

Mohindar Singh Vs. Union of India

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Court : Delhi

Decided On : Nov-21-1978

Reported in : 1979RLR319

Judge : Rajendar Sachar, J.

Acts : Punjab Police Rules - Rule 14; CCS (C) Rules, 1964 - Rule 25(4)

Appeal No. : Writ Appeal No. 450 of 1970

Appellant : Mohindar Singh

Respondent : Union of India

Advocate for Pet/Ap. : Sital A.K. Dar and; Charanjit Talwar, Advs

Judgement :

Rajendar Sachar, J.

(1) This is a petition against order of dismissal passed by S.P. on 8th April 1968 as affirmed by D.I.G. by his order dated 20.11.1968 and by the I.G. Police by his order dated 14.1.69 and the further order of Lt. Governor conveyed by memo dated 7.11.69 rejecting the representation of the petitioner.

(2) This case is off shoot of what is commonly known as 'Policemen Agitation' which took place in April 1967. It appears that a large number of policemen

abstained from work ; many of them were suspended and against many of them criminal cases were filed. The petitioner who had joined as a constable was at that time working as an Offg. Head Constable as per the counter-affidavit filed by the respondent. On 27.1.1968 the petitioner was charged as follows :-(...).....

(3) The petitioner denied the allegations, and enquiry was held, the Enquiry officer found that petitioner was collecting funds at the time when pay was being disbursed to the police personnel. He found the charges proved against him. Show cause was issued to the petitioner by Superintendent Of Police, and he also found that the charges against the petitioner were true inasmuch as by collecting funds he violated Rule 14.25(4) and Rule 12 of the P.P.R. and D.C.S. (c) Rule 1964 respectively. He also found that the disobedience of the order of the superior Officer amounted to gross misconduct and cannot be tolerated in a discipline force on whose shoulder the responsibility of the security of the country lies. He, therefore, passed an order of dismissal on 8th April 1968. The Petitioner's further appeal and revision and representation failed, as mentioned above. This has brought the petitioner to this Court asking for quashing of the impugned orders,,

(4) Now the finding that petitioner was collecting funds at the time when the pay was disbursed is not disputed. It is also not in dispute that the collection of funds was for the benefit of and to be used to assist a large number of police personnel who had been suspended or against whom cases had been instituted. It is also not in dispute that the collection was being made only from the police personnel and at the time when the pay was being disbursed. There is no suggestion that the funds were being raised from any member of the public. As a matter of fact, the charge itself is very clear that the funds were being raised from the police personnel and it is also very clear that the purpose of the funds was for keeping those police personnels who had been suspended during the police unrest. Does such an action of the petitioner violate P.P.R. 14.25(4) and C.C.S. (C) R 12 of 1964 Rules. The rules are..... ..

(5) Mr. Talwar, the counsel for Union Of India argues that sub-rule 4 of Rule 14.25 prohibits any voluntary subscription and rule 12 also prohibits asking for or accepting any contributions or the raising of any funds in pursuance of any object

whatsoever, and therefore, any collection made by a Government servant like in the present case by the petitioner will ipso facto immediately attract sub-rule 14.25(4) C.C.S. (C) R.12. The argument is that Government does not wish to encourage any monetary transaction to the employees for the reasons that this may lead to undesirable consequence. Mr Talwar would have it that any collection by the Government servant for even the most laudable object without permission from the authorities concerned would attract the applicability of the rules. Now I am prepared to accept prima facie the suggestion that any collection by the Government servant from the public for any purpose may possibly attract the applicability of these rules (though I would not like to give definite and a final opinion on this aspect as it is not necessary in the present case) It may be that a bar on Government employees to collect any funds from the public is motivated by consideration of public interest in as much it may be difficult to distinguish whether the funds collection had an element of voluntariness or otherwise and collection even made for a good purpose and thereby become counter-productive if voluntariness is absent. Restriction in a case may well be serving a public purpose. But the difficulty is when Mr. Talwar seeks to extend the operativeness of these rules to prohibition against a Government servant like the petitioner in collecting funds even from his immediate colleagues and that also for the purposes of meeting the immediate needs of the suspended employees or those against whom cases have been instituted. I do not find it possible to hold the applicability of rules to this limited situation. The purpose behind the rules being to take care that collections are not made under compulsion. The said compulsion would be completely missing when collections are made from colleagues and in the open. In the present case the allegations even if accepted only mentioned that the petitioner started raising funds from police personnels for those who had been dismissed or suspended. There is no suggestion that there was any coercion in funds collection. It is relevant to mention that the Government itself had recognised the Delhi Police Non-gazetted karamchari Sangh and had given sanction to Non-gazetted members of Delhi police from being members of the Sangh (Annexure 'B' to the petition). Evidently in the matter of Police unrest and agitation, Karamchari Sangh was very vitally affected as being representative of the police personnel. If in that context the petitioner as a police personnel was

asking for funds for other police personnel for the benefit of suspended and dismissed police personnel I fail to see how and in what manner could these rules be said to have been controverted. Even Government seems to have relied that to read rules as prohibiting collections by the organisation for the benefit of his members should not constitute a violation of the rules. In this connection reference may be made to the Government of India memo Mha, O.M. No. 24/20/55 Eatis B) dated 10th August. 1955 in which it had been made clear that though technically saying Rule 12 may seek to bar collection even from a member of the service associations but in order to assist the smooth working of unions it has been decided to grant general permission in specified cases. Thus members of a union can freely collect subscription amongst themselves for welfare activities of the union So long as appeal is confined to members no permission need be sought. Similarly where in a matter affecting the general interest of the members of the union is in dispute and it is permissible under the rules of the union to spend its funds over such a matter, its members should be free to collect funds especially for that special purpose from amongst its members. I cannot conceive of any better utilization of the funds by the Sangh and the police personnels than for the aid of those of their colleagues who had been suspended or dismissed in a matter which was common to all the police force. So in the limited category of exemption from rule 12 the petitioner would have got benefit. In my view neither of the Rules, would cover a case if voluntary collection is made from ones own colleagues in the service for a purpose common to all. In that view the reliance of the authorities in finding against the petitioner on the basis of the violation of P.P.R. 14,2. (4) and C.C.S. (C) Rule 12 cannot be upheld and has to be set aside, but unfortunately, for the pe-titioner it is not the end of the matter because he has also been charged with disobeying orders and behaving in insubordinate manner in not desisting from collecting funds. Thus dismissal is as a result of finging on all these charges. It is possible as Mr. Dar urged that if the authorities knew that the said rules were inapplicable the other charge of disobedience or not desisting from collecting funds, which flows really from the charge of violation of the Rules in collecting funds would have fallen by its own weight and would not really have survived or it may be as Mr. Talwar sought to urge that charge of disobedience or insubordination would have survived even if there was no violation of the rules by

the petitioner in collecting funds. Evidently this is not a matter which this court under Article 226 can choose to determine. This is a matter obviously for the authorities concerned to look into. I am aware that if the order may be supported on any finding as to substantive misdemeanour for which the punishment can lawfully be imposed. It is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant-See : (1963)ILLJ239SC (State of Orissa vs. Bidybhushan Mohapatra) But in at least two out of the five heads of charge relating to illegal gratification had been urged and it was in that connection that those observations were made. As said in the principle of decision was explained in : [1967]2SCR583 (State of Maharashtra V Babu Lal where the court said : 'An administrative or quasi-judicial order based on several grounds, all taken together, cannot be sustained if it be found that some of the grounds are non-existent or irrelevant, and there is nothing to show that the authority would have passed the order on the basis of the other relevant and existing grounds'.

(6) I am finding the charge against petitioner on basis of contravention of Ppr 14.25 as irrelevant because the said rules do not cover the case of the petitioner. It is evident therefore that the authorities have taken into account matters which fall outside the purview of the relevant circumstances which could be taken into account for the purpose of proceeding against the petitioner. It is not possible for me to divine as to what result might have been, had the authorities correctly come to the conclusion that there is no violation Ppr 14.25 and Rule 12 of CCS(C) Rules. Obviously the authorities have to consider whether any proceedings would have been taken against the petitioner if they knew the correct position in law to the effect that the reliance on these rules is irrelevant and non-existent. In such a situation I cannot say with certainty as to what proceedings if any of the order would have been passed and it is not possible to uphold the impugned orders.

(7) The result is that the impugned order of dismissal and the further orders of affirmation in appeal and revision and the rejection of representation cannot be upheld and are set aside. The only alternative for this Court now is to send the matter back to the Superintendent of Police (now the Deputy Commissioner of Police-respondent, No. 4 for reconsideration in the light of the judgment and on

law and merits I may mention that I am sending this to Respondent No. 4 because he was the first authority who had passed the order of dismissal, Mr. Dar had mentioned it in the petition and still maintains that the respondent No. 4 was not the competent authority to take action against him. But as I am allowing the petition on other point and sending the matter back. I need not dwell on it. Mr. Dar is free to raise this point when the matter is dealt with by authorities.

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