Makeshwar Nath Srivastava vs State Of Bihar & Ors on 2 March, 1971

Equivalent citations: AIR 1971 SUPREME COURT 1106, 1971 LAB. I. C. 727

Bench: J.M. Shelat, C.A. Vaidyialingam, A.N. Grover, A.N. Ray

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           CASE NO.:
Appeal (civil)  23 of 1967

PETITIONER:
MAKESHWAR NATH SRIVASTAVA

RESPONDENT:
STATE OF BIHAR & ORS.

DATE OF JUDGMENT: 02/03/1971

BENCH:
S.M. SIKRI (CJ) & J.M. SHELAT & C.A. VAIDYIALINGAM & A.N. GROVER & A.N. RAY

JUDGMENT:
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JUDGMENT 1971 AIR 1106 = 1971 (3) SCR 863 = 1971 (1) SCC 662 The Judgment was delivered by Shelat, J, -This appeal, by special leave, is against the judgment of the High Court of Pitna dismissing in limine the writ petition Med by the appellant challenging the order of his dismissal from service passed by the Government of Bihar.

The appellant was first appointed as a stenographer, Sub- Inspector of Police in 1940 in the Police Service of the State. After the requisite training in the Police Training College at Hazaribagh, he was posted as a- Sub-Inspector in 1950 in Champaran District. In 1954, he was promoted to officiate as an Inspector of Police. In June 1955, he worked in Saharsa District as an- officiating Inspector of Police.

In July 1955, he received a notice to show cause why disciplinary proceedings should not be taken against him in a matter relating to certain cloth recovered at Katihar Police Station in a Police Case under ss. 379 and 414 of the Penal Code. The appellant submitted his reply denying any misappropriation by him. On September 26, 1955, he was served with a charge sheet alleging misappropriation and connivance by him of misappropriation by two constables named therein . This was followed by an enquiry held by the Deputy Superintendent of Railway police at Samastipur. The appellant alleged that the enquiry was held at partially behind his back and was, therefore, bad.' In April 1956, the Deputy Superintendent of Police submitted his findings to the Superintendent of Railway Police, Samastipur holding that the charges against the appellant had been established. These findings were than submitted to the Inspector General of Police with a recommendation that the appellant should be awarded exemplary punishment. In September 1957, the Inspector-General

served a second show cause notice on the appellant to show cause why he should not be dismissed. The appellant submitted his reply and also appeared in person.By his order dated September 30, 1958, the Inspector-General exonerated the appellant from the said charges. But on the basis of certain adverse remarks in the confidential character roll of the appellant, he passed an order reverting the appellant to his substantive rank of Sub- Inspector of Police for a period of one year. This order clearly was one of penalty. Admittedly, there was no charge against the appellant founded on the said adverse remarks. The adverse remarks on the basis of which the order of reversion was passed were, as the said order itself pointed out, never notified to the appellant. Nor was--any opportunity to explain those remarks ever afforded to the appellant before the order of reversion was passed.

Aggrieved by the said order the appellant filed an appeal before the Government. On November 7, 1959, the Government set aside the order of reversion passed by the Inspector- General. That was the relief prayed for by the appellant in his said appeal. The order was set aside on the ground that no opportunity had been given to the appellant to explain the said adverse remarks, and that therefore, it was legally unsustainable. But the Government passed instead an order of dismissal disagreeing with the findings of the Inspector-General and agreeing with the findings given by the enquiry officer, by whom the appellant had been found guilty. On a further appeal to the Governor having been dismissed by the Government, the. appellant filed a writ petition in the High Court. On January 18, 1962, the High Court allowed the writ petition setting aside the Government's order of dismissal, but directed that the appellant's appeal should go back to the Government for disposal according to law.', The Government thereupon served a notice on the appellant to show cause why he should not be dismissed from service. That notice was issued on, the strength of rr. 851 (b) and 853-A of the Bihar &Orissa Manual, 1930. The appellant thereupon gave his reply and requested for a personal hearing. The request for personal hearing was rejected. About a year after the High Court's order quashing the Government's order of dismissal, the Government issued an order dated March 5, 1963 reinstating the appellant, but at the same time suspending him from service. On June. 15, 1963, the Government passed the order dismissing the appellant from service. Hence, the appellant filed once more the present petition which the High Court dismissed in limine.The question is whether it was competent for the Government, in an appeal filed by the appellant against the said order of reversion passed by the Inspector-General Police, to set aside the findings of that officer by which he exonerated the appellant from the said charges against him, which findings were not appealed against by the department, and then pass an order of dismissal accepting the findings of the enquiry officer.

The appellant was governed by the Police Act, 5 of 1861. Sec. 2 of the Act deals with the constitution of the police force and provides that the entire police establishment under a State Government shall, for the purposes of the Act, be deemed to be one police force, and shall be constituted is such manner as shall from the to time be ordered by the State Government. Sec. 3 provides that "The superintendence of the police throughout a general police district shall vest in and, shall be exercised by the State Government to which such district is subordinate."

Under s. 4, the administration of the police throughout a general police district is vested in the Inspector-General of Police, and in such Deputy Inspectors-General of Police and Assistant

Inspectors General as the State Government shall deem fit. Sec. 7 runs as follows "Subject to the provisions of article 3 1 1 of the Constitution, and to such rules as the State Government may from time to time make under this Act, the Inspector General, Deputy Inspectors-General, Assistant inspectors-General and District Superintendents of Police may at any time dismiss, suspend or reduce any police officer of the sub-ordinate 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 rank 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."

The section then sets out the punishments which the said officers can impose, namely, fine, confinement to quarters, deprivation of good-conduct pay and removal from any office of distinction or special emolument.

It is clear that the Act itself confers on the Inspector- General power to impose in suitable cases the penalty of dismissal, suspension and reduction, subject of course, to the provisions of Art. 311 and the rules made under the Act. The power of superintendence conferred on the State Government by S. 3 must, therefore, be read in the light of the provisions of S., 7 under which the Legislature has conferred specific powers to the officers mentioned therein. Therefore, the State Government cannot interfere with, under the purported exercise of the general power of superintendence under s. 3 with an order passed by any one of the officers mentioned in S. 7 in exercise of the power conferred on them by that section, unless there is some provision which authorises or envisages such interference. Under S. 46(2), the State Government has been given the power to make rules from time to time by notification in the official gazette consistent with the Act, Inter alia:

> "(a) to regulate the procedure to be followed by Magistrates and police-

officers in the discharge of any duty imposed-upon them by or under this Act;

(c)generally, for giving effect to the provisions of this Act."

It would seem that in pursuance of the rule making power under S. 46 (2) rules have been made which are to be found in the Bihar &Orissa Police Manual, 1930. The Manual has not been produced before us. But we find r. 851 set out by the High Court in its judgment in the first writ, petition filed by the appellant, reported in Makeshwar Nath vs. Bihar 1962 AIR(Pat)

276.). The rule so set out reads 'as follows:

> "General rules as to appeals
>
> (a).....
>
> (b) Against an order of, dismissal, removal reduction, withholding of promotion or periodical increment..... there shall be one appeal in each case as follows; Against an

order passed by a Superintendent, to the Deputy Inspector General;

Against an original order passed by a Deputy Inspector General, to the Inspector General; Against an original(order passed by the Inspector- General, to the Local Government.

(c) The order of the appellate authority on any such appeal shall be final."

Under this rule an appeal would lie before the Government against the order of the Inspector-General reverting the appellant to his substantive post of Sub-Inspector for one year. Such an appeal was in fact filed by the appellant. But no appeal was filed by the department against the order of the Inspector-General exonerating the appellant of the charges of misappropriation and connivance of misappropriation by the two constables. Under r. 851 (b), therefore, the only question before the Government was whether the order of reversion should be sustained or not. There was no other matter by way of an appeal before the Government by the department or by any one else being aggrieved against the order of the Inspector-General by which he held that the charges. against the appellant had not been established. That being so, the Government could pass in exercise of its appellate power under r. 851 (b) such an order as it thought fit in the appeal filed by the appellant, i.e. either upholding the order of reversion or setting it aside. In the absence, of any other appeal, the Government could not sit in judgment over the findings of the Inspector-General given by him under the power conferred upon him by S. 7 of the Act. An appeal before the Government having been provided for under r. 851 (b), presumably both by the delinquent police officer, as also by the department, if aggrieved by an order passed by the Inspector-General, there would also be no question of the Government exercising, its general power of superintendence under S. 3 of the Act. The exercise of such a power is ordinarily possible when there is no provision for an appear unless there are other provisions providing for it. The order of dismissal passed by the Government in the appeal filed by the appellant therefore, was not sustainable.We are, however, informed by counsel that the Government of Bihar has framed two rules, r. 853 and r. 853-A. Rule 853, a copy, of which has been furnished to us, provides " Memorials and Revision.-No petition or memorial which is a representation against an order passed in a disciplinary case shall be submitted to any authority other than the authority which under the rule for the time being in force is empowered to enter am the appeal.

No memorial or revision was filed either by the appellant or any one else before the Government, which was the appellate authority which could- entertain such a memorial or revision. Assuming that under r. 853 the Government could suo moto revise the order of the Inspector General, an appeal having been filed before I it, it could not so act. The fact that the power of revision is con feared on the authority possessed of appellate power indicates that the power of revision is intended to be used when an appeal could not for some reason be filed and the appellate authority felt that the order was so unjust or unreasonable that it should act under its revisional power. That was not the case of the Government before us. Nor did the Government say so in the impugned order. Therefore, there was no occasion for the Government to revise the order passed by the Inspector-General exonerating the appellant of the charges preferred against him.

In its order, dated January 31, 1963, the Government, no doubt, has referred to rr. 8 5 1 (b) and 8 5 3 A as being the rules under which it purported to act for the purpose of making the impugned order of dismissal. Rule 851 (b), as already pointed out, however, confers no such power. As regards r. 853-A, it is neither set out in the impugned order, nor in the statement of case of the respondent-State. We called for its production, or even its copy but counsel for the State expressed his inability to produce the same. Further, counsel for the appellant told us that even if r.853 A had been framed, it cannot operate because so far it has, not been published in the official gazette as required by S. 46(2). Counsel for the State was not in a position to throw any light whether the said rule has been framed or not and if framed whether it was notified in the Gazette. In these circumstance he could not rely upon that rule to sustain the order of dismissal passed by the Government. We have, therefore, to go upon r. 851

(b), which clearly does not empower the Government to pass an order such as the one impugned by the appellant on the ground of its revisional power or any such similar power under s. 3 of the Act. In the absence of any other provision of law or any rule conferring on the- State Government the, power to pass an order of dismissal in exercise of its revisional power or power of general superintendence, the general principle must prevail, namely, that an appellate authority in an appeal by an aggrieved party may either dismiss his appeal or allow it either wholly or partly and uphold or set aside or modify the order challenged in such appeal. It cannot surely impose on such an appellant a higher penalty and condemn him to a position worse than the one he would be in if he had not hazarded to file an appeal. Since under r. 851 (b) an appeal to the Government has been provided for and the Government had under that rule the appellate authority to dispose of appeals filed before it against the original order passed by the Inspector-General, it could not resort to any general power of superintendence except in cases where there is a provision conferring such a power in addition to its appellate authority and in the manner envisaged by such a provision.In our view, the High Court was not right in dismissing the appellant's writ petition. The appeal has, therefore, to be allowed and the order of the State Government quashed as being without jurisdiction. The consequence is as if the appellant was never dismissed, and continued to remain in the, police force to which he was attached. The respondent State will pay to the appellant the costs both of this appeal and also of the writ petition filed by him in the High Court.