Vijay Singh vs State Of U.P.& Ors on 13 April, 2012

Equivalent citations: AIR 2012 SUPREME COURT 2840, 2012 (5) SCC 242, 2012 AIR SCW 2604, 2012 LAB. I. C. 2143, 2012 (4) ALL LJ 62, 2012 (2) SERVLJ 347 SC, 2012 (4) SCALE 361, (2012) 2 SERVLJ 347, (2012) 3 JCR 89 (SC), (2012) 3 SCT 390, (2012) 5 CAL HN 266, (2012) 4 LAB LN 65, (2012) 3 SERVLR 721, (2012) 4 SCALE 361, (2012) 2 ESC 206, (2012) 3 ALL WC 3011, (2012) 2 CURLR 1

Bench: B.S. Chauhan, Jagdish Singh Khehar

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3550 OF 2012
(Arising out of SLP(C) No. 27600 of 2011)

Vijay Singh
b &Appellant

Versus

State of U.P. & Ors. b &Respondents

O R D E R

1. Leave granted.

2. This appeal has been preferred against the impugned judgment and order dated 19.7.2011 passed by the High Court of Judicature at Allahabad in CMWP No. 39609 of 2011, wherein the case of the appellant against the order of punishment in disciplinary proceedings has been rejected as the revisional authority had held that against the order passed by the disciplinary authority, the revision was not maintainable. The High Court held that on such facts the writ petition was not worth entertaining.

3. The instant case is an eye opener as it reveals as to what extent the superior statutory authorities decide the fate of their subordinates in a casual and cavalier manner without application of mind and then expect them to maintain complete discipline merely being members of the disciplined forces. The facts necessary to decide this appeal are as under:

A. The appellant when posted as Sub-Inspector of Police at Police Station, Moth, District Jhansi in the year 2010, had arrested Sahab Singh Yadav for offence punishable under Section 60 of the U.P. Excise Act and after concluding the investigation, filed a chargesheet before the competent court against the said accused. B. During the pendency of the said case in court, a show cause notice was served upon him by the Senior Superintendent of Police, Jhansi dated 18.6.2010 to show cause as to why his integrity certificate for the year 2010 be not withheld, as a preliminary enquiry had been held wherein it had come on record that the appellant while conducting investigation of the said offence did not record the past criminal history of the accused.

C. The appellant filed reply to the said show cause notice on

4.7.2010 pointing out that the said offence was bailable. The purpose of finding out the past criminal history of an accused is relevant in non-bailable cases as it may be a relevant issue for considering his bail application. More so, withholding the integrity could not be the punishment and as the criminal case was sub judice before the competent court against the said accused on the chargesheet submitted by him, no action could be taken against the appellant unless the court comes to the conclusion that investigation was defective. D. The disciplinary authority, i.e. Senior Superintendent of Police without disclosing as under what circumstances not recording the past criminal history of the accused involved in the case had prejudiced the cause of the prosecution in a bailable offence and without taking into consideration the reply to the said show cause, found that the charge framed against the appellant stood proved, reply submitted by the appellant was held to be not satisfactory. Therefore, the integrity certificate for the year 2010 was directed to be withheld vide impugned order dated 8.7.2010.

E. Aggrieved, the appellant preferred an appeal before the Deputy Inspector General of Police on 20.8.2010 raising all the issues including that it was not necessary to find out the past criminal history of the accused in bailable offence and the punishment so imposed was not permissible under the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as b Rules 1991b). The appeal stood rejected by the appellate authority vide order dated 29.10.2010. F. Being aggrieved, appellant preferred a revision before the Additional Director General of Police which was dismissed vide order dated 29.3.2011 observing that withholding integrity certificate did not fall within the ambit of the Rules 1991. Therefore, the said revision could not be dealt with on merit and thus was not maintainable.

G. Aggrieved, appellant filed a Writ Petition which was dismissed by the High Court by the impugned judgment and order dated 19.7.2011. Hence, this appeal.

4. Shri R.K. Gupta, learned counsel appearing for the appellant has raised all the issues which had been agitated persistently by the appellant in his show cause reply, grounds in appeal and revision and in the writ petition before the High Court and submitted that as the punishment awarded is not provided under the Rules, 1991, the punishment so awarded is without jurisdiction and is liable to be quashed.

5. On the contrary, Shri Arvind Verma, learned counsel appearing for the State of U.P. made an attempt to defend the impugned orders on the ground that the appellant did not conduct the investigation properly and, therefore, the order passed against him was justified and no interference was required.

6. We have considered the rival submissions made by learned counsel for the parties and perused the record.

7. The only question involved in this appeal is as to whether the disciplinary authority can impose punishment not prescribed under statutory rules after holding disciplinary proceedings. The appellant is employed in the U.P. Police and his service so far as disciplinary matters are concerned, is governed by the Rules 1991. Rule 4 thereof provides the major penalties and minor penalties and it reads as under:-

> b Æ Punishment b (1) The following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed upon a Police Officer, namely -
>
> a. Major Penalties b i. Dismissal from service.
>
> ii. Removal from service.
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> iii. Reduction in rank including reduction to a lower-scale or to a lower stage in a time scale.
>
> b. Minor Penalties b i. Withholding of promotion.
>
> ii. Fine not exceeding one monthb s pay. iii. Withholding of increment, including stoppage at an efficiency bar.
>
> iv. Censure.
>
> 2) In addition to the punishments mentioned in sub-rule (1) Head Constables and Constables may also be inflicted with the following punishments b
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> i) Confinement to quarters (this term includes confinement to Quarter Guard for a term not exceeding fifteen days extra guard or other duty).
>
> ii) Punishment Drill not exceeding fifteen days.
>
> iii) Extra guard duty not exceeding seven days.
>
> iv) Deprivation of good-conduct pay.

3) In addition to the punishments mentioned in sub-rules (1) and (2) Constables may also be punished with Fatigue duty, which shall be restricted to the following tasks:

i) Tent pitching.

ii) Drain digging.

iii) Cutting grass, cleaning jungle and picking stones from parade grounds.

iv) Repairing huts and butts and similar work in the lines.

v) Cleaning arms.

8. Admittedly, the punishment imposed upon the appellant is not provided for under Rule 4 of Rules 1991. Integrity of a person can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report. However, if the statutory rules so prescribe it can also be withheld as a punishment. The order passed by the Disciplinary Authority withholding the integrity certificate as a punishment for delinquency is without jurisdiction, not being provided under the Rules 1991, since the same could not be termed as punishment under the Rules. The rules do not empower the Disciplinary Authority to impose b any otherb major or minor punishment. It is a settled proposition of law that punishment not prescribed under the rules, as a result of disciplinary proceedings cannot be awarded.

9. This Court in State of U.P. & Ors. v. Madhav Prasad Sharma, (2011) 2 SCC 212, dealt with the aforesaid Rules 1991 and after quoting Rule 4 thereof held as under:

> b Æ6. We are not concerned about other rule. The perusal of major and minor penalties prescribed in the above Rule makes it clear that sanctioning leave without pay is not one of the punishments prescribed, though, and under what circumstances leave has been sanctioned without pay is a different aspect with which we are not concerned for the present. However, Rule 4 makes it clear that sanction of leave without pay is not one of the punishments prescribed. Disciplinary authority is competent to impose appropriate penalty from those provided in Rule 4 of the Rules which deals with the major penalties and minor penalties. Denial of salary on the ground of b no work no payb cannot be treated as a penalty in view of statutory provisions contained in Rule 4 defining the penalties in clear terms.b (Emphasis added)

10. The Authority has to act or purport to act in pursuance or execution or intended execution of the Statute or Statutory Rules. (See: The Poona City Municipal Corporation v. Dattatraya Nagesh Deodhar, AIR 1965 SC 555; The Municipal Corporation, Indore v. Niyamatulla (dead) by his Legal representatives, AIR 1971 SC 97; J.N. Ganatra v. Morvi Municipality, Morvi, AIR 1996 SC 2520; and Borosil Glass Works Ltd. Employees Union v. D.D. Bambode & Ors., AIR 2001 SC

378).

11. The issue involved herein is required to be examined from another angle also. Holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one. (Vide: Bachhittar Singh v. State of Punjab & Anr., AIR 1963 SC 395; Union of India v. H.C. Goel, AIR 1964 SC 364; Mohd. Yunus Khan v. State of U.P. & Ors., (2010) 10 SCC 539; and Chairman-cum-Managing Director, Coal India Ltd. & Ors. v. Ananta Saha & Ors., (2011) 5 SCC

142).

Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules.

Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant.

12. This very ground has been taken by the appellant from the very initial stage. Before the appellate authority such a ground was taken. Unfortunately, the appellate authority brushed aside the said submission observing that the judgments mentioned by him to the effect that integrity could not be withheld as punishment not prescribed under the statutory rules, had no application to the case, and therefore, in that respect no further consideration was necessary. The order of punishment imposed by the disciplinary authority did not require any interference. The revisional authority rejected the revision as not maintainable observing as under:

> b Representation is not maintainable. Withholding of integrity certificate does not come under punishment under 1991 Rulesb &.Therefore, the revision is returned without hearing on merit on the ground of non maintainability.b (Emphasis added)

13. We fail to understand, if the revisional authority was of the view that integrity could not be withheld as punishment, why the mistake committed by the disciplinary authority as well as by the appellate authority could not be rectified by him. This shows a total non-application of mind. In such a fact-situation, the subordinate officer has to face the adverse consequences without any fault on his part. The grievance raised by the appellant that recording the past criminal history of an accused is relevant in non-bailable offences only as it may be a relevant factor to be considered at the time of grant of bail, and he did not record the same as it was a bailable offence, has not been considered by any of the authorities at all. Undoubtedly, the statutory authorities are under the legal obligation to decide the appeal and revision dealing with the grounds taken in the appeal/revision etc., otherwise it would be a case of non- application of mind.

14. The present case shows dealing with the most serious issues without any seriousness and sincerity. Integrity means soundness of moral principle or character, fidelity, honesty, free from every biasing or corrupting influence or motive and a character of uncorrupted virtue. It is synonymous with probity, purity, uprightness rectitude, sinlessness and sincerity. The charge of negligence, inadvertence or unintentional acts would not culminate into the case of doubtful integrity.

Withholding integrity merely does not cause stigma, rather makes the person liable to face very serious consequences. (Vide: Pyare Mohan Lal v. State of Jharkhand & Ors., AIR 2010 SC 3753). oweigh

15. Unfortunately, a too trivial matter had been dragged unproportionately which has caused so much problems to the appellant. There is nothing on record to show as to whether the alleged delinquency would fall within the ambit of misconduct for which disciplinary proceedings could be initiated. It is settled legal proposition that the vagaries of the employer to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant rules is nonetheless a misconduct (See: M/s. Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court, Meerut & Ors., AIR 1984 SC 505; and A.L. Kalra v. The Project and Equipment Corporation of India Ltd., AIR 1984 SC 1361).

16. Undoubtedly, in a civilized society governed by rule of law, the punishment not prescribed under the statutory rules cannot be imposed. Principle enshrined in Criminal Jurisprudence to this effect is prescribed in legal maxim nulla poena sine lege which means that a person should not be made to suffer penalty except for a clear breach of existing law. In S. Khushboo v. Kanniammal & Anr., AIR 2010 SC 3196, this Court has held that a person cannot be tried for an alleged offence unless the Legislature has made it punishable by law and it falls within the offence as defined under Sections 40, 41 and 42 of the Indian Penal Code, 1860, Section 2(n) of Code of Criminal Procedure 1973, or Section 3(38) of the General Clauses Act, 1897. The same analogy can be drawn in the instant case though the matter is not criminal in nature.

Thus, in view of the above, the punishment order is not maintainable in the eyes of law.

17. In the result, appeal succeeds and is allowed. The impugned order dated 8.7.2010 withholding integrity certificate for the year 2010 and all subsequent orders in this regard are quashed. Respondents are directed to consider the case of the appellant for all consequential benefits including promotion etc., if any, afresh taking into consideration the service record of the appellant in accordance with law.

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.....J. (Dr. B.S. CHAUHAN) b &b &.b &b &b &b &b &b &b &b &b &b &b &J. (JAGDISH SINGH KHEHAR) New Delhi, April 13, 2012
