

(Judgement reserved on 26.04.2023)
(Judgment delivered on 19.10.2023)

Neutral Citation No. - 2023:AHC:195510

Court No. - 52

Case :- WRIT - A No. - 40893 of 2010

Petitioner :- Const. No. 118 Awadhesh Kumar Pandey

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Rajesh Nath Tripathi, Ajai Kumar Srivastava, Harendra Yadav, Manoj Kumar

Counsel for Respondent :- C. S. C.

Hon'ble Saurabh Srivastava, J.

1. Heard Shri Rajesh Nath Tripathi, learned counsel for the petitioner and Shri Girijesh Kumar Tripathi, learned standing counsel for the State respondents.

2. This writ petition has been preferred for seeking quashing of the impugned orders dated 10.5.2009, 10.9.2009 and 10.5.2010 passed by respondent nos. 2, 3 and 4 respectively through which the services of the petitioner has been terminated.

3. It is the case of the petitioner that he was duly selected and appointed as Constable in Civil police and was posted at police station Bakhira District Sant Kabir Nagar. On 12.9.2008, the petitioner was assigned special duty and attached with Circle officer, Mehdawal and when he was relieved from the special duty by the Circle Officer, Mehdawal he fell ill and came for taking bed rest at his rented accommodation, where some altercation took place between the petitioner and his landlord and at the same time Additional Superintendent of Police (A.S.P) Sant Kabir Nagar was passing and seen the crowd near the house of the petitioner, he stopped there and on wrong information that was given by some person against the petitioner that he was having illicit relationship with a woman, the A.S.P, directed to arrest the petitioner and

that women also and a case was registered bearing case crime no.2158 of 2008 under Section 294 I.P.C in police station Kotwali Khalilabad, District Sant Kabir Nagar. The petitioner was released on bail on the very next date as there was not a single person of public or nearby locality to support the prosecution version of the F.I.R. Chargesheet dated 18.11.2008 was forwarded and filed in the court on 11.12.1988 and after taking cognizance, Criminal Case No.6478 of 2008 was registered between State of U.P. vs. Awadhesh Pandey under Section 294 IPC before the court of Chief Judicial Magistrate, District Sant Kabir Nagr but as the A.S.P. was annoyed with the petitioner, he was suspended the petitioner on 23.9.2008 and after considering the reply submitted by the petitioner, he was reinstated in service with effect from 29.11.2008 and continued on duty till his dismissal from service on 10.5.2009. After registration of the first information report, a disciplinary proceedings were also initiated against the petitioner and served with a show cause notice also. Petitioner submitted his written reply on 6.11.2008 and also prayed to produce two witnesses namely Shri Vinod Rai and Arendra Rai in defence of his case but the same was not accepted by the Enquiry Officer and submitted enquiry report dated 19.4.2009. Respondent No.2 had again issued show cause notice on 22.4.2009 granting fifteen days time to file his reply to the enquiry report. Since the petitioner was suffering from hypertension w.e.f. 20.4.2008 to 10.5.2009 hence he could not appear personally before the Superintendent of Police. Petitioner sent his explanation dated 8.5.2009 by Blaze Courier Ltd, which was received in the office of Superintendent of Police on the same dated i.e, 8.5.2009. Respondent no.2 thereafter passed an order of dismissal from service on 10.5.2009 totally ignoring the detailed reply of the petitioner dated 8.5.2009.

4. Against the order of dismissal dated 10.5.2009, petitioner preferred an appeal before Deputy Inspector General of Police, Basti Region (respondent no.3) alongwith his medical certificate showing that he was continuously ill w.e.f. 20.4.2008 to 10.5.2009. Respondent no.3 dismissed

the appeal of the petitioner on 10.9.2009, copy of which had been served upon the petitioner on 17.9.2009.

5. Being aggrieved with the order of the appellate authority, petitioner preferred writ dated 10.9.2009 before this Court being Civil Misc. Writ Petition No.69680 of 2009. The writ petition too was dismissed on 22.12.009 on the ground of alternative remedy of filing revision under Rule 23 of Rules of 1901. Thereafter petitioner preferred revision before the revisional authority. Revision of the petitioner was also dismissed on the ground of delay in filing the revision.

6. Learned counsel for the petitioner submitted that the petitioner did not commit any misconduct as alleged by the disciplinary authority and the said misconduct was not supported by any evidence and the enquiry officer without appreciating the evidence and without enquiring the said misconduct by any independent witnesses, passed the order of dismissal from service. Learned counsel for the petitioner further submitted that if the said incident is true, the same was not committed by the petitioner during duty period and the said alleged incident committed by him at his private residence which is not a misconduct in performing his duties. The petitioner has also been acquitted in case crime no.2158 of 2008 under Section 294 I.P.C on the basis of which the services of the petitioner were terminated. The departmental appeal preferred by the petitioner was dismissed without providing any information of date and hearing and as such the orders impugned are illegal and the same may be set aside.

7. In support of his submissions, learned counsel for the petitioner relied upon the judgments of Coordinate Bench of this Court passed in **Basistha Muni Mishra vs. Union of India** [2023 (6) ADJ 704] and **Indra Kumar (Ex-Constable) vs. Union of India** [2023 (5) ADJ 57 (LB)]. In addition to the aforesaid judgments, learned counsel for the petitioner had also relied upon the judgment of **Kedar Nath Yadav vs. State of Uttar**

Pradesh, Laws (All) 2005 (5) 286 as well as **M.Paul Anthony Capt vs. Bharat Gold Mines Ltd, 1999 Law Suit (SC) 379.**

8. Per contra, learned standing counsel opposed the prayer as made in the petition and submitted that the petitioner was awarded punishment of dismissal from service on the basis of departmental proceedings carried out against him for committing negligence and carelessness in performing duty as he did not record his returning in police station Bakhira on 21.9.2008 and because of his unauthorised absence alongwith his government rifle and 20 units of bullets, he was arrested red handed alongwith a women and said F.I.R was lodged against him. He further submitted that during the course of enquiry, neither the petitioner produced any evidence in his defence nor examined any witnesses in his favour after having being given so many opportunities of hearing.

9. Learned standing counsel placed reliance upon the judgment passed in **Imtiyaz Ahmad Malla vs. State of Jammu & Kashmir and others [SLP (C) No. 678 of 2021]** and submitted that a terminated employee cannot be reinstated in service only because of his acquittal in criminal proceedings.

10. After having the rival submissions as extended by learned counsel for both the parties and perusal of the records as well as the judgments relied upon, the Court finds that the services of the petitioner were terminated on the basis of departmental proceedings, not at the behest of criminal proceedings in which the petitioner was ultimately acquitted. The departmental proceedings were conducted on the ground that the petitioner had not complied with the order of his senior and without informing the department, he was absent from duty with his government rifle and 20 units of bullets and the said proceedings were culminated into termination from service of the petitioner as he was found guilty under the provisions of Police Officers of Subordinate Ranks (Punishment & Appeal) Rules, 1991 and as such, the criminal proceedings initiated against the petitioner under Section 294 IPC is not identical with the departmental proceedings.

11. In the case of **Imtiyaz Ahmad Malla (Supra)**, the Hon'ble Supreme Court held that if a persons is acquitted or discharged, it cannot obviously be inferred that he was falsely involved, or he had no criminal antecedents and it does not entitle an employee to the reinstatement in service.

12. In another case, namely, **The State of Rajasthan and others vs. Phool Singh (Civil Appeal No.5930 of 2022, dated 2.9.2022)**, the Apex Court has taken a different view with the order passed in **Capt. M. Paul Anthony (Supra)** and held that a terminated employee cannot be reinstated in service because of his acquittal in criminal proceedings.

13. The departmental proceeding were conducted against the petitioner in accordance with procedure and law and the charges leveled against him, were found proved thereafter, the petitioner had been terminated from service and as such the orders impugned are perfectly just and legal.

14. In view of the aforesaid facts and circumstances, the present petition lacks merit and is accordingly **dismissed**.

Order Date :- 19.10.2023
Vivek Kr.

(Saurabh Srivastava, J.)