

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 3526 OF 2005**

Vijay Lal Markam (dead), through his legal representative,
Smt. Lachchan Dai Markam, Wd/o. Late Shri Vijay Lal Markam, Aged
about 29 years, R/o. Bunglawapara, Narayanpur, Tahsil Narayanpur,
District Bastar (Chhattisgarh)

---- Petitioner**Versus**

1. State of Madhya Pradesh, through: the Director General of Police M.P., Police Headquarters, Bhopal, Madhya Pradesh
2. The State of Chhattisgarh, through: the Director General of Police, C.G. Police Headquarters, Raipur (Chhattisgarh)
3. The Inspector General of Police, Bastar Range, Jagdalpur, (Chhattisgarh)
4. The Superintendent of Police, District Kanker (Chhattisgarh)

----Respondents

For Petitioner	:	Shri S.C. Verma, Advocate
For State	:	Shri Dheeraj Wankhede, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**C.A.V. ORDER****Delivered on 17/09/2018**

1. The challenge in the present writ petition is to the order of termination dated 19.06.1999 (Annexure A/4) and also to the order dated 24.08.1999 (Annexure A/6), whereby the appeal preferred against the order of termination was rejected by the Appellate authority.
2. The present O.A. was originally filed before the State Administrative Tribunal, Raipur, where the case was registered as O.A. No. 75/2001, which on the abolition of the Tribunal has since been transferred to this High Court, where it has been given a fresh registration number of the year 2005. Meanwhile, the original petitioner i.e. the employee namely Vijay Lal Markam expired on 30.07.2003 and the wife of the employee has been substituted for further conducting of the case.
3. Cutting short the detailed factual matrix of the case, the facts which are relevant for adjudication of the present case is that the deceased

employee/original petitioner was working with the respondents as a Constable. The husband of the petitioner or the employee concerned was posted at police station Bhanupratappur, District Kanker. On 05.09.1998 while the employee concerned was posted as a Duty Treasury Guard at around 1:00 p.m. when there was a checking by the Superintendent of Police along with the Assistant Sub Inspector and other staffs and the Superintendent of Police found that the original petitioner along with another Guard to have consumed liquor. Immediately the Superintendent of Police got the two constables examined by the Doctor and obtained a report and the Doctor gave a positive report of the concerned employees to have been found having consumed alcohol. Subsequently, again on 23.09.1998 i.e. after about 15 days time, the Superintendent of Police again visited the police station in the night and the concerned employee i.e. the husband of the petitioner was again found having consumed liquor and the Superintendent of Police again got the constable examined from the Doctor and the Doctor again gave a report that the concerned constable was found positive of having consumed liquor.

4. Subsequently, the charge sheet was issued to which the original petitioner/employee gave a reply, thereafter a departmental enquiry was conducted and the employee was finally terminated from service vide order dated 19.06.1999 (Annexure A/4). The concerned employee preferred an appeal before the Inspector General of Police, who too vide its order (Annexure A/5) dated 24.08.1999 rejected the appeal. It is these two orders, which are under challenge in the present writ petition.

5. The contention of the counsel for the petitioner is that the punishment imposed was highly disproportionate and does not commensurate the gravity of the offence and prayed for an interference with the same. Likewise, the contention of the petitioner was also that though the finding is that the employee was found having consumed liquor, but it is not a case where the employee was found intoxicated or in an inebriated condition.
6. According to the petitioner, the conduct of the employee is not one which could be brought within the provisions of Rule 23 (b) of the Conduct Rules. The violation of which is alleged for terminating the services of the employee. The counsel for the petitioner referring to the medical report of the Doctor who had examined the delinquent employee on both the dates i.e. on 05.09.1998 and again on 23.09.1998 submitted that on both the dates the finding was that "he has taken alcohol, but not intoxicated". According to the petitioner, this report of the Doctor itself establishes the fact that he was not in an intoxicated condition so as to attract the Rule 23 of the Madhya Pradesh Civil Services Conduct Rules. The counsel for the petitioner tried to emphasize on the fact that the action on the part of the respondents is discriminative for the reason that the another constable namely Moolchand posted in the same police station was also found having consumed alcohol when the employee in the present case was examined, however, the said constable was not inflicted with any major punishment. Thus the employee in this case has been discriminated being inflicted with capital punishment of termination from service. It was also the contention of the counsel for the petitioner that it was not

a case where the employee concerned has drunk liquor while on duty. According to the petitioner, it is a case where the employee who belongs to the Gond community in the morning had consumed a little bit of liquor at his house and which is part of the social and tribal background to which the employee belongs and it is only smell which was coming from his mouth and nothing else and for which the order of termination is too harsh a punishment. It was also the contention of the counsel for the petitioner that the order of the Appellate authority is not a speaking order in as much as it does not reflect any discussions. The counsel for the petitioner referred to the judgments passed by this Court in the case of **“Churendra Kumar Dhruw v. State of Chhattisgarh & Ors.”** 2012(4) CGLJ 381, **“D.C. Upadhyay v. State of Chhattisgarh”** 2017 ILR CG 2181.

7. Per contra, the State counsel opposing the petition submits that there is no scope of interference for this Court under Article 226 so far as the termination of the services of the employee is concerned. According to the State counsel, it is a case where all the requisites under the service regulations were in fact fully followed and complied with. The employee has also participated in the departmental enquiry.
8. The State counsel referring to the place of posting i.e. Bhanupratapur submitted that it was a Naxalite Prone Area and the Police station also was always a sensitive area, where some amount of arms and ammunition are always stored and stocked and the employee was posted there as a constable/guard on duty. According to the State counsel on two occasions one on 05.09.1998 and again on 29.09.1998, the District Superintendent of Police made a surprise visit

to the Police Station and in the course found the employee to have consumed liquor and as such he was found drunk on duty. The State counsel further referring to the deposition of the employee concerned himself submitted that there is an admission on the part of the delinquent employee himself admitting the charges leveled against him and under the circumstances, the punishment cannot be said to be either excessive or striking the conscious of the Court.

9. According to the State counsel, the concerned employee was found to be under the influence of the liquor and by his conduct he has put security of the State more particularly of the Police Station and the surroundings at stake specially when the area and the Police Station, where he was posted being a sensitive schedule area and thus prayed for dismissal of the writ petition.
10. Having heard the contentions put forth on either side and on perusal of record, undisputed fact as it stands is that the employee was posted as a constable at the Police Station Bhanupratappur, District Kanker on 05.09.1998 and on 23.09.1998 during night hours while the employee was on duty as a Guard to the Police Station, he was found having consumed alcohol.
11. Now with the aforesaid factual matrix it would be relevant to refer to Rule 23 of the Conduct Rules, which for ready reference is reproduced herein under:-

23. Consumption of intoxicating drinks and drugs. - A
Government servant shall ;-

(a) strictly abide by any law relating to intoxicating drinks or drugs in force in any area in which he may happen to be for the time being;

(b) take due care that the performance of his duties is not affected in any way by the influence of any intoxicating drink or drug;

(c) not appear in a public place in a state of intoxication; and

(d) not habitually use any intoxicating drink or. drug in excess.

[Explanation. - For the purpose of this rule "Public Place" means any place or premises (including a conveyance) to which the public have, or are permitted to have, access, whether on payment or otherwise.]

12. The plain reading of the aforesaid provisions itself would mean that it is the very consumption of intoxicating drinks, which should have been avoided or a government servant is suppose to abstain from duties. Now if we look at the statement of the delinquent during the course of the inquiry he has in very categorical terms admitted the fact that on 05.09.1998 he had consumed liquor during day time, though he has denied consuming liquor during the duty hours.
13. From the proceedings, which have been brought on record, it appears that the concerned employee was given all opportunity of defense. Even if we read the appeal preferred by the employee against the order of termination, it would reveal that the employee had not raised any ground in the appeal of having not being granted sufficient opportunity or the inquiry proceedings being in any manner defective, neither is there the allegation of the inquiry being in violation of the

principles of natural justice. Since the employee had not raised too many objections and contentions in his appeal, the Appellate authority also had no occasion for re-appreciating the entire evidence threadbare and since there was not much of the ground raised in the appeal, the employee also cannot be aggrieved of the Appellate authority in not deciding the matter by a detailed order.

14. It would be relevant at this juncture to refer the judgment of the Supreme Court in case of State of Punjab Vs. Ex. Constable Ram Singh, 1992 (4)SCC 54 wherein discussing the term misconduct and the meaning of misconduct and also misconduct in office, the Supreme Court has held in paragraphs 5 & 6 as under:

"5. Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999 thus :-

"A transgression of some established an definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offence but not negligence or care-lessness."

Misconduct in office has been defined as :

"Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. The term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

P. Ramanatha Aiyar's the Law Lexicon, Reprint Edition 1987 at p.821 'misconduct' defines thus:-

"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden

act; carelessness, a forbidden quality of an act, and is necessarily in definite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

6. Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, if must be improper or wrong behaviour; unlawful behaviour, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

15. Indisputably, the petitioner was a member of Uniformed Force which otherwise is considered to be a disciplined force. Moreover, the petitioner was found having consumed liquor during the duty hours. Furthermore, the petitioner seems to be in a habit of being in duty after consuming liquor as is reflected from the charge sheet that on two occasions when the Superintendent of Police inspected the Police Station he found the petitioner on duty and on both occasions he found him on duty after having consumed liquor. The charge of having consumed liquor stood established from the medical examination as also from the statement of the concerned doctor before the enquiry officer.
16. What also cannot be brushed aside is the fact that the petitioner was posted at one of the sensitive areas and was also on duty during night hours which makes it all the more sensitive. It is during this period where the guard on duty has to be on maximum alert. The area where the Police Station situates is otherwise a naxalite prone scheduled area. The police station always has a pretty amount of arms and

ammunitions and which also has to be guarded with all efficiency and alertness. Under such circumstances, when a guard discharges his duties after consuming liquor, it exposes the security of the police station to a great amount of risk.

17. Being on duty, the disciplined service like police service, the personnel are expected to maintain discipline and shall not resort to intoxicating drink or to be under a drunken state while in duty. The police service is otherwise also considered a disciplined service and the police personnels are required to maintain strict discipline at-least while on duty. Laxity to the discipline can cause serious repercussions in the maintenance of law and order particularly when the place of posting being a sensitive naxalite area. To make things worse, the petitioner was found habitual in attending duty after consuming liquor and the duration between the two inspections also was not too large a gap which shows that the petitioner did not intend to reform himself.
18. So far as contention of the petitioner that he was not in an intoxicated stage/state is concerned, the same may not be of much relevance for the simple reason that it is not that only on getting intoxicated or being in an inebriated condition while on duty would amount to misconduct. Consuming intoxicated drink would also amount to misconduct as is evident from Rule 23 of the Conduct Rules.
19. The said judgment cited by the petitioner is not sustainable as the facts are entirely different and the judgment also was under a different factual context.
20. Likewise, the case of D.C. Upadhyay (Supra) also have been decided under entirely different contextual background which cannot be applied

in the facts of the present case where the nature of misconduct itself is different. Further, as regards the fact that the appellate authority has not decided the appeal of the petitioner by a reasoned order or any order in detail is concerned, the said action again may not be sustainable for the reason that the memo of appeal of the petitioner itself did not have much grounds for the appellate authority to consider.

21. Now coming to the scope of interference, the High Court while considering a petition under Article 226 of the Constitution, does not substitute itself as an appellate authority or revisional authority reviewing the manner in which the decision under challenge has been made. The power of judicial review is meant only to ensure that the concerned individual has been given a fair treatment and the manner and procedure adopted in the course of passing of the impugned order, the authorities concerned have kept under consideration the basic principles of natural justice and also have abided by the procedures prescribed under the service regulations.
22. This court would not further conduct a roving enquiry nor would in exercise of its power under Article 226 of the Constitution would it scrutinize the evidence threadbare. The power of judicial review is confined to the extent of ensuring that the findings and the conclusions arrived at are based on some evidence. The authority who has passed the impugned order has the jurisdiction, power and authority to pass the same and lastly ensuring that the findings arrived at is not a perverse finding.
23. Given the aforesaid facts, this court is of the opinion that the impugned order of termination of the petitioner from service cannot be held to be

bad in law in any manner, nor can the same be said to be disproportionate considering the nature of misconduct, the place of posting coupled with fact that the petitioner was a member of a disciplined force i.e. the police service and posted in a sensitive naxalite prone area. This court does not find any good reason for interfering with the impugned order.

24. The writ petition fails and accordingly stands dismissed.

**Sd/-
(P. Sam Koshy)
Judge**

inder