

Dharmendra Kumar Dikshit vs Superintendent Of Police, Kanpur And ... on 16 September, 1955

Equivalent citations: AIR1956ALL172, AIR 1956 ALLAHABAD 172

ORDER

Mehrotra, J.

1. This is an application under Article 226 of the Constitution praying that a writ of certiorari or any direction be issued to the opposite parties quashing the order of the Superintendent of Police, Kanpur, dated 20-12-1952 by which he dismissed the applicant from service.

2. The facts alleged in the affidavit filed along with the petition are that on 19-8-1952, the applicant, who was holding the substantive post of a head constable, was officiating as a Sub-Inspector of Police and was posted at police station 'Cantonment' as incharge of Rail Bazar Chauki in the City of Kanpur. The allegation was that on the night between 23rd and 24th August, 1952, the applicant along with two constables entered the house of one Nadir Hussain in mohalla Mirpur and threatened to lock him up and other inmates of the house under the Gambling Act in order to extort money from them and thereafter the applicant and the constables received money from them.

On these allegations, the applicant was suspended and reverted to the substantive rank of head constable on 26-8-1952. Thereafter proceedings under Section 7, Police Act were started against him and were conducted by Shri S. K. Saxena, officiating Deputy Superintendent of Police. Sri Saxena gave his findings on 26-11-1952 and recommended that the applicant be removed from the police force. The findings were submitted to the Superintendent of Police; Kanpur for necessary orders.

Sri Mardan Singh, who was at that time officiating Superintendent of Police, Kanpur City, issued a letter under his signature to the applicant and the applicant was asked to give his explanation to the findings arrived at by Sri Saxena. The applicant submitted his explanation to the officiating Superintendent of Police and the Superintendent of Police, by his order dated 20-12-1952, uphold the findings arrived at by Sri Saxena and the applicant was dismissed from service.

An appeal was filed by the applicant to the Deputy Inspector General of Police, Southern, Range, Kanpur who, by his order dated 12-5-1953, rejected the appeal. The applicant then filed a second appeal before the Inspector General of Police who, by his order dated 18-3-1954, upheld the decision of the subordinate authorities. The applicant then made a representation to the State Government but he was directed to make his representation through proper channel and the representation was then withheld. Thereafter the present petition was filed.

(3) A counter-affidavit has been filed on behalf of the opposite parties in which it is stated that on the morning of 24-8-1952 the matter was reported to the Station Officer Cantonment, Sri Gajendra Singh. On 26-8-1952, Sri Gajendra Singh informed through phone to the Superintendent of Police, City. Same day the Superintendent of Police suspended the applicant and reverted him to the substantive rank of head constable.

Thereafter the Superintendent of Police ordered an inquiry into the matter by the Circle Inspector. The Circle inspector submitted his report on 6-9-1952 and on the strength of that report, proceedings under Section 7, Police Act were started against the applicant. The Deputy Superintendent of Police, Sri Saxena, who held the inquiry against the Applicant eventually submitted his findings to the Superintendent of Police on 26-11-1952 with the recommendation that the applicant should be removed from service.

The recommendation was accepted by the Superintendent of Police by his order dated 20-12- 1952 and he dismissed the applicant from service. An affidavit was further filed by the petitioner on 24-8-1955 in which he deposed that the applicant came to know that Sri Saxena, Deputy Superintendent of Police, was not authorised by the higher authorities, that is the Deputy Inspector General of Police, Southern Range, Kanpur under para 479 (f) of the Police Regulations to conduct the inquiry under Section 7, Police Act.

4. Three points have been raised by the applicant in the present petition. Firstly, it is contended that under Section 35, Police Act, a charge under Section 7, Police Act can only be gone into and decided by an officer who has got magisterial powers. In view of the Full Bench decision of this Court in -- 'Mahendra Singh v. State of U. P.', AIR- 1956 All 96 (A), this point has not been pressed by the applicant. It has now been held by the Full Bench that for departmental inquiries under Section 7, Police Act it is not necessary that an officer conducting an inquiry should have magisterial powers as Section 35 does not apply to such inquiry.

5. The next point urged by the applicant was that the applicant was reverted to his substantive post of head constable after the charges had been levelled against him under Section 7 and on the date when the inquiry was started against him, he was still an officiating Sub-Inspector of Police and as such the procedure provided in the rules for inquiries against a Sub-Inspector should have been followed.

As I have already pointed out, in the counter affidavit it has been stated that before the inquiry under Section 7 was started against the applicant, he had been reverted to his substantive post of head constable and consequently there is no substance in this argument of the applicant that the procedure provided for an inquiry against a Sub-Inspector of Police should have been followed in his case. On this question, a further argument was advanced by Mr. Khare.

He contended that the reversion of the applicant itself amounted to reduction in rank and such an order could not have been passed by the opposite parties without following the procedure provided in paras 480 onwards of the Police Regulations. There is no substance in this argument either.

Firstly, there is no prayer in the petition asking for the order reverting the applicant to be quashed and secondly, the order of reversion was not passed under para 478 of the Police Regulations. The applicant was not reverted as a punishment but as he was only officiating as a Sub-Inspector of Police, it was open to the authorities to revert him to the substantive post and the reversion cannot be called as a reduction in rank.

6. The last argument advanced by the applicant was that Sri Saxena was not competent to hold an inquiry against him. Section 7, Police Act provides that subject to such rules as the State Government may from time to time make under this Act, the Inspector General, Deputy Inspector-General, Assistant Inspector-General and District Superintendents of Police may at any time dismiss, suspend or reduce any police officer of the subordinate ranks on certain grounds. Section 7, as will appear from the opening part of the section is subject to rules framed by the State Government.

It is, therefore, clear that before an action can be taken under Section 7, the authorities, enumerated in the section, must follow the procedure provided in the rules. Paragraph 478 of the Police Regulations enumerates the punishments which can be awarded to the Police Officers on an inquiry under Section 7, Police Act. Paragraph 479 enumerates the officers who are empowered to award the punishments enumerated in para 478. It is necessary to refer to three sub-paragraphs of para 479. Sub-paragraphs (d), (e) and (f) are as follows:

"(d). The Superintendent, of Police may punish all inspectors, and sub-inspectors temporarily or permanently subordinate to him except with dismissal or removal. Any case in which he proposes the dismissal or removal of an inspector or sub-inspector of any branch of the force must be forwarded for orders to the Deputy Inspector General of Police in accordance with the instructions contained in Sub-para 8 of para 490 below.

"(e). The Superintendent may punish all head constables and constables temporarily or permanently subordinate to him.

"(f). Subject to the provisions of para 491 (i) all permanent Assistant Superintendents of Police and Deputy Superintendents of Police who have crossed the first efficiency bar in the time scale of pay applicable, to them and (ii) other Assistant Superintendents of Police and Deputy Superintendents of Police, specially authorised in this behalf by the Deputy Inspector' General of Police so far as his Range is concerned; may exercise all the powers of a Superintendent of Police as detailed in Sub-paras (d) and (e) of this paragraph other than powers relating to the punishment of inspectors of police and powers under Fundamental Rules 24 and 25." From a perusal of these sub-paragraphs, it is clear that the Superintendent of Police could, under Sub-para, (e) of para. 479, punish the applicant. All the powers of the Superintendent of Police can be exercised by the officers enumerated in Sub-para, (f) of para. 479. Paragraph 491 provides for the procedure for the inquiry before an order under para. 478 is passed by any of the officers mentioned in para. 479.

Paragraph 491 provides that the officers holding the posts enumerated in para. 479(f) shall follow the procedure prescribed in para. 490 when, conducting departmental trials, and their orders shall, with the concurrence of the Superintendent of Police, have the same executive force in all cases as the orders of the Superintendent of Police except in cases in which the officer conducting the proceedings recommends the dismissal or removal of a constable or under officer. In such cases the Superintendent of Police shall give the officer a copy of the finding of the enquiring 'Officer and ask him to show cause within a reasonable time against the punishment proposed. Paragraph 491, therefore, provides for the procedure to be followed in such inquiries, The contention of the applicant is that the officers mentioned in para 479 (f) can only make an inquiry under para, 491. An officer, who is not mentioned in para 479 (f), has no power to hold any inquiry under para. 491 and recommend to the Superintendent of Police to exercise his powers under para 479(e)..

The Standing Counsel's contention is that para 479 (f) provides that subject to the provisions of para. 491 (i) all permanent Assistant Superintendents of Police and Deputy Superintendents of Police ,who have crossed the first efficiency bar in the time-scale of pay applicable to them and other Assistant Superintendents of Police and Deputy Superintendents of Police, specially authorized in this behalf by the Deputy Inspector General of Police so far as his range is concerned, may exercise all the powers of a Superintendent of Police as detailed in Sub-paras (d) and (e) of this paragraph.

Sri Saxena, who conducted the inquiry, was the Deputy Superintendent of Police and unless he was specially authorised in this behalf by the Deputy Inspector General of Police so far as his range was concerned, he had no power to conduct the inquiry under para 491. The question to be determined is whether Sri Saxena had any such authority on the date when he conducted the inquiry. The Standing Counsel, who appears for the opposite parties, has relied upon a letter sent by the Deputy Inspector General of Police, Southern Range, Kanpur to the Superintendent of Police, Kanpur in August 1950.

As the applicant's counsel has no objection, I have ordered a copy of this letter to be placed on the record of this petition. It appears that in 1950 certain cases under Section 7, Police Act were started against some constables and the Superintendent of Police, Kanpur wrote to the Deputy Inspector General of Police, Southern Range, Kanpur for the necessary authority to be granted to Shri Saxena to conduct such inquiries and a reply was sent by the Deputy Inspector General of Police Southern Range, Kanpur 'in the following terms:

"Once an officer has been authorised to take Section 7 proceedings under the amended para 479(d) of P. Rs., he continues to be so authorised to take Section 7 proceedings, unless this authority is withdrawn from him.

As such it is not necessary to empower Shri Surendra Kumar Saxena, Officiating Deputy Superintendent of Police City 1 again on his transfer to this Range."

In the first place the Standing Counsel's contention is that the interpretation put on para 479 (f). of the Police Regulations by the Deputy Inspector General of Police in this letter is a correct interpretation. According to the Standing Counsel, once the Deputy Superintendent of Police has

been granted the authority to conduct an inquiry under Section 7 no fresh authority need be granted to him on his transfer to some other range. If this interpretation of para 479 (f) is accepted, then the words "so ar as his range is concerned," in the said paragraph after the words "Deputy Inspector General of Police" will become redundant.

In my judgment what para 479 (f) means is that the authority granted by the Deputy Inspector General of Police of a particular range to a Deputy Superintendent of Police to conduct an inquiry under Section 7, Police Act is operative only so long as the Deputy Superintendent of Police is working within that range. As soon as he is transferred to some other range, the authority ceases to be operative.

It is not a case of withdrawal of the authority the authority in its own force becomes In operative as soon as the Deputy Superintendent of Police is transferred to some other range. It was therefore, necessary to grant a fresh authority to Sri Saxena. In my opinion, therefore, a fresh authority was necessary to be given to Shri Saxena when he was transferred from Sultanpur, to Kanpur.

7. The next contention of the Standing Counsel is that even if it be accepted that a fresh authority was needed, the letter of the Deputy Inspector General of Police, Southern Range, who was authorised to grant an authority under para 479 (f), should be treated as granting the required authority under para 479 (f). In my opinion there are two objections to this contention of the Standing Counsel.

Firstly, in the letter itself the Deputy Inspector General of Police says that the officer had been authorised to take proceedings under Section 7 under the amended para 479 (d) only. There is no reference to Sub-para (e) in this letter and consequently it cannot be argued that the letter gave any authority to the Deputy Superintendent of Police under para 479 (f) to act under Sub-para (e) Secondly the letter did not in terms confer any authority on Sri Saxena.

On' the contrary the contents of the letter show that the Deputy Inspector General of Police was definitely of opinion that no fresh order conferring the authority was needed and if the authority who could confer such a power, itself definitely holds that it was not necessary for him to grant any fresh authority, it cannot be said that such a letter by itself granted any authority to Sri Saxena to conduct the inquiry within the meaning of para 479 (f).

Sri Saxena, 'when he made the inquiry, therefore, had no power under para 479 (f) of the Police Regulations to conduct the" inquiry under para 491 and consequently the inquiry made by him was without jurisdiction and the order passed consequent upon this inquiry must be set aside.

8. The last contention of the Standing Counsel is that the question as to whether Sri Saxena was authorised under para 479 (f) to hold the inquiry should have been raised before him or before the Superintendent of Police, the Tribunal which had to determine the question of fact and it is not open to the applicant in the present petition to raise the question of fact at this stage.

The question really urged by the applicant is not one of fact but goes to the very root of the jurisdiction of the officer holding the inquiry. The contention of the applicant, as I have already pointed out, is that unless an officer is authorised under para 479 (f), he has no power to hold an inquiry under para 491 and in challenging the order of the Superintendent of Police on the ground of want of jurisdiction, it is open to the petitioner here to urge that there was no proper authority given to Sri Saxena under para 479 (f) of the Police Regulations.

The failure to raise that point before D.I.G. or the Superintendent of Police is no bar to the applicant to raise the question of the power of Sri Saxena to hold the inquiry in this writ petition.

9. I, therefore, quash the order of the Superintendent of Police dated 20-12-1952.