

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 7548 OF 2011
(Arising out of S.L.P. (C) No. 19150 of 2008)

Surendra Prasad Shukla

... Appellant

Versus

The State of Jharkhand & Ors.

... Respondents

ORDER

A. K. PATNAIK, J.

Leave granted.

2. This is an appeal by way of special leave under Article 136 of the Constitution against the order dated 09.06.2008 of the Division Bench of the Jharkhand High Court in L.P.A. No. 176 of 2008 (for short 'the impugned order').

3. The facts very briefly are that the appellant was recruited as a Constable in the Bihar State Police on 07.08.1971 and he was later on promoted to the post of Head Constable (Hawaldar). On 04.07.2004, a complaint was lodged in the Muzaffarpur Sadar Police

Station that three unknown persons had snatched a car, which was registered as Muzaffarpur Sadar P.S. Case No. 139 of 2004 under Section 392 of the Indian Penal Code (for short 'the I.P.C.'). The police recovered the stolen car on 13.07.2004 from the government quarters occupied by the appellant and arrested the son of the appellant, Raju Shukla @ Rajiv Shukla alongwith two others who were involved in the theft of the car. The appellant was suspended and a memo of charges was served on him on 20.07.2004 charging him with the misconduct of negligence, indiscipline, conduct unbecoming of a police personnel. It was also alleged that he had harboured the accused Raju Shukla. He was asked to submit his explanation. The appellant submitted his reply on 26.07.2004 to the Superintendent of Police, Purvi Singhbhoom, Jamshedpur (for short the 'disciplinary authority') stating *inter alia* that in the evening of 12.07.2004 he had been to Tulailadugri T.O.P. for duty and he was patrolling in that area the whole night and that when he returned to his government quarters in the morning

around 6:15 a.m. on 13.07.2004, he saw the police of Muzaffarpur Sadar Police Station at his government quarters, who had arrested his son alongwith two others, and had seized the stolen Matiz car. He also stated in his reply that he did not get any time to question his son and that he had no idea that his son was involved in the crime. The enquiry officer then carried out the enquiry and submitted his report holding the appellant guilty of the charges and the disciplinary authority after considering enquiry report took the view that in the circumstances it was not reasonable that the appellant should serve the police force and passed an order of dismissal against him. The appellant carried an appeal to the Deputy Inspector General, Singhbhoom, but the appeal was dismissed. Thereafter, the appellant filed a revision before the Inspector General of Police, but the same was also rejected.

4. The appellant then filed Writ Petition (s) No. 6728 of 2006 under Article 226 of the Constitution in the Jharkhand High Court challenging his dismissal from

service. The learned Single Judge of the High Court dismissed the Writ Petition by order dated 30.04.2008. Aggrieved, the appellant filed L.P.A. No. 176 of 2008 and the Division Bench of the High Court dismissed the L.P.A. by the impugned order. When the Special Leave Petition was heard on 17.10.2008, this Court issued notice to the respondent to show-cause why the punishment of dismissal should not be altered to compulsory retirement. In response to the notice, respondent no.4 has appeared and filed his counter affidavit and has contended that the appellant is guilty of keeping the robbed Matiz car and giving shelter to the accused persons in his house and has not informed the matter to the higher authorities and that the conduct of the appellant has tarnished the image of the police force and that the punishment of dismissal should not be altered to compulsory retirement.

5. We have heard the learned counsel for the parties and we find that the misconduct alleged against the appellant was that he had harboured the accused Raju Shukla in the government quarters occupied by him

and the stolen car was recovered from the yard in front of the government quarters. The enquiry officer has recorded a finding that the appellant was guilty of the misconduct. The disciplinary authority accepted the finding of the enquiry officer and was of the view that the appellant should not any longer serve the police force and dismissed him from service and the appellate authority and the revisional authority have agreed with the disciplinary authority. As the appellant was working as a Head Constable, it was his duty to enquire from his son about the car kept in front of the government quarters occupied by him, and by not performing this duty he was guilty of negligence. The fact that the son of the appellant, who was an accused in an offence under Section 392 IPC, and his accomplices were found in the government quarters under the occupation of the appellant and the fact that the stolen car was also recovered from the yard in front of his government quarters were sufficient to hold the appellant guilty of negligence which affected the image of the police force in the area and for such negligence

the authorities were right in taking the view that the appellant should not be retained in police service.

6. The question which however arises for our decision is whether such negligence of the appellant was sufficient for the disciplinary authority to dismiss him from service. There was no charge against the appellant that he had in any way aided or abetted the offence under Section 392 IPC or that he knew that his son had stolen the car and yet he did not inform the police. The appellant, as we have held, was guilty of negligence of not having enquired from his son about the car kept in front of the government quarters occupied by him. The appellant had served the government as a Constable and thereafter as a Head Constable from 07.08.1971 till he was dismissed from service on 28.02.2005, i.e. for 34 years, and for such long service he had earned pension. In our considered opinion, the punishment of dismissal of the appellant from service so as to deprive him of his pension for the service that he had rendered for long 34 years was shockingly disproportionate to the negligence proved against him.

7. We accordingly, allow this appeal in part and modify the punishment of dismissal from service to compulsory retirement. The L.P.A. and the Writ Petition filed by the appellant before the High Court are allowed in part. There shall be no order as to costs.

.....J.
(R.V.

Raveendran)

.....J.
(A. K. Patnaik)

New Delhi,
September 01, 2011.