

Mukhtar Singh Vs. State and ors.

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SooperKanoon Citation : sooperkanoon.com/462293

Court : Allahabad

Decided On : Nov-03-1958

Reported in : AIR1959All569; (1959)ILLJ464All

Judge : J. Sahai, J.

Acts : [Constitution of India](#) - Articles 14 and 311; Uttar Pradesh Police Regulations; [Government of India Act, 1935](#) - Sections 240 and 243; Civil Services (Classification, Control and Appeal) Rules - Rule 3

Appeal No. : Civil Misc. Writ No. 960 of 1957

Appellant : Mukhtar Singh

Respondent : State and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : S.N. Misra, Adv.

Judgement :

ORDER

J. Sahai, J.

1. The petitioner was originally recruited as a constable in the U. P. police force but was later on promoted to be a head-constable after having completed the

necessary training. In February 1955 he was posted in Shahjahanpur and on the 17th of that month he received an order of suspension. The suspension order was communicated to him telephonically by the Kotwal, Shahjahanpur. On the 7th of April 1955 a charge sheet was served upon him. He submitted his reply to the charges on or about the 17th of April 1955. The petitioner was departmentally tried under Section 7 of the Indian Police Act. Sri R. D. Pandey, Superintendent of Police, Shahjahanpur., recorded findings-against the petitioner, the concluding portion of which runs as follows :--

'In view of the seriousness of the charge and the fact that it has been proved beyond any shadow of doubt and the bad record of service and the fact that all sorts of punishments have had no effect on the party charged to reform him I feel that he is a thoroughly undesirable type incapable of reform. He is the type that brings a bad name to the police force and is responsible for spoiling police and public relations. He is a slur on the force and a bad example to his subordinates and colleagues. In view of the above I find that no punishment less than dismissal from the Force will serve the ends of justice. I, therefore, call upon the party charged, H. C. Mukhtar Singh. to show cause within 10 days of the receipt of this finding why he should not be dismissed from the Force.

A copy of this finding will be handed over to H. C. Mukhtar Singh, the party charged, free of cost.

Sd. R. D, Pandey IPS.

Superintendent of Police

Shahjahanpur,

10-7-55.'

2. The petitioner filed a reply to the showcause notice mentioned above on or about the 19th July 1955 and on 2nd of August 1955 he was dismissed by the Superintendent of Police. He filed an appeal before the Deputy Inspector General of Police in November 1955. The D. I. G. rejected the appeal by his order dated 6th of March 1956, Thereafter the petitioner filed a petition before the Inspector

General of Police who rejected the same on 29th of October 1956. The petitioner thereafter applied for certified copies of the various orders which he received on the 15th of February 1957. Thereafter the present petition was filed in this Court.

The grounds taken in the petition are that the charges levelled against the petitioner amounted to the cognizable offence of lurking house-trespass by night and the proceedings under Section 7 of the Police Act were wholly without jurisdiction because no first information report was recorded against the petitioner and a case was not registered against him and that the petitioner had not a reasonable opportunity of showing cause because he was not allowed to lead evidence in defence.

Mr. Misra, the learned counsel for the petitioner, later on made an application for adding some grounds which are to the effect that the provisions of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules are applicable to his case and inasmuch as the same were not applied in his case there has been no proper enquiry and in any case the provisions of the Police Regulations are ultra vires inasmuch as it is open to a Superintendent of Police to discriminate between two members of the police force by applying in the case of one the provisions of the Police Regulations, which are more onerous than the provisions of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules (hereinafter called the Rules), and by applying in the case of the other the provisions of the Rules which are more generous.

3. A counter-affidavit has been filed on behalf of the State which has been sworn by Sri Girraj Singh, Circle Inspector. It is in the counter-affidavit that on the night between 16th and 17th February, 1955, one Radhey Lal reported to Sri Aisar Hussain, Deputy Superintendent of Police, Shahjahanpur, at about 10 p.m. that the petitioner and two other head-constables Rajendra Behari and Basdeo Singh had entered his house for immoral purposes while he was sleeping with his wife, and that the two head-constables had since run away while the petitioner was still lying on the cot in drunken state inside the house which he (Radhey Lal) had bolted from outside.

The Deputy Superintendent of Police sent Radhey Lal to C. L. Girraj Singh the deponent of the counter-affidavit who went to the house of Radhey Lal and found the petitioner sleeping under the influence of liquor on the cot of Radhey Lal. The petitioner was examined by the medical officer in charge of Shahjahanpur hospital who reported that he was found under the influence of liquor. When this fact was brought to the notice of the Superintendent of Police he suspended the petitioner on 17-2-1955. The Superintendent of Police asked C. I. Girraj Singh to hold an enquiry and report which the latter did, 'and on a perusal of the report the Superintendent of Police started Section 7, Police Act proceedings against the petitioner and framed charges against him which were delivered to him (the petitioner) on 7th April 1955.

The charge was read out and explained to the petitioner and thereafter the Superintendent of Police put certain questions. The petitioner submitted his reply to the charge on 17th April 1955, The petitioner's allegation that the departmental trial against him was conducted by C. I. Girraj Singh has been controverted in the counter-affidavit and it is stated that C. I. Girraj Singh only conducted the preliminary enquiry but the departmental trial was conducted by the Superintendent of Police himself who recorded the statements of the prosecution and the defence witnesses. From the counter-affidavit it appears that the petitioner had full opportunity of cross-examining such witnesses as were examined by the prosecution. So far as the defence is concerned it is stated in the counter-affidavit that originally the petitioner had submitted a list of 17 witnesses out of whom he examined 10 witnesses and gave up the others. On 29-6-1955 the petitioner made the following oral statement before the Superintendent of Police.

'I have no complaints to make regarding the conduct of the departmental proceedings against me. I have been given full opportunity to cross-examine the witnesses and to produce the defence. I have no more defence to offer,

Sd/- M. Singh

Sd. R.D. Pandey,

S. P. 29/6/--'

4. The petitioner's allegation that he was not given an opportunity of cross-examining prosecution witnesses and producing defence has been controverted. In his oral statement before the Superintendent of Police on 26-9-1955 which has been referred to above the petitioner definitely admitted that he had no complaints to make regarding the conduct of departmental proceedings and that he had full opportunity to cross-examine the witnesses and to produce defence. He also stated that he had no more defence to offer. This statement was signed by the petitioner.

I believe the counter-affidavit filed by C I. Girraj Singh, and hold that there was no defect in the conduct of the departmental trial and the petitioner had full opportunity not only of cross-examining the prosecution witnesses but of producing such defence as he liked. It is obvious that the allegations now made by him are clear afterthought as is evidenced by the statement of the petitioner himself made on 29-6-1955 which has been referred to above. I therefore hold that the petitioner had a reasonable opportunity of showing cause as required by Article 311(2) of the [Constitution of India](#).

5. Though the petitioner has taken a ground that no first information report was lodged against him and no case was registered against him under Chapter 14 there is no averment to that effect either in the petition or in the affidavit filed in support of it. Since this allegation was not made the respondents had no opportunity of getting it contradicted in the counter-affidavit. Inasmuch as the petitioner has not laid any foundation for this ground in the form of allegations either in the petition or in the affidavit filed in support of it, there is no material on which the petitioner can be allowed to raise this ground (ground No. 1 of the petition). I therefore hold that even this ground has not been substantiated.

6. We therefore come now to the grounds which have been raised by means of a supplementary application i.e., the grounds relating to the applicability of Rule 55 of the Rules to the petitioner's case and to the constitutionality of the Police Regulations. It is true that a provision analogous to Section 243 of the Government of India Act 1935, does not find place in our Constitution. Section 243 of the Government of India Act runs as follows:

'Notwithstanding anything in the foregoing provisions of this chapter, the conditions of service of the subordinate ranks of the various police forces in India shall be such as may be determined by or under the Acts relating to those forces respectively.'

It is contended that the only bar to the applicability of Rule 55 of the Rules to the case of the petitioner and other members of the police force was Section 243 of the Government of India Act and inasmuch as the same has been replaced and no analogous provision has found its way into the Constitution, the provisions of Rule 55 of the Rules should apply to the petitioner's case. In my opinion the only effect of Section 243 of the [Government of India Act, 1935](#), was to make the provisions of Section 240 of the said Act non-applicable to the subordinate ranks of the police forces in India. The matter came up for consideration before their Lordships of the Privy Council in the case of *North-West Frontier Province v, Suraj Narain Anand*. Their Lordships expressed themselves in the following words :--

'On the first question, apart from consideration whether the context indicates a special significance to the expression 'conditions of service', their Lordships are unable, in the absence of any such special significance, to regard provisions which prescribe the circumstances under which the employer is to be entitled to terminate the service as otherwise than conditions of the service, whether these provisions are contractual or statutory: they are therefore of opinion that the natural meaning of the expression would include such provisions. In the second place, it will be found, on a perusal of Chap. II, which includes Sections 240 to 263, that Sub-sections (2) and (3) of Section 240 are the only provisions of Chap. II to which the introductory words of S. 243 can be referable in relation to conditions of services, as every one of the other provisions of the chapter, with one exception deals with special classes of service, just as Section 243 deals with special class.'

The result therefore is that with the repeal of Section 243 of the Government of India Act the provisions of Article 311 of the [Constitution of India](#) which is a substitute for Section 240 of the [Government of India Act, 1935](#), are made applicable to the case of members of the subordinate police force including the

petitioner. To my mind there has been no other effect of the repeal of Section 243 of the [Government of India Act, 1935](#). The reason why to my mind the provisions of the Rules do not apply to the petitioner's case is to be found in the language of Section 7 of the Indian Police Act. The said section runs as follows :--

'7. Appointment, dismissal, etc., of inferior officers--Subject to such rules as the State Government may from time to time make under this Act, the Inspector-General, Deputy Inspectors-General, Assistant Inspector-General and District Superintendents of Police may at any time dismiss suspend or reduce any police officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same;

or may award any one or more of the following punishments to 'any police-officer of the subordinate ranks who shall discharge his duty in a careless or negligent manner, or who, by any act of his own shall render himself unfit for the discharge thereof, namely :--

(a) fine to any amount not exceeding one month's pay;

(b) confinement to quarters for a term not exceeding fifteen days, with or without punishment drill, extra guard, fatigue or other duty;

(c) deprivation of good-conduct pay;

(d) removal from any office of distinction or special emolument,"

The opening words of the section, i.e., 'subject to such rules as the State Government may from time to time make under this Act' clearly indicate that the rules that will be applicable to the case of the police personnel are the rules framed under the Police Act. The words 'such rules.....under this Act' are very significant'. The provisions of Chapter XXXII of the U. P. Police Regulations have been made under Section 7 of the Police Act as is clearly shown by Rule 477 of the Police Regulations which runs as follows :--

'477. The rules in this chapter have been made under Section 7 of the Police Act (V of 1861) and apply only to officers appointed under Section 2. Police Act (V of

1861). No officer appointed under that Section shall be punished by executive order otherwise than in the manner provided in this chapter,

The punishment of gazetted officers is regulated by the conditions of their agreements with the Secretary of State and by rules made by the Secretary of State in Council under Sub-section (2) of Section 96-B of the Government of India Act of 1919. The rules for the punishment of the clerical staff are given in the Office Manual; those for the punishment of village chaukidars in Chapter IX of these regulations.'

There is nothing in the provisions of the Rules which makes them applicable to the members of the subordinate police force. On the contrary Clause (a) of Rule 3 of the Rules clearly provides that the Rules will not be applicable to 'persons for whom, appointment and conditions of employment special provision is made by or under any law for the time being in force.' So far as the members of the subordinate police force are concerned they are employed under the provisions of the Indian Police Act and. their conditions of service have also been provided for under that Act and the Police Regulations, Rule 3 of the Rules runs as follows:

'3. These rules shall apply to every person in the whole-time civil employment of a Government in India (other than a person so employed only occasionally or subject to discharge at less than one month's notice) except-

(a) persons for whose appointment and conditions of employment special provision is made by or under any law for the time being in force;

(b) (i) railway servants as defined in Section 3 of the Indian Railways Act, 1890.

(ii) persons holding posts in the Railway Board who are subject to the Railway Services (Classification, Control and Appeal) Rules, and

(iii) other persons holding posts under the administrative control of the Railway Board or of the Financial Commissioner of Railways;

(c) Persons in respect of whose conditions of service, pay and allowances, pension, discipline and conduct or any of them special provision has been made

by agreement entered into before these rules were made or entered into thereafter in pursuance of the provisions of Rule 46:

Provided that in respect of any matter not covered by the provisions special to him, his service or his post, these rules shall apply to any person coming within the scope of exceptions (a) or (c) above to whom but for these exceptions the rules would otherwise apply;

Provided also that these rules shall apply to any person temporarily transferred to a service or post coming within exception (b) to whom, but for such transfer, these rules would otherwise apply.'

It is true that proviso 1 mentioned above provides that even to the case of a government servant whose case falls within Clause (a) or (c) of Rule 3 the Rules shall be applicable in respect of matters which are not covered by special provisions. The proviso would not, however, be applicable to the case of the petitioner because the provisions of the Police Act and the Police Regulations fully cover the question of the petitioner's dismissal. It was held by the Privy Council in the case of Suraj Narain Anand (referred to above) that the expression 'conditions of service' include the provisions which prescribes the circumstances under which the employer is entitled to terminate the services of the employee, and it appears to me that the conditions of the petitioner's employment which include the conditions or provisions for his dismissal have been specially provided for by the Police Act and the Police Regulations and, therefore, the proviso to Rule 3 of the Rules cannot apply because the proviso can only apply if there is no provision in the special Act or the special rules.

I am therefore of the opinion that the Rules do not apply to the petitioner's case. If they do not apply to his case there is no question of the Police Regulations being discriminatory. The provisions of Ch. XXXII of the Police Regulations apply to all the officers appointed under Section 2 of the Indian Police Act. In other words, they apply to a whole class. The law-making authority can always make a special provision for a special class. There is no scope for discrimination in those rules nor can they be held to be discriminatory on the ground that they are more onerous than the Rules because the latter do not apply to officers to whom the former

applied. The rules mentioned in Ch. XXXI of the Police Regulations are therefore not discriminatory.

7. In my opinion no case is made out for interference. The petition is accordingly dismissed with costs.

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