, whereby the petitioner has been dismissed from service on the charge of bigamy. The petitioner has also challenged the appellate order dated 27.09.2021 as well as the revisional order dated 06.07.2022.

3. While the petitioner was posted as Constable in Churchu Police Station in the district of Hazaribagh, a complaint was lodged on 10.07.2017 by one [redacted] alleging inter alia that despite the petitioner was already married having two children, he lived with her in live-in-relation and in continuance of physical relationship she became pregnant. Thereafter, the petitioner started torturing her by various means, for which a *Panchayati* was also held. The matter was also reported to local police station and an FIR to that effect being Daru Police Station Case No. 29 of 2016 for the offence under sections 341, 323, 376, 313 and 506 of the Indian Penal Code was registered. The matter from the first wife of the petitoner was also enquired into and thereafter finding the allegation true, the petitioner was put under suspension with effect from 4.6.2018 and a regular departmental proceeding was initiated. The petitoner submitted his

reply to the memo of charge by which he totally denied the charges and claims to be innocent. Thereafter enquiry proceeding was started and having found the charge of live-in-relationship proved, the petitioner was held guilty, which culminated into his dismissal from service, as is evident from the order dated 11.02.2021 passed by the Superintendent of Police, Hazaribagh. The appeal and revision preferred by the petitioner were also rejected. Hence, the petitioner having no efficacious and alternative remedy, knocked the door of this Court.

4. Mr. Satish Prasad, learned counsel appearing for the petitioner argues that impugned orders are not tenable in the eyes of law for the plain and simple reason that the petitioner has been punished for the charge which has not been reflected in the charge memo. He further submits that there had to be a specific charge of bigamy in this charge sheet, but in absence thereof, the impugned order based on the charge of bigamy is not tenable. He further argues that at the best, it can be said that the petitioner was living with the complainant, as live-in-relationship, but it does not mean that she was married to the petitioner, as the petitioner does not recognize any marriage. Therefore, in view of the proviso to Rule 23 of the Jharkhand Service Code, which is related to solemnization of second marriage, the impugned orders are fit to be quashed and set aside. Learned counsel also points out that in the criminal case, which has been lodged by the victim for the same set of allegation, the petitioner has been acquitted vide judgment dated 17.02.2023 passed in S.T. No. 110 of 2019.

5. To buttress his arguments, learned counsel places heavy reliance upon the judgments of the Hon'ble Apex Court in the cases of ***Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd***., reported in **(1999) 3 SCC 679**, ***G.M. Tank Vs. The State of Gujarat***, reported in ***(2006) 5 SCC 446*** and ***M.V. Bijlani Vs. Union of India & Ors***., reported in **(2006) 5 SCC 88**.

6. On the other hand, Mr. Gaurav Abhishek, learned counsel representing the State argues that the stand of the petitioner is not at all tenable in the eyes of law. Admittedly the petitioner was having illicit relationship and was in live-in-relationship with one [redacted]. The petitioner was already married. The petitioner being a member of Police

Force was not expected to violate the Rules, in particular Rule 23 of the Jharkhand Service Code, read with Rule 707 of the Jharkhand Police Manual. He further submits that merely acquittal in the criminal case cannot be a ground for quashment of the order of dismissal.

7. Having heard the rival submission of the parties across the Bar, this Court is of the view that no interference is warranted in the instance writ petition for the following facts and reasons:

(i) Admittedly the petitioner was having illicit relationship with the lady other than his wife.

(ii) Petitioner himself admits that he was in live-in-relationship with [redacted] [redacted]. The admission of the petitioner that he was living in-relationship with [redacted] [redacted], who was a lady other than his wife, becomes a sufficient reason for termination / dismissal in view of the Rule 23 of the Service Code read with Rule 707 of the Jharkhand Police Manual.

(iii) It is unbecoming of a police personnel who was in live-in-relation with another lady other than wife and amounts to violation of rules whereby the service conditions of the petitioner are governed.

(iv) Though the petitioner was acquitted in the criminal case, but it cannot be a ground for quashment of the order of dismissal, which was done in regular departmental proceeding. The parameters of the criminal case are different from the regular departmental proceeding. In this context, the Hon'ble Apex Court in the case of ***Samar Bahadur Singh Vs. State of UP and others, reported in (2011) 9 SCC 94*** held in paragraphs-7 and 8 as follows:-

> ***"7.*** *Acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings as the standard of proof in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt whereas in a departmental proceedings, the department has to prove only preponderance of probabilities. In the present case, we find that the department has been able to prove the case on the standard of preponderance of probabilities. Therefore, the submissions of the counsel appearing for the appellant are found to be without any merit.*

> ***8.*** *Now, the issue is whether punishment awarded to the appellant is disproportionate to the offence alleged. The appellant belongs to a disciplinary force and the members of such a force are required to maintain discipline and to act in a befitting manner in public. Instead of that, he was found under the influence of liquor and then indulged himself in an offence. Be that as it may, we are not inclined to interfere with the satisfaction arrived at by the disciplinary authority that in the present case punishment of dismissal from service is called for. The punishment awarded, in our considered opinion, cannot be said to be shocking to our conscience and, therefore, the aforesaid punishment awarded does not call for any interference."*

(v) The petitioner was given ample opportunity before the enquiry officer as well as the appellate authority and the revisional authority. The Hon'ble Apex Court in the case of ***Union of India & Ors. Vs. P. Gunasekaran***, reported in **(2015) 2 SCC 610** has held that "*no interference be made by the High Court in the case of concurrent findings of the authorities*". Further, the Hon'ble Apex Court in para-12 and 13 has held as under:-

> ***12.*** *Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:*
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> *(a) the enquiry is held by a competent authority;*
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> *(b) the enquiry is held according to the procedure prescribed in that behalf;*
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> *(c) there is violation of the principles of natural justice in conducting the proceedings;*
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> *(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
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> *(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
>
> *(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. *Under Articles 226/227 of the Constitution of India, the High Court shall not:*

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.

(vi) The judgments relied upon by the learned counsel for the petitioner are of no help to the petitioner. The punishment order passed by the disciplinary authority was tested up to the highest authority of the State which could not be questioned here sitting under Article 226 of the Constitution of India, when no folly in the departmental proceeding is pointed out.

8. As a sequitur to the aforesaid rules, regulations, guidelines and judicial pronouncements, I do not see any reason to interfere with the impugned penalty order dated 14.03.2017 affirmed upto the appellate authority as well as the revisional authority, which requires no interference by this Court.

9. The writ petition is, accordingly, dismissed.

(Dr. S. N. Pathak, J.)

R.Kr.