

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 355 of 2013

Jeevandas Vaishnav S/o Shri Tilakdas Vaishnav, aged about 53 Years
R/o Urdana, Deepapara, Raigarh, P.S. Civil Line, Tahsil & Distt. Raigarh,
(C.G.)

---- Petitioner

Versus

1. State Of Chhattisgarh through Secretary, Panchayat And Village
Department Of Home (Police), Mahanadi Bhavan, Mantralaya, Raipur,
(C.G.)
2. Director General Of Police, Police Head Quarter, Raipur, Distt Raipur,
(C.G.)
3. Inspector General Of Police, Bilaspur Range, Bilaspur, (C.G.)
4. Superintendent Of Police, Raigarh Distt, Raigarh, (C.G.)

---- Respondents

For Petitioner	:	Shri M. K. Sinha, Advocate.
For State	:	Shri Chandresh Shrivastava, Dy. AG

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20/09/2019

1. The challenge in the present writ petition is to the order Annexure P-5, Annexure P-7 and Annexure P-1. Annexure P-5 is the order dated 01.11.2003 wherein the services of the petitioner has been terminated on the grounds of major misconduct. The petitioner subsequently preferred an appeal before the Inspector General of Police which stood rejected vide order dated 10.02.2004. Thereafter, the petitioner preferred a mercy appeal before the Director General of Police which stood rejected vide Annexure P-1 dated 10.08.2004.
2. Facts of the case in nutshell is that the petitioner was working as a Constable in the Police Department under the Government of

Chhattisgarh. It is alleged that on 02.03.2003 the petitioner was found ineligible for discharging duties on account of his own conduct and having consumed liquor and for not being in a normal state for discharging the duties. It was also the allegation against the petitioner that on the same day i.e. 02.03.2003 the petitioner under the influence of Alcohol is said to have misbehaved at the house of the Additional Superintendent of Police and thus committed a misconduct under the provisions of Rule 23 of the Chhattisgarh Civil Services Conduct Rules, 1965.

3. The petitioner was later on, issued with a charge sheet on 10.04.2003 whereby the petitioner was charged for the aforesaid two acts of misconduct. Firstly, for not being in a normal state on 02.03.2003 under the influence of liquor, thus he was found not fit to be assigned duties. Second charge was in respect of his alleged misbehavior at the residence of Superior officer of the Police Department under the influence of the liquor. Third charge imposed upon the petitioner was that in the recent past the petitioner was inflicted with four major punishments and warnings, yet, the petitioner did not improve upon his conduct in spite of last warning being given in respect of his being under the influence of Alcohol and also that the petitioner had promised not repeat such misconduct.
4. Later on, an enquiry was conducted and enquiry report was submitted on 27.08.2003. Based on the enquiry report it was found that charge No. 1 was found to be proved. The petitioner also was warned in the past and petitioner having been inflicted with four major punishments in the past, he has not improved upon and has repeated this misconduct. It is also revealed that petitioner was twice

earlier warned for being under the influence of alcohol while discharging his official duties and he was also issued with a major punishment of stoppage of one annual increment with cumulative effect, so imposed for the same nature of misconduct.

5. Disciplinary authority vide his order dated 01.11.2003 (Annexure P-5) terminated the services of the petitioner. Against which the petitioner first preferred an appeal before the Inspector General of Police who rejected the appeal on 10.02.2004. Thereafter, a mercy appeal was preferred before the Director General of Police which stood rejected vide order Annexure P-1 dated 10.08.2004. Though, the termination order was passed in the year 2003 and two appeals were rejected in the year 2004. The petitioner did not challenge the same any further for a considerable period of time. After a period of about 10 years in the year 2013 i.e. on 07.03.2013, the present writ petition has been filed challenging the order of termination as also the rejection of the appeals.
6. Main ground of challenge of the impugned orders are that there has been no strong evidences placed before the enquiry officer for proving the charges levelled against the petitioner. That in the absence of any cogent strong evidence, the punishment of termination inflicted upon the petitioner is bad in law. Further contention of the petitioner is that there is no sufficient evidence to establish the fact that even if the petitioner had consumed liquor, he was not in an intoxicated condition and therefore the punishment of termination for having consumed liquor would be too harsh a punishment and highly disproportionate warranting interference by this Court. Further contention of the petitioner is that enquiry officer

himself is given a finding that charge No. 2 levelled against the petitioner of having misbehaved at the house of the Additional Superintendent of Police found to be proved and therefore only charge which is left is charge No. 1 of being found to be under the influence of liquor which by itself would not warrant a punishment of termination and prayed for recalling of the same and also prayed for grant of consequential benefits.

7. State counsel on the contrary referring to the allegations levelled against the petitioner first referred to the conduct of the petitioner wherein charge No. 3 itself speaks that petitioner's conduct in the past was not befitting the police personnel as he was subjected to four major punishment and 11 minor punishment. The petitioner on an earlier occasion on the charge of having been found under the influence of liquor was inflicted with a punishment of stoppage of one annual increment with cumulative effect and he was also warned for the same allegations of being in the regular habit of being found to be under the influence of liquor on a couple of occasions. State counsel further referring to the enquiry report Annexure P-4 wherein the conduct of the petitioner has been elaborately discussed and that petitioner was also subjected to medical examination and Dr. Smt. Meena Patel Medical Practitioner was also examined before the enquiry officer and who has clearly narrated the fact that smell of liquor was coming from the mouth of the petitioner. She suggested that he had consumed liquor, though Medical Practitioner did not find petitioner to be under the intoxicated state. State counsel further submits that since services of the petitioner was under the Police Establishment there is a great element of discipline which police personnels are bound to maintain. One such area is also ensuring

that in the course of discharging their duties they should ensure that they are not under the influence of alcohol. Thus, for all the aforesaid reasons, the State counsel prayed for rejection of the writ petition.

8. Having heard the contentions put forth on either side and on perusal of records what primarily has to be seen is the fact that petitioner firstly is a member of armed forces which is otherwise also considered to be a disciplined force. The petitioner was working as a Constable. The charge imposed upon the petitioner was that on 02.03.2003, he was found to be under the influence of liquor. He was not fit enough inasmuch as he was not in the normal state for being assigned any duties on the said date. It was also allegations that Later on the same day the petitioner is said to have gone to the house of the Additional Superintendent of Police and is said to have created a ruckus and misbehaved himself. The staff posted in the house of the Additional Superintendent of Police tried to restrain the petitioner from misbehaving, but he continued with the same and later the petitioner was sent to the Government Hospital for medical examination.
9. The petitioner has not raised any specific allegation of the departmental enquiry to be in violation of the principles of natural justice nor has he been able to show from the records as to what was the violation as such on the part of the authorities in the conducting of the enquiry. Further what is evident that there is no allegation of any malafides against any specific officer of the department which could be alleged for the petitioner to be falsely implicated in the said case.

10. There is no dispute to the extent that enquiry officer has found that charge No. 2 has not been sufficiently proved. Given the facts that charge No. 2 has not been proved by the enquiry officer, we only need to confine ourselves to the charge No. 1 & Charge No.3. Charge No.1 is the charge which is primarily alleging is of the incident on 02.03.2003. The allegations primarily is in respect of consumption of liquor and not being in a normal state for discharging his duties. If we look into the evidences which have been gathered by the enquiry officer, it would clearly reveal that there is sufficient witnesses who were examined in this regard and supporting evidences led by the Doctor who had examined the petitioner on 02.03.2003 i.e. Dr. Meena Patel in her deposition she has clearly stated that she found the petitioner to have consumed alcohol but she did not find the petitioner to be in an intoxicated condition. In the deposition, doctor has said that she did not conduct any specific test like Blood test etc. for ascertaining the petitioner to be under the influence of the liquor but she has made a categorical statement that petitioner was smelling strong of alcohol when she examined. There is no malafides alleged against the Doctor for giving a false statement or false evidences against the petitioner. Now what stands established from the aforesaid evidences is that the petitioner undoubtedly was under the influence of liquor. It may be that petitioner would not be in an intoxicated condition but was under the influence of liquor as is evident from the witnesses who have been examined before the enquiry officer.
11. Given the aforesaid facts, charge No. 1 has been rightly held by the enquiry officer to have been proved. If we take into consideration, charge No. 1 and when read it with charge No.3 it shows the fact

that petitioner is a habitual offender. In the past he has been inflicted with four major punishment. One major punishment was for identical charge of having been found under the influence of liquor. Apart from four major punishments, the petitioner has also been subjected to nine minor punishment. In addition, the petitioner on a couple of occasion was also warned for being under the influence of the alcohol while on duty. When all these facts are taken note of and charge No.1 is read along with Charge No.3, this Court has no hesitation in reaching to the conclusion that the present would not be a case where the allegations levelled against the petitioner can be subject to be trivial in nature. It also is not a case where the petitioner's punishment can said to be highly disproportionate as the petitioner in the past have been given punishment for the same nature of offence. Petitioner has been warned on couple of occasion in the past and petitioner himself had promised that he would not commit any further misconduct, yet, the petitioner repeats the same offence which shows the attitude and conduct of the petitioner and also reflects that he is a person who is incorrigible. Therefore this further reduces the scope of interference of this Court in the disciplinary proceedings initiated by the department which has been passed also taking into consideration the entire past services of the petitioner.

12. Given the facts and circumstances of the case, this Court does not find any strong case made out by the petitioner calling for an interference. Thus, the writ petition fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge