

S/L 1
21.03.2024
Court. No. 3
*Suwayan/
Sourav*

WPA 6828 of 2017

Smt. Runee Devi

Vs.

The Secretary, Ministry of Home Affairs & Ors.

Mr. Soumya Majumder

Mr. Pramod Kr. Drolia

Mr. Alok Srivastava

...for the petitioner.

Mr. Dayashankar Mishra

Mr. Shaunak Ghosh

...for the U.O.I.

1. Heard Mr. Drolia, learned advocate for the writ petitioner and Mr. Mishra, learned advocate for the respondents/Union of India and its officials at length and in full.
2. The instant matter is now taken up for passing appropriate order.
3. By filing the instant writ petition, the writ petitioner being the widow of one Mohan Kumar, an erstwhile constable of CRPF who has been removed from service by an order dated 06.04.2013, has prayed for cancellation of the order of removal of her husband dated 06.04.2013 as passed by the disciplinary authority as well as cancellation of the order of the appellate authority dated 19.03.2014 which has affirmed the said order dated 06.04.2013 as passed by the disciplinary authority.
4. Admittedly, the said Mohan Kumar, since deceased after suffering the order of removal dated

06.04.2013 as passed by the disciplinary authority and the order of the appellate authority dated 19.03.2014 remained alive till 28.10.2015 and during the said period the said delinquent, Mohan Kumar had not challenged the said two orders either before any superior authority or before any writ court.

5. The moot question, therefore, arises: i) as to whether because of non-filing of any appeal and/or any writ petition challenging the aforesaid two orders of dismissal the present writ petitioner has at all any *locus standi* to the challenge the said order of dismissal of her deceased husband and ii) as to whether the said two orders of dismissal and/or removal dated 06.04.2013 and 19.03.2014 have reached their finality or not.
6. While arguing on the aforesaid two points Mr. Drolia, learned advocate for the petitioner submits before this Court that on the death of the delinquent who is her husband, the right to sue survives upon the present writ petitioner especially when it is apparent on the face of the record that there occurred serious violation of principle of natural justice and/or gross violation of the established procedure in conducting the said disciplinary proceeding. In course of his argument Mr. Drolia, learned advocate for the writ petitioner placed his reliance upon a decision of the High Court of judicature at Patna as passed in *letters*

patent appeal no. 247 of 2015 (***The State of Bihar and others vs. Shanti Kumari and others***).

7. Drawing attention to page nos. 9 and 10 of the aforesaid reported decision of Shanti Kumari (Supra) it is contended that since on account of untimely death of delinquent, he got no opportunity to prefer a writ petition challenging the aforesaid two orders of the respondent authorities right to sue survives upon the writ petitioner and, therefore, by no stretch of imagination it can be said that the claim of the writ petitioner is barred by any law.
8. It is further argued by Mr. Drolia that the present petitioner being the widow of the delinquent has every right to proceed with the instant writ petition in view of the fact that on account of the illegal removal of the delinquent, the present writ petitioner and her children are being deprived of the legitimate dues as payable to her and her children on account of service rendered by her husband in his employment and the same according to Mr. Drolia tantamounts to violation of Article 21 of the Constitution of India.
9. *Per contra*, Mr. Mishra, learned advocate for the respondents/Union of India strongly contended that from the chronology of the events it would reveal that the delinquent was removed from his service on 06.04.2013 and the appellate authority

by its order dated 19.03.2014 affirmed the said order. It is further argued by Mr. Mishra, learned advocate for the respondents that the writ petitioner, therefore, remained alive for more than 1½ years and the said delinquent had chosen not to prefer any revision and/or writ petition. According to Mr. Mishra, the orders which have been challenged before this Court had thus reached finality and those two orders are not amenable to the writ jurisdiction.

10. While arguing on the point of *locus standi* of the present writ petitioner, Mr. Mishra also places his reliance upon the decision of the High Court of judicature at Patna in the case of Shanti Kumari (Supra). It is argued by Mr. Mishra that on a meaningful reading of the said decision, it would reveal that it is the dictum of the High Court of judicature at Patna that in the event delinquent dies during the pendency of an appeal proceeding, the proceeding would not abate instantly and the legal heirs of the delinquent have every right to carry on the said proceeding, however, the situation would be different if the death of the delinquent occurred during the pendency of the disciplinary proceeding in which case the disciplinary proceeding stands abated.
11. On perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, this Court has no

hesitation to hold that the delinquent, i.e., deceased husband of the writ petitioner during his lifetime practically accepted the order of his removal dated 06.04.2013 as well as the order of the appellate authority dated 19.03.2014 which is why he had chosen not to prefer either any revision or to file any writ petition before any competent Court. Such being the position, this Court is of considered view that the decision of the disciplinary authority as well as the appellate authority have reached its finality.

12. So far as the *locus standi* of the present petitioner to carry on the instant writ petition is concerned, it appears to this Court that it is not the case of the writ petitioner that during the pendency of a writ petition as filed by the delinquent, the delinquent died and, therefore, right to sue survives upon her being the wife of the delinquent as held in the decision of Shanti Kumari (Supra) by the High Court at Patna. It appears that the writ petitioner in her individual capacity approached this Court by filing a writ petition under Article 226 of the Constitution of India and thereby challenged the legality and validity of a disciplinary proceeding as well as the proceeding before the appellate authority which was concluded long back against her husband.
13. In view of such, this Court finds that the present writ petitioner lacks her propriety to challenge the

finding of the disciplinary authority as well as findings of the appellate authority as against her husband who was removed from his service on account of misconduct. This Court thus holds that the instant writ petition is not maintainable.

14. For the sake of argument, even if it is held that the instant writ petition is maintainable, this Court proposes to examine further as to whether the writ petitioner is at all entitled to the relief as prayed for or not.
15. In course of his submission, Mr. Drolia, learned advocate for the writ petitioner at the very outset draws attention of this Court to the charges as framed against the delinquent, i.e., the deceased husband of the writ petitioner. It is argued on behalf of the writ petitioner that the articles of charges containing imputation against the delinquent are far from the truth inasmuch as *prima facie* there were no sufficient materials in the hands of the enquiry officer to frame those charges. It is further argued on behalf of the writ petitioner that since at the material time, the delinquent was in custody in connection with a criminal case, the delinquent has not got sufficient opportunity to put his proper defence in the said disciplinary proceeding and practically the enquiry proceeding was conducted in an unilateral manner causing serious prejudice to the delinquent which is clear violation of principle of natural justice for

which appropriate relief under Article 226 of the Constitution of India may be granted by quashing the said proceeding vis-à-vis the coercive orders as passed by the disciplinary authority and the appellate authority. With regard to the charges under Article 2 of the imputation of charge, it is contended further that from the materials as available from the enquiry proceeding, it would reveal that there was no latches on the part of the delinquent to inform his employer about the factum of his arrest and despite such fact an untrue charge has been framed which was subsequently claimed to have been proved.

16. In support of his contention, learned advocate for the petitioner draws attention of this Court to the annexure P13 of the affidavit-in-reply as filed by the petitioner. It is further argued on behalf of the writ petitioner that the punishment as awarded to the delinquent is disproportionate to the charges levelled against him which is apparently shocking in nature for which interference of the writ court is necessary.
17. In course of his submission, learned advocate for the writ petitioner places his reliance upon the following reported/unreported decisions: i) judgment dated May 14, 2009 as passed in Civil Appeal No. 3565 of 2009 (Jagdish Singh vs. Punjab Engineering College & Ors.) by the Supreme Court of India, ii) Krushnakant B. Parmar vs. Union of

India and another reported in (2012) 3 SCC 178, iii) Collector Singh vs. L.M.L. Limited, Kanpur reported in (2015) 2 SCC 410 and iv) Hind Construction & Engineering Co. Ltd. vs. Their Workmen reported 1964 SCC Online SC 31.

18. While opposing the prayer of the writ petitioner, Mr. Mishra, learned advocate for the respondents draws attention of this Court to the annexure P13 of the affidavit-in-reply. It is argued that the said annexure P13 being an undated letter has got neither any evidentiary value nor any persuasive value since the said letter is undated and bears no seal of the respondent authorities. It is further argued that no cognizance on the said unsigned and undated letter needs be taken since in course of the discipline proceeding, it has been established that the delinquent had not informed the factum of his judicial custody to his superior which is violative of Government of India, Ministry of Home Affairs, Office Memorandum No. 39/59/54-Estd.-A dated 25.02.1955 vis-à-vis Rule 3C(2) of CCS Conduct Rules.
19. It is further argued by Mr. Mishra that considering the inconvenience of the delinquent, the disciplinary proceeding was conducted in jail where the delinquent was detained and sufficient opportunity was given to him to put his best possible defence which is available from the internal page no. 5 of the enquiry report which has

been annexed with the writ petition being Annexure P5. It is thus argued that there is no violation of principle of natural justice as alleged to have been occurred by the writ petitioner.

20. Mr. Mishra further argues that in the instant writ petition, the writ petitioner has failed to satisfy the Court that the respondent authorities while conducting the disciplinary proceeding as well as the departmental appeal had done such an act which is against the public policy and in complete violation of the established procedural law. Mr. Mishra thus submits that it is a fit case for dismissal of the instant writ petition.
21. In the backdrop of the aforementioned factual scenario, this Court feels it is obligatory to mention that scope of finding legality and propriety of a departmental proceeding which has been challenged in a writ petition is much less than that of an appellate authority. Sitting in writ jurisdiction, this Court is not supposed to scan the entire materials of the disciplinary proceeding, re-assess the evidence adduced by the witnesses like an appellate court unless it has been shown that in such disciplinary proceeding, the delinquent has not been given sufficient opportunity to defend himself or the disciplinary proceeding has been conducted in a manner not in accordance with law or the authorities have proceeded in such a manner which is *de hors* to the established procedural law

and/or where it has been shown that the principle of natural justice has been seriously denied at the instance of the authorities.

22. So far as the scope of the writ court to interfere with the quantum of punishment is concerned, the law is well-settled in a catena of judgments both by the Supreme Court as well as by the different courts, the writ court must not interfere with the quantum of punishment unless it is shown that the quantum of punishment is of such nature, it shocks conscience of the court and completely disproportionate and harsh. The aforementioned view was taken by the Supreme Court in the following reported decision: *Union of India vs. P. Balasubrahmanayam* reported in (2021) 5 SC 662.
23. Keeping in mind the proposition of law as discussed hereinabove, it appears to this Court that the delinquent while enjoying his earned leave, got himself involved in a criminal proceeding which is why he was in J.C. from 08.01.2011 to 30.03.2011. From the affidavit-in-opposition as filed by the respondents/Union of India, it appears that the said delinquent initially made no attempt to inform his detention to his superior on the contrary his superior came to learn about the detention on the basis of a complaint by one Smt. Bittu Kumari.
24. From the materials as placed before this Court, it reveals further that the delinquent informed his department about his arrest only on 10.03.2011

which according to the respondent authorities tantamounts to violation of the discipline and such finding being a factual finding, this Court makes no comment with regard to the correctness of the said factual finding sitting in the writ jurisdiction.

25. The argument of Mr. Drolia, learned advocate for the writ petitioner that the delinquent being the deceased husband of the writ petitioner practically got no opportunity to defend himself since he was at that material time in custody appears to be not convincing to this Court in view of the fact that both the enquiry officer as well as the appellate authority had come to a finding that the delinquent was informed that he has a right to engage his defence assistant but the delinquent gave no fruitful reply.
26. In considered view of this Court such finding is also factual in nature and this Court feels hesitant to interfere with such finding sitting in writ jurisdiction.
27. While refuting contention of the learned advocate for the writ petitioner that the punishment as imposed upon the delinquent is excessively harsh Mr. Mishra, learned advocate for the respondents in course of his argument draws attention of this Court to Rule 27 of the CRPF Rule, 1955 which contains a table of punishment which may be inflicted upon a delinquent on finding of his guilt after completion of an enquiry proceeding. It

appears to this court that the authorities are within their limit to impose punishment upon the delinquent in accordance with such Rule and considering the conduct of the delinquent who is a member of uniformed service and a disciplined force it does not appear that the quantum of punishment as awarded is excessively high, unjust and is shocking in nature.

28. In further considered view of this court the reported decision as cited from the side of the writ petitioner though may be used as guiding principles for a writ court while disposing a writ petition of similar nature but those are no way helpful for the petitioner in the facts and circumstances of the case as discussed (Supra).
29. In view of the discussion made hereinabove, this Court finds no merit in the instant writ petition.
30. Accordingly, the instant writ petition being WPA 6828 of 2017 is dismissed both on the point of maintainability as well as on the point of merit.
31. There shall be no order as to costs.
32. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.
33. Before parting with, it is needless to mention that in the event the writ petitioner being the widow of the delinquent, Mohan Kumar is entitled to any permissible dues from the respondent authorities, they shall have to be disbursed within a period of

three months from the date of communication of this order along with accrued interest thereon.

(Partha Sarathi Sen, J.)