

GAHC010284612023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/251/2024

THE UNION OF INDIA
REPRESENTED BY THE HOME SECRETARY, GOVT. OF INDIA, NEW DELHI,
PIN-110001

2: THE DY INSPECTOR GENERAL CISF(NEZ) KOLKATA-17.

3: THE COMMANDANT CISF UNIT ONGC JORHAT PIN- 785001.

4: THE ASSISTANT COMMANDANT CISF UNIT ONGC JORHAT PIN- 785001

VERSUS

KALADHAR CHAUBEY
S/O SHARADA PRASAD CHAUBEY, R/O- HATHIAR KHURD, P.O- KATI HAR
KALA, P.S- CHOLAPUR, DISTRICT- VARANASI (UP), PIN- 221101.

Advocate for the Petitioner : MRS. A GAYAN,

Advocate for the Respondent : MR. R MAZUMDAR, MS T WAPANGLA, MR. R DEKA

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 08.11.2024

Date of Judgment & Order : 08.11.2024

JUDGMENT & ORDER (ORAL)

(N. Unni Krishnan Nair, J.)

Heard Ms. Anuradha Gayan, learned CGC, appearing on behalf of the appellants. Also heard Mr. Rajesh Mazumdar, learned counsel, appearing on behalf of the sole respondent.

2. The present intra-Court appeal preferred by the appellants, herein, is directed against the judgment & order, dated 02.08.2023, passed by the learned Single Judge in Review Petition No. 89/2023. The appellants have also presented a challenge to the order, dated 06.06.2023, passed by the learned Single Judge in WP(c)4518/2008, against which the Review Petition being Review Petition No. 89/2023 was so instituted by the sole respondent, herein.

3. The brief facts requisite for the purpose of adjudication of the issues arising in the present proceeding, is noticed, as under:

3.1. The sole respondent, herein, while working as a Constable in the Central Industrial Security Force and posted at the Oil and Natural Gas Commission Ltd. (ONGCL) Unit of the said Force at Jorhat; a Disciplinary Proceeding came to be instituted against him basing on an allegation that he along with another constable viz. Santosh Kumar Singh had assaulted and manhandled a senior Officer of the Unit.

3.2. Basing on the said allegation, two separate proceedings came to be so instituted against the sole respondent, herein, and said Santosh Kumar Singh. On conclusion of the said Disciplinary Proceeding, the disciplinary authority issued the order, dated 30.10.1996, imposing the penalty of dismissal from service upon the sole respondent. The said Santosh Kumar Singh was also vide order, dated 28.09.1996, imposed the penalty of dismissal from service.

3.3. The sole respondent, herein, assailed the order, dated 30.10.1996, before the High Court of Allahabad by way of filing a writ petition being WP No. 10317 of 1999. The said writ petition, was, however, dismissed on the ground of lack of territorial jurisdiction. The sole respondent, thereafter, had instituted WP(c)4518/2008, before this Court.

3.4. The said Santosh Kumar Singh who was also imposed with the penalty of dismissal from service basing on the same set of allegations as were levelled against the sole respondent, herein, had also instituted WP(c)4517/2008, before this Court. The WP(c)4518/2008 so filed by the sole respondent, herein, was, however, dismissed due to non-prosecution vide order, dated 28.11.2013. This Court proceeded to consider the issues arising in the proceeding of WP(c)4517/2008 filed by said Santosh Kumar Singh, and the learned Single Judge vide judgment & order, dated 10.05.2018, on consideration of the matter, was pleased to set aside the said order, dated 28.09.1996, directing for reinstatement of said Santosh Kumar Singh in his service with consequential benefits as provided for in the judgment & order, dated 10.05.2018. The said judgment & order, dated 10.05.2018, passed by the learned Single Judge in WP(c)4517/2008 was assailed before a Division Bench of this Court by the appellants, herein, by way of instituting a writ appeal being WA No. 120/2019. The said writ appeal was dismissed by the Division Bench of this Court vide judgment & order, dated 29.08.2019, upholding the judgment & order, dated 10.05.2018, passed by the learned Single Judge in WP(c)4517/2008.

3.5. The sole respondent, herein, thereafter, took steps for restoration of WP(c)4518/2008 which was dismissed for non-prosecution on 28.11.2013.

The writ Court on consideration of the matter, was pleased vide order, dated 15.11.2021, to restore the said WP(c)4518/2008, to file. Subsequently, the said WP(c)4518/2008 was taken up for consideration by the learned Single Judge and vide judgment & order, dated 06.06.2023, the said writ petition was allowed by the learned Single Judge following the directions passed by this Court in WP(c)4517/2008 vide judgment & order, dated 10.05.2018. However, in paragraph No. 16 of the judgment & order, dated 06.06.2023 passed in WP(c)4518/2008; the learned Single Judge by noticing that the sole respondent, herein, in the meantime, had crossed the age of superannuation, had not directed for his reinstatement in service and accordingly, directed for payment of a lump-sum amount of Rs. 2,00,000/- as backwages to the sole respondent, herein.

3.6. The sole respondent, herein, being aggrieved by the directions as contained in paragraph No. 16 of the judgment & order, dated 06.06.2023, passed by the learned Single Judge in WP(c)4518/2008; proceeded to institute Review Petition No. 89/2023, and by contending therein, that he, on the date of passing of the said judgment & order, dated 06.06.2023, had not reached the age of superannuation and accordingly, an error being apparent on the face of the said judgment & order, dated 06.06.2023; the same would call for a review.

3.7. The learned Single Judge on consideration of the issues in Review Petition No. 89/2023, was pleased vide, order, dated 02.08.2023, to review the directions so passed in paragraph No. 16 of the judgment & order, dated 06.06.2023, in WP(c)4518/2008, and on review thereof; the said directions was substituted with directions identical to the one as passed by

the learned Single Judge vide judgment & order, dated 10.05.2018, in WP(c)4517/2008. The sole respondent, herein, was directed to be reinstated in service as a Constable in the Central Industrial Security Force with immediate effect and the service benefits applicable to him, was directed to be released by the authorities as per the provisions of law. In the said order, dated 02.08.2023, it was further provided by the learned Single Judge that the sole respondent, herein, would be given notional benefits in service and his seniority would be protected. The payment of a lump-sum amount of Rs. 2,00,000/- as backwages to the sole respondent, as ordered vide judgment & order, dated 06.06.2023, in WP(c)4518/2008, was, however, retained.

4. Being aggrieved; the appellants, herein, have instituted the present proceeding.

5. Ms. Gayan, learned CGC, appearing for the appellants, has submitted that the learned Single Judge in passing the orders impugned in the present appeal, had committed an error in placing reliance upon the decision of this Court rendered in the case of Santosh Kumar Singh, in WP(c)4517/2008. The learned Single Judge having not examined the case of the sole respondent, herein, basing on the materials coming on record in the independent inquiry so held against him in the matter and by solely placing reliance on the decision of this Court in the case of Santosh Kumar Singh(supra); having interfered with the order of penalty imposed upon the sole respondent, herein, which was contended to be impermissible. The learned CGC has also submitted that the interference with the order of penalty imposed upon the sole respondent, herein, not being on account of

a consideration being made with the materials coming on record in the inquiry held against him; the orders impugned of the learned Single Judge in the present appeal, cannot be sustained and calls for an interference by this Court.

6. Ms. Gayan, learned CGC, has further submitted that the delay occasioning in considering the writ petition i.e. WP(c)4518/2008 being clearly attributable to the sole respondent, herein, in-as-much as, it is on account of the default on the part of the sole respondent that the matter on being dismissed for non-prosecution, remained at that stage, for around 8 years. Accordingly, it was contended that in view of the above position, the learned Single Judge had committed an error in directing payment of a lump-sum amount of Rs. 2,00,000/- to the sole respondent, herein, as backwages.

7. Per contra, Mr. Mazumdar, learned counsel appearing for the sole respondent, herein, by referring to the judgment & order, dated 06.06.2023, passed in WP(c)4518/2008, has submitted that the respondent authorities, had, during the hearing of the said proceedings, admitted to the fact that the allegations levelled against the sole respondent, herein, and said Santosh Kumar Singh, were one and the same and the documents and witnesses examined in the proceedings held against both of them, were the same. Accordingly, the conclusions as arrived at by this Court in the case of Santosh Kumar Singh(supra), stands attracted to the case of the sole respondent, herein, and hence, the learned Single Judge had not committed any error in recording the conclusions so recorded in the judgment & order, dated 06.06.2023, passed in

WP(c)4518/2008.

8. Mr. Mazumdar, learned counsel, has further submitted that the learned Single Judge in the judgment & order, dated 06.06.2023, passed in WP(c)4518/2008, more particularly, in paragraph No. 16, having recorded that the sole respondent, herein, in the meantime, had crossed the age of superannuation, and on the said basis, having not passed any direction for his reinstatement in service; necessitated the sole respondent to institute a Review Petition in the matter being Review Petition No. 89/2023.

9. Mr. Mazumdar, learned counsel, by referring to the order, dated 02.08.2023, passed by the learned Single Judge in Review Petition No. 89/2023, has submitted that vide the said order, dated 02.08.2023, only the error occasioning in paragraph No. 16 of the judgment & order, dated 06.06.2023, passed in WP(c)4518/2008, under review; came to be rectified and no fresh conclusions in the matter was drawn by the learned Single Judge.

10. Mr. Mazumdar, learned counsel, has also submitted that the decision as rendered by the learned Single Judge in the case of Santosh Kumar Singh vide judgment & order, dated 10.05.2018, in WP(c)4517/2008, having already been upheld by the Division Bench of this Court in WA No.120/2019 and no further appeal therein being instituted by the appellants, herein, the said judgment & order, dated 10.05.2018, has attained its finality, the case of the sole respondent, herein, being covered by the conclusions as reached by the learned Single Judge in the case of Santosh Kumar Singh(supra); the same would stand applied to the case of

the sole respondent, herein, also.

11. We have heard the learned counsels appearing for the parties and also perused the materials available on record.

12. It is an admitted position that the sole respondent, herein, as well as said Santosh Kumar Singh were proceeded against basing on the same set of allegations by institution of two separate Disciplinary Proceedings. The materials available on record further highlighted that the sole respondent was levelled with only one charge and the said charge is similar in all respects to the charge No. 1 as levelled against said Santosh Kumar Singh in the Disciplinary Proceeding so instituted against him.

13. The learned Single Judge vide the judgment & order, dated 10.05.2018, passed in WP(c)4517/2008, on consideration of the matter, having interfered with the charges so levelled against said Santosh Kumar Singh and directed for his reinstatement in service with consequential benefits as provided for in the said judgment & order; the appellants, herein, during the hearing of WP(c)4518/2008, having admitted to the fact that although separate Disciplinary Proceedings were initiated against the sole respondent, herein, and said Santosh Kumar Singh and separate findings arrived at by the Inquiry Officer, the incident involved in the Disciplinary Proceedings so instituted against both of them, were one and the same. It was further highlighted that the witnesses examined and the documents relied upon, were also the same.

14. The learned Single Judge on consideration of the issues arising in the matter, had drawn the following conclusions in the judgment & order, dated 06.06.2023, passed in WP(c)4518/2008:

“12. It is also seen that there is only one charge framed against the petitioner whereas in respect of the petitioner in W.P(C) No. 4517/2008 namely Santosh Kumar Singh, there were two charges framed. The charge No. 1 framed against Santosh Kumar Singh (petitioner in W.P.(C) No. 4517/2008) and the Charge No. 1 framed against the present petitioner are exactly similar. As such, when a Co-ordinate Bench had already rendered a finding in respect of both the charges as well as the enquiry conducted and had interfered with the enquiry officer’s findings and the consequential order passed by the disciplinary authority and which Judgment had already been upheld by the Division Bench of this Court, the same is binding on this Court. The conclusions arrived at by the learned Single Judge vide the Judgment dated 10.05.2018 which is upheld by the Judgment dated 29.08.2019 by the Division Bench of this Court are also applicable in the facts and circumstances of the proceedings arises from the same incident and the materials relied upon and the witnesses who have deposed before the enquiry proceedings are also exactly the same.

13. Upon consideration of the entire matter, this Court is of the view that the conclusions reached by the learned Single Judge vide Judgment dated 10.05.2018 in W.P.(C) No.4517/2008 in respect of the findings of the enquiry conducted against the delinquent employee-Sri Santosh Kumar Singh is acceptable to this Court as the Article of Charge No. 1 is one and the same against the present petitioner as well as the petitioner in W.P.(C) No. 4517/2008 and the materials relied upon and the witnesses who had adduced evidences are also one and the same.

14. I respectfully concur with the conclusions arrived at by the Coordinate Bench in W.P(C) No. 4517/2008 and hold that there are no grounds to differ with the conclusions arrived at by the Co-ordinate Bench in the facts and circumstances of the case.”

15. Basing on the said conclusions, the learned Single Judge had, accordingly, passed the following directions:

“15. In that view of the matter, the findings arrived at by the Enquiry Officer vide the enquiry report dated 16.09.1996 are set aside. The consequential order of the disciplinary authority is also interfered with and set aside.

16. It is submitted that the petitioner had in the meantime already crossed the age of superannuation and therefore, this Court considers it appropriate to grant similar relief as had been done by the Co-ordinate Bench in W.P(C) No. 4517/2008 and therefore, direct payment of lumpsum amount of Rs. 2,00,000.00 as backwages which as it is considered to be as just and proper compensation for the injuries suffered by the petitioner because of the suffering endured by the petitioner.”

16. The sole respondent, herein, having not crossed the age of superannuation on the date of passing of the judgment & order, dated 06.06.2023, by the learned Single Judge in WP(c)4518/2008; proceeded to prefer a Review Petition being Review Petition No. 89/2023, before this Court, praying for review of the directions as contained in paragraph No. 16 of the said judgment & order, dated 06.06.2023. The learned Single Judge on appreciating the fact that the sole respondent had only attained the age of 51 years as on the date of filing of the said Review Petition and he having almost 9 years of service left to be rendered; proceeded vide order, dated 02.08.2023, to dispose of the said Review Petition No. 89/2023, reviewing the directions as contained in paragraph No. 17 of the judgment & order, dated 06.06.2023, passed in WP(c)4518/2008. On such review being made; the learned Single Judge passed the following directions:

“16. In view of the findings arrived at by this Court and in view of the discussions referred above, the Para-16 of the present Judgment under review now stands recalled and instead the following directions are issued.

17. In view of the discussions held above, this Court considers it appropriate to grant similar relief as has been done by the Co-ordinate Bench in W.P.(C) No. 4517/2008. As such, in view of the interference by this Court of the enquiry report dated 16.09.1996 as well as the order of dismissal dated 30.10.2016 passed by the disciplinary authority, the petitioner is directed to be reinstated as Constable in CISF with immediate effect and the service benefits applicable to the petitioner will be released by the authorities as per provisions of law. The petitioner will be given the notional benefit of his service and the seniority be also protected.

18. In view of the injustice found to have been caused to the petitioner, this court substance the payment of lumpsum of Rs. 2,00,000/- as backwages which would be considered to be as just and proper compensation for the injuries suffered.

19. The review petition is accordingly closed.

20. This order shall be read together with the Judgment and order dated 06.06.2023 passed in W.P.(C) No. 4518/2008.”

17. On a perusal of the conclusions drawn by the learned Single Judge in the judgment & order, dated 06.06.2023, passed in WP(c)4518/2008, and also noticing the allegations levelled against the sole respondent, herein,

and against said Santosh Kumar Singh, to be one and the same and the materials relied upon by the appellants for establishing the charges so levelled against both of them in their respective Disciplinary Proceedings being one and the same and the fact also admitted to by the appellants, herein, during the hearing of WP(c)4518/2008; we are of the considered view that the reliance placed by the learned Single Judge on the decision rendered in the case of Santosh Kumar Singh(supra), was not erroneous.

18. The Review Petition No. 89/2023 being mandated to be so instituted by the sole respondent, herein, on account of an error occasioning in paragraph No. 16 of the judgment & order, dated 06.06.2023, passed by the learned Single Judge in WP(c)4518/2008, and the learned Single Judge vide order, dated 02.08.2023, passed in the said Review Petition No. 89/2023 having only rectified the said error and passed consequential directions similar to the one as passed by the learned Single Judge vide judgment & order, dated 10.05.2018, in WP(c)4517/2008, which judgment & order was already upheld by the Division Bench of this Court in WA No. 120/2019; we are of the considered view that no error is apparent in the order, dated 02.08.2023, passed by the learned Single Judge in Review Petition No. 89/2023, requiring an interference with the same by this Court.

19. The grievance raised by Ms. Gayan, learned counsel for the appellants, with regard to the directions passed by the learned Single Judge vide order, dated 02.08.2023, in Review Petition No. 89/2023, for payment to the sole respondent, herein, a lump-sum amount of Rs. 2,00,000/- as backwages, being also directed to be so passed by this Court in the case of Santosh Kumar Singh(supra), which as noticed hereinabove, was already

upheld by a Division Bench of this Court; we are of the further considered view that the said grievance raised by the appellants, herein, would not merit acceptance.

20. In the above view of the matter, we are of the considered view that no error being apparent in the conclusions and directions passed by the learned Single Judge vide judgment & order, dated 06.06.2023, in WP(c)4518/2008, and vide order, dated 02.08.2023, in Review Petition No. 89/2023; the same would not call for any interference.

21. Accordingly, in view of the above discussions and the conclusions reached by us hereinabove; this writ appeal is held to be devoid of any merit and consequently, the same stands dismissed. However, there shall be no order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant