

## **Mewa Ram Ram Charan vs United Provinces on 21 January, 1954**

**Equivalent citations: AIR1954ALL487, AIR 1954 ALLAHABAD 487**

### **JUDGMENT**

Randhir Singh, J.

1. This is a plaintiff's appeal arising out of a suit for a declaration that the order of dismissal passed against him by the Inspector General of Police was wrongful, illegal & ultra vires & for a decree for damages to the extent of Rs. 14,000/-. An alternative prayer asking for a decree for Rs. 2,653/8/- on account of arrears of salary together with station allowance had also been asked for in case the order of dismissal against the plaintiff was held to be 'ultra vires' and void.

2. The plaintiff was a Sub-Inspector of Police in U. P., having been appointed by the Inspector General of Police in the year 1921. He was posted at police station Payagpur in 1943 and was suddenly transferred to police station Sujauli on 24-3-1944. Some confidential enquiry was made against him presumably on receipt of some information by the Superintendent of Police. On 17-4-1944 an order of suspension of the plaintiff was passed by the Superintendent of Police and this order was served on the plaintiff on 20-4-1944. He was ordered to hand over charge and to report his arrival at the police lines which he did on 22-4-1944. A departmental-trial under Section 7 of the Police Act followed and a number of witnesses were examined in support of the allegations against the plaintiff. Charges were framed on the basis of the evidence adduced, and this charge sheet was served on the plaintiff on 25-4-1944. He was asked to produce evidence in defence which he did.

The enquiry concluded at the end of May, & the Superintendent of Police reported to the Deputy Inspector General of Police on 12-6-1944, that most of the charges brought against the plaintiff had been satisfactorily established and further recommended the dismissal of the plaintiff from the police force. The Deputy Inspector General of Police agreed with the report and the recommendation of the Superintendent of Police and called upon the plaintiff to show cause as to why he should not be dismissed from the police force. The plaintiff then made his representation orally which was recorded and ultimately the Deputy Inspector General of Police reported to the Inspector General of Police recommending the dismissal of the plaintiff. The Inspector General of Police finally agreed with the recommendation and passed the order of dismissal of the plaintiff on 1-8-1944.

3. The plaintiff then went up in appeal to the Provincial Government but his appeal was dismissed and he then instituted the suit on 29-3-1946 which has given rise to this appeal after serving the notice under Section 80, C. P. C. on the Government.

4. The suit was contested by the defendant on various grounds. It was pleaded that the order of dismissal was perfectly valid, that the suit was barred by limitation and that it was also not maintainable. The lower Court came to the conclusion that although the enquiry resulting in the dismissal of the plaintiff-appellant was not regular and the dismissal was wrongful but as there had been no breach of any statutory duty and the order of dismissal was passed by a competent authority, the plaintiff had no right to maintain a suit. The plea of limitation raised by the defendant was repelled but in view of the finding that the suit for a declaration was not maintainable the suit was dismissed. The plaintiff has now come up in appeal.

5. The plaintiff has mentioned in the plaint the various grounds on which he challenged the regularity and legality of the proceedings which terminated in the order of dismissal. It was alleged by him that he was not given a reasonable opportunity to defend himself and that his application for postponement of the hearing of the evidence was rejected by the Superintendent of Police. It has also been mentioned in the plaint that the Superintendent of Police and the other officers connected with the enquiry against the plaintiff were biased against him and the enquiry was not conducted in a free and impartial atmosphere. The plaint does not conform to the rules of pleadings and matters which should not have found a place in the pleadings such as arguments, have been put into the plaint. The main question, however, which arises for determination in this appeal is whether the order of dismissal passed against the appellant can be challenged in a suit and whether the plaintiff was entitled to a decree for the recovery of pay or for damages if the dismissal was found to be wrong.

6. In order to appreciate the arguments advanced on behalf of the appellant in this case it may be necessary to examine the factual state of law and regulations applicable to the plaintiff on the date the departmental trial took place and the order of dismissal was passed. The Government of India Act, 1935 came into force on 1-4-1937 and Police regulations which were in force in 1944 were corrected and brought-up-to-date in April 1942. Chapter II of the Government of India Act dealt with Civil Services. Certain safeguards had been provided in Section 240 against the termination of services of Civil Servants in India.

One of these safeguards embodied, in Section 240 was that no person shall be dismissed or reduced in rank until he had been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. This provision was applicable to All Civil Servants but an exception was made by Section 243, Government of India Act and Section 243 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."

A perusal of Section 243, therefore, shows that the constitutional safeguards provided in Section 240, Government of India Act against the termination of services of Civil Servants were not made available to police forces whose conditions of service were to be governed by the Acts relating to those forces. With the policy of the legislature or with the wisdom thereof we are not concerned and

it is, therefore, not necessary to discuss as to why the meagre safeguards which were available to other Civil Servants were not made available to the police forces. The conditions of service of the subordinate ranks of the police forces in India were to be governed, therefore by the Acts relating to those forces. The plaintiff was a member of the police force and as such the conditions of his service were to be governed by the Police Act and by the regulations framed under the Police Act.

A detailed discussion on this point may not be necessary as the question was discussed at length in a ruling of this Court reported in -- 'Gulzar Ahmad Jafri v. Government of U. P.', AIR 1950 All 212 (A). In this reported case which was also instituted by a dismissed Sub Inspector a question arose as to whether Section 240, Government of India Act was applicable to members of the police force and it was held that in view of the provisions of Section 243, Government of India Act the provisions of Section 240 would not be applicable to members of the Police force and the conditions of their services will be determined by the Police Act.

7. In another case reported in -- 'North West Frontier Province v. Suraj Narain Anand', AIR 1949 PC 112 (B), the question was as to whether the words "conditions of Service" would include the termination of service also and it was held that the words "conditions of service" will be deemed to include termination of service by dismissal. In view of these rulings it cannot now be disputed that the conditions of service including termination of service of a police officer was not affected by the safeguards provided in Section 240, Government of India Act, 1935.

8. It remains now to be seen if the departmental trial of the plaintiff and the order of dismissal passed against him were not in accordance-with the provisions of the Police Act or the regulations framed thereunder. The procedure of a departmental trial under Section 7 of the Police Act is provided by regulations 489 to 491 of the Police Regulations. Unlike the enquiry conducted in other departmental trials it was provided by these regulations that the evidence in support of the accusation shall be produced first and after the evidence had been adduced, the accusation shall be reduced to the form of a charge which shall be served upon the party proceeded against. The party was to be given an opportunity to cross-examine the witnesses and the explanation to be-offered by the accused officer was then to be recorded by the enquiring officer. The accused officer had then the right to produce evidence in his defence and the enquiring officer was then to submit his report to the Deputy Inspector General of Police in case the officer happened to be a Sub-Inspector or an Inspector.

It is not alleged on behalf of the plaintiff that the enquiry was not conducted in the manner provided in the police regulations, and his main-grievance is that he was not given sufficient time to put up his defence. The enquiry started on 22nd of April & continued up to the end of May although the main prosecution evidence had been recorded within the first three days. The Superintendent of Police sent his report and the recommendation for the dismissal of the plaintiff on 12-6-1944, and the Deputy Inspector General of Police after he had considered the report of the Superintendent of Police directed the plaintiff on 29-6-1944 to show cause why he should not be dismissed on the charges framed against him by the Superintendent of Police.

This order of the Deputy Inspector General of Police requiring the plaintiff to show cause, though issued on 29-6-1944 was actually served on the plaintiff on 8-7-1944. He turned up on the 12th of July and made a statement in which he definitely stated that he had received a copy of the charges and had understood them. He did not ask for any further time nor did he make any complaint that the time given to him for making the representation or the statement was insufficient. He made certain allegations in his statement against the Circle Inspectors and the Superintendent of Police. These allegations were considered by the Deputy Inspector General of Police and he came to the conclusion that the findings arrived at by the Superintendent of Police on the charges were correct. He then recommended the action proposed by the Superintendent of Police to the Inspector General of Police.

Under the police regulations the report of the Superintendent of Police in such matters had to be sent through the District Magistrate and in this case also the Superintendent of Police sent his report through the District Magistrate. The District Magistrate had also concurred with the findings of the Superintendent of Police. The order of dismissal passed by the Inspector General of Police, a copy of which has been filed vide Ex. A5, shows that he had considered the report and the evidence adduced against the plaintiff with care and thoroughness. He has pointed out in his order the omissions made by the Superintendent of Police in framing the charge and in conducting the enquiry. He, however came to the conclusion that these irregularities did not affect the merits of the charge against the applicant & concurring with the recommendation of the Deputy Inspector General of Police he passed the order of dismissal of the plaintiff.

9. The learned counsel for the Appellant has not been able to show in what manner the conduct of the enquiry was unlawful. It is not open to this Court to enter into or examine the correctness of the findings arrived at by the Deputy Inspector General of Police or the Superintendent of Police or the merits of the order of dismissal. It is only if there has been a breach of any statutory duty imposed by law in making the enquiry or in passing the order of dismissal that a Court of law can interfere.

10. The learned Civil Judge has held the enquiry to be irregular as it was not in accordance with the provisions of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules. It appears that the learned Civil Judge overlooked the provisions of Rule 3 of these rules. It has been expressly mentioned in Rule 3 that the rules would not apply to persons for whose appointment and conditions of employment special provision is made by or under any law for the time being in force. The procedure provided in the Civil Services (Classification, Control and Appeal) Rules would not, therefore apply to departmental trials under Section 1 of the Police Act and they will be governed by the Police Act or by any regulations framed under the Police Act. As remarked above, the procedure provided for departmental trials under Section 7 of the Police Act was in some particulars different from the one provided under Rule 55 of the Civil Services (Classification, Control and Appeal Rules.

11. Another ground on which the learned Civil Judge has held that the dismissal was wrongful and defective was that the notice issued to the plaintiff to show cause against his dismissal had been issued by the Deputy Inspector General of Police and not by the Inspector General of Police. It is not disputed that the plaintiff had been appointed by the Inspector General of Police who was, it appears, the appointing authority in the year in which the plaintiff was appointed. By the regulations

which were in force in 1944 the Deputy Inspector General of Police was the appointing authority in the case of Sub Inspectors of Police and he had also the right to dismiss them. In the present case the order of dismissal was passed by the Inspector General of Police and the question as to whether the Inspector General of Police had the right to dismiss the plaintiff does not in fact arise.

12. It had been argued on behalf of the appellant that if the police regulations in force in 1944 be deemed to apply to the case of the plaintiff, the order of dismissal should have been passed, if at all, by the Deputy Inspector General of Police and not by the Inspector General of Police. Paragraph 479 (b) of the police regulations empowers the Inspector General of Police to punish Inspectors and all police officers of lower rank. The powers of the Inspector General of Police and the Deputy Inspector General of Police with regard to punishment to be inflicted on Sub-Inspectors are, therefore, concurrent and both have the right to punish Inspectors of Police. The Inspector General of Police had, therefore, even under the police regulations in force in 1944, the right to pass an order of dismissal of the plaintiff.

As regards the notice to be given to an accused petitioner to show cause against the proposed order of dismissal, it has been contended by the learned counsel for the appellant that this notice to show cause could be given only by the person who ultimately passed the order of dismissal. It has been observed in some cases vide -- 'Secretary of State v. I. M. Lair, AIR 1945 PC 47 (C) that a reasonable opportunity of showing cause against the proposed order of dismissal should be given by the person who is competent to dismiss the officer. It is primarily the sphere of the appointing authority, who is also competent to dismiss a person, to make up his mind whether the charges had been established against the person, sought to be dismissed, and if he was of opinion that punishment by dismissal, reduction in rank or removal was called for, before the accused officer is called upon to show cause against the proposed punishment, it would evidently not be proper for anybody else, who is not competent to dismiss an officer, to arrive at a tentative decision as to whether dismissal was the proper punishment in that case.

These considerations, however, do not arise in the case of the plaintiff. As Section 240 becomes inapplicable to the case of the plaintiff in view of Section 243, Government of India Act the departmental enquiry as also the subsequent proceedings up to the passing of the order of dismissal would be governed by the Police Act or the regulations framed thereunder. Originally there was no provision in the police regulations requiring the enquiring officer to ask the accused officer to show cause against the proposed punishment but an amendment was made on 20-5-1943 to para. 490(7) of the Police Regulations. It was provided as follows :

"Should the Superintendent of Police consider that either dismissal, removal or reduction is an appropriate punishment he should give the officer charged an opportunity to show cause why such punishment should not be inflicted."

Paragraph 490(7) as amended in 1943 further underwent an amendment in 1946 but we are not concerned with that amendment as that came into force after the order of dismissal had been passed against the plaintiff. Under the regulations, as they stood in 1944, the Superintendent of Police was required to give the officer charged an opportunity to show cause as to why the punishment which

he proposed should not be inflicted. In the case of the plaintiff the Superintendent of Police did not ask the plaintiff to show cause against the proposed punishment but it was the Deputy Inspector General of Police who gave him this opportunity. Evidently the plaintiff can make no grievance out of this procedure inasmuch as an opportunity to show cause against the proposed punishment had been given to him by the Deputy Inspector General of Police and he was heard before the Deputy Inspector General of Police who recommended the dismissal of the plaintiff to the Inspector General of Police. The only opportunity which was to be given to the plaintiff was the one provided under the police regulations and not under Section 240, Government of India Act and this opportunity had been given.

13. It would thus appear that the departmental trial of the plaintiff had been conducted according to the regulations framed under the police Act and the order of dismissal was also passed by a competent authority. It is only the breach of any statutory duty or obligation on the part of the authorities dealing with the plaintiff that can give him a cause of action. If there has been no breach of any statutory provisions the plaintiff would not be entitled to seek relief in a court of law against the order of dismissal, passed by a competent authority. We are clearly of opinion that the order of dismissal passed by the Inspector General of Police was by a competent authority and it was, therefore, a good order binding upon the plaintiff.

14. The last and the only remaining submission on behalf of the appellant is in respect of the quantum of damages and salary which should be awarded to the plaintiff. This question does not arise in view of our findings on the first point. In view of what we have held above, the plaintiff is not entitled to a decree for any damages or arrears of salary.

15. As a result, the appeal fails and is dismissed with costs to the respondent.