
(1989) 08 GUJ CK 0020
In the Gujarat High Court

A.C. Barot

APPELLANT

Vs

District Superintendent of Police and Others

RESPONDENT

Date of Decision : 19-08-1989

Acts Referred:

Bombay Police Act, 1951 — Section 25
Penal Code, 1860 (IPC) — Section 323, 323, 504, 504

Citation : (1990) 2 GLR 888

Hon'ble Judges : P.M. Chauhan, J

Bench : Single Bench

Judgement

P.M. Chauhan, J.—Can a Police Officer against whom a complaint is filed for offences which are not serious and not committed in discharge of duty be suspended ? Under what circumstances a Police Officer can be suspended ? What should be the criteria for suspension during contemplated disciplinary action ? Are some of vital points requiring consideration in this Writ Petition.

2. Petitioner, a Sub-Inspector of Police has challenged the order of suspension by the District Superintendent of Police, Panchmahals at Godhra, contending, inter alia, that in the facts and circumstances of the case the suspension during the inquiry is not warranted nor such suspension order can be passed under the provisions of the Bombay Police (Punishment & Appeals) Rules, 1956, enacted under the provisions of Section 25 of the Bombay Police Act, 1951 and under the relevant provisions of the Gujarat Police Manual, 1975. It is also contended that the alleged act of misconduct is alleged to have been committed not in the discharge of duty but when the petitioner was on sick leave and that too not within the jurisdiction of the petitioner as the Sub-Inspector of Police.

3. The petitioner was serving as Sub-Inspector of Police at Bharuch and was transferred from Bharuch District to Panchmahals District and was relieved on December 25, 1987. The petitioner had proceeded on leave and was on leave on January 31, 1988. The petitioner was at Ahmedabad on January 31, 1988 and went to the garage of Ramzanbhai Jivabhai at about 3.00 p.m. to 4.00 p.m. As

stated in the Affidavit-in-reply of Mr. Shivanand Jha, District Superintendent of Police, District Panchmahals, the petitioner had asked Ramzanbhai to clean his scooter and as it was not cleaned, the petitioner is alleged to have given threats to Ramzanbhai and had beaten him. Ramzanbhai had, therefore, addressed a letter to the Director General & Inspector General of Police alleging that the petitioner had given him threats and constrained him to clean his scooter. The Director General & Inspector, General of Police instructed the Vigilance Squad to inquire and it was found that there was substance in the complaint and the papers were sent to the District Superintendent of Police, District Panchmahals, respondent No. 1 herein on or about February 23, 1989 and on perusal of the papers the District Superintendent of Police, District Panchmahals, was satisfied that the petitioner was required to be placed under suspension and accordingly passed the order of suspension on February 24, 1989 (Annexure "A"). In the suspension order the allegations are somewhat different than stated by Mr. Jha in the Affidavit-in-reply. It is stated in the suspension order that the petitioner went to the garage of Ramzanbhai at Madhavapura Market Compound, Shahibaug Road, Ahmedabad, and told him to go to his house to carry out the fittings and service of his Scooter/Motor-cycle, but Ramzanbhai told him that he would go there afterwards and therefore, the petitioner got enraged, abused and caught hairs of Ramzanbhai and pushed him, Abdulbhai Bhikhabhai, uncle of Ramzanbhai, who tried to intervene, was also pushed, and for that incident Ramzanbhai filed non-cognizable complaint at Dariapur Police Station for offences under Sections 323 and 504 of the Indian Penal Code and it was registered as Non-Cognizable Offence No. 60 of 1988. Initially, therefore, there are two contradictory versions about the incident of cleaning the Scooter/Motor-cycle. This incident is considered by the District Superintendent of Police as abuse of the powers vested in the petitioner as Police Sub-Inspector. Mr. Jha, D.S.P., has stated in his Affidavit that the petitioner who is a Police Sub-Inspector, had abused his power and had committed offences under the provisions of Sections 323 and 504 Indian Penal Code for which the complaint is registered at Dariapur Police Station, at Ahmedabad. He has also stated that the petitioner behaved in a manner which would not befit a Policeman. In view of Mr. Jha, as stated in the Affidavit-in-reply, the petitioner being a Police Officer whose function is to see that the law and order is maintained and instead of doing so, the petitioner wanted to abuse his power as a Police Officer and had beaten a person and had given threats to him. From the affidavit of Mr. Jha it is, therefore, clear that Mr. Jha thought it proper to suspend the petitioner as the petitioner is alleged to have abused his power as a Police Officer and behaved in a manner which would not befit a Policeman. Even accepting the facts alleged against the petitioner, it can never be accepted that the petitioner over abused his power as a Police Officer. The petitioner was on sick leave and was already relieved from Bharuch District and had not taken charge at the place where he was transferred at Panchmahals District and he was not holding any position at Ahmedabad where the incident is alleged to have taken place. It also does not transpire from the allegations that the petitioner ever told that he happened to be Police Sub-

Inspector and wanted to get the Scooter/ Motor-cycle cleaned or carry out the fitting at the garage or at his residence. It may be that some incident might have taken place of abusing or causing hurt for not cleaning or servicing a Scooter/ Motorcycle or for not agreeing to immediately accompanying for servicing or carrying out fittings of the Scooter/Motor-cycle at the residence, but that was all in the private capacity of the petitioner, as a person and not either in the discharge of his duty or in abuse of the power as a Police Officer. By this I do not mean to observe that the misconduct or abuse of the power must only be during the discharge of duty, but even accepting the facts alleged against the petitioner, as they are, there is absolutely no allegation that the petitioner abused his power or misconducted himself as a Police Officer. There is therefore, total non-application of mind by the District Superintendent of Police in passing the suspension order of the petitioner.

4. Section 25 of the Bombay Police Act, 1951 provides for the punishment of suspension of the Police Officers. That provision is for the suspension by way of punishment, but in the instant case the suspension is not ordered by way of punishment. It is clear that power to inflict punishment by the Police Officers specified in Section 25, Bombay Police Act, are required to be exercised subject to the rules and orders as may be made by the State Government in that behalf. In the instant case the suspension order is passed under Sub-rule (1-A) of Rule 3 of the Bombay Police (Punishment and Appeals) Rules, 1956 enacted in exercise of the powers under Clause (c) of Sub-section (2) of Section 25, read with Section 5(b) of the Bombay Police Act. As provided in Clause (b) of Section 5 the conditions of the Police force shall be such as may from time to time be determined by the State Government by general or special order. As the rules are framed under the provisions of Clause (c) of Sub-section (2) of Section 25 read with Section 5(b) of the Bombay Police Act, the power of suspension should be exercised subject to the orders which may be passed by the Government.

5. Miss Rekha Doshit, learned Asstt. Government Pleader referring Clause (b) of Sub-rule (1-A) of Rule 3 of the Bombay Police (Punishment and Appeals) Rule, 1956 submitted that the trial of the complaint filed against the petitioner is pending and therefore, the suspension order can be passed by the District Superintendent of Police. There is nothing on record to show that the trial is pending. However, even if it is accepted that the complaint filed by Ramzanbhai is pending in the Court the question of wider amplitude requiring consideration is as to whether the complainant of the nature as discussed above for the offences u/s 323 and 504 of the Indian Penal Code can be the ground for suspension under the provisions of the aforesaid Rules. Sub-rule (1-A) of Rule 3 of the Bombay Police (Punishment and Appeals) Rules, 1956 provides:

3(1) ...

(1-A) (i) The appointing authority or any authority to which it is subordinate or any authority empowered by the State Government in this behalf may place a Police Officer under suspension where:

(a) an inquiry into his conduct is contemplated or is pending, or

(b) a complaint against him of any criminal offence is under investigation or trial:

Provided that where the order of suspension is made, by an authority lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order of suspension was made. Explanation : The suspension of a Police Officer under this sub-rule shall not be deemed to be a punishment specified in Clause (a-2) of Sub-rule (1).

(i) A Police Officer who is detained in custody whether on criminal charge or otherwise, for a period longer than forty eight hours shall be deemed to have been suspended by the appointing authority under this rule.

(ii) An order of suspension under Sub-rule (1) may be revoked at any time by the authority making the order or by any authority to which it is subordinate.

(2)

As the power for punishment of suspension u/s 25 of the Bombay Police Act, is required to be exercised subject to the rules and orders of the Government, it should be held that the power of suspension not by way of punishment under Sub-rule (1-A) of Rule 3 of the Bombay Police (Punishments and Appeals) Rules should also be exercised subject to the orders of the State Government. The instructions by way of rules and issued by the Government in the Gujarat Police Manual, 1975. The power under Sub-rule (1-A) of Rule 3 should be exercised subject to the relevant rules and instructions issued by the Government in Gujarat Police Manual, 1975.

6. Rule 372 of the Gujarat Police Manual, 1975 restricting the exercise of power of suspension of the Police Officers against whom an inquiry in the complaint is pending:

372. Suspension

(1) ...

(2) Suspension of a Government servant should be sparingly resorted to and Government servants (whether prosecuted or not) should be placed under suspension only if the following conditions are satisfied:

(a) The Officer or person concerned is involved in a grave misconduct or has committed very serious offence and on the basis of the available evidence, there is a prima facie case for his dismissal, removal or compulsory retirement; and

(b) (i) There is reason to believe that the continuance of the Government servant in active service is likely to hamper the enquiry or investigation or to afford an opportunity for interference with the witnesses or tampering with the evidence; or

(ii) His continuance in service is likely to afford him an opportunity to indulge in the commission of similar misconduct or offence as envisaged in Bombay Civil

Services, Rule 156.

In respect of any other irregularity or misconduct, suspension should not be resorted to.

(3) ...

(4) ...

The suspension order, therefore, should be sparingly passed and that too if the above conditions are satisfied. One of the conditions is that the Police Officer should have been involved in grave misconduct or should have committed very serious offence. The Government while issuing the instructions and enacting the provisions of Rule 372 is conscious of the situation in which the Police Officers may be implicated in a case without valid reasons. Filing a complaint against or involving for offences like one under Sections 323, 504 and 506, Indian Penal Code, the Police Officer who has to displease so many unsocial elements during the discharge of his duty may not be very difficult. It appears that the Government being conscious of such a situation issued instructions that the suspension order should be sparingly passed. Apart from the monetary loss and the adverse effect on the reputation to the individual suspended officer, the Government and the society at large are also at loss by indiscriminate suspension of the public servant. Subsistence allowance will have to be paid without the benefit of the services of the public servants and in case ultimately suspension order is set aside, full salary during the suspension period is required to be paid and the public exchequer will be unnecessarily strained. The officer exercising the power, therefore, should sparingly exercise the power of suspension.

7. Before exercising the power of suspension the competent authority has to consider various aspects viz., the gravity of alleged misconduct, seriousness of the offence, availability of the evidence; prima facie case for dismissal, removal or compulsory retirement, and continuance in service likely to hamper the inquiry or investigation or affording an opportunity to interfere with the witnesses or tampering with the evidence or that the continuance of such public servant would afford an opportunity to indulge in similar misconduct or offence as envisaged in Bombay Civil Services Rule 156. If the acts of misconduct or misbehaviour or the alleged offences are not as stated above, any other irregularity or misconduct should not be the ground for the suspension of the public servant. It is evident that not only specific criteria is laid down for exercising the power of suspension but even the mandatory instructions are issued not to resort to the suspension in case of other irregularity or misconduct. Before exercising or resorting to the power of suspension the above criteria are required to be satisfied.

8. Mr. Oza, learned Advocate for the petitioner while referring to the provisions of Rule 5 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 submitted that the Government servant can be placed under suspension when the case against him in respect of the criminal offence involving moral turpitude

is under investigation, inquiry or trial. It is true that Rule 5 of the said Rules specifically provides for the suspension of the Government servant for the allegations of the offences involving moral turpitude, but the said Rules are applicable to the Government servants in the Police Department except Police Inspectors and members of the subordinate ranks of the Police force. It, therefore, cannot be accepted that the offence alleged to have been committed by the Police Inspector and ranks below that in Police force should be one involving moral turpitude. The alleged offence should be of the serious nature and may not be offence involving moral turpitude but just analogous thereto. If that would not have been the intention of the Government any offence would have been made ground for suspension and not the "serious offence". The Government must never have thought of discriminating Police Inspectors and ranks below that, with other officers of the same department or other Government officers. It is, therefore, reasonable to hold that serious offence referred to in Rule 372, Gujarat Police Manual, should be offence analogous to offence involving moral turpitude or grave in nature with reference to the duty to be performed by such police personnel.

9. The allegation of committing serious offence should not necessarily be during the course of the discharge of duty. If the allegation is regarding involvement in offence, which is not connected with the discharge of duty, it should be a serious offence of category discussed above, which should require the suspension of the Police Officer.

10. Reverting to the facts of the instant case, the alleged offence against the petitioner is causing hurt and abusing, punishable under Sections 323 and 504, Indian Penal Code. Even if that allegation is accepted to be prima facie true and that the complaint is pending, it was not committed in the discharge of the duty, that cannot be the ground for the suspension of the petitioner for various reasons recorded above. The suspension on the basis of said allegations is violative of the relevant provisions of the Gujarat Police Manual and the instructions issued by the Government and, therefore, deserves to be quashed and set aside.

11. The same view is expressed by the learned single Judge of Kerala High Court in *N. J. Sajive v. The Asstt. Collector and Ors.* 1984 (1) SLR 164 wherein similar provisions were being considered.

12. Miss Doshit submitted that the misconduct or act of misconduct should not necessarily have been committed during the course of duty or in the discharge of the duty and the act of indiscipline or misconduct which might be committed not in the discharge of duty or during the course of duty, is also sufficient ground for suspending the concerned Police Officer, not by way of punishment. In support of the submission, Miss Doshit, learned Advocate referred the judgment in *Madhosingh Daulatsingh v. The State of Bombay* 61 BLR 1537. It was a case in which the Police Constable behaved in an insolent manner with the Company Commandant of the Home Guards, in violation of the Central Provinces and Berar

Police Regulations. It is true that such rude behaviour was outside the employment and not in the discharge of duty but was committed while acting in private capacity and even then it was held that it was an act contrary to the discipline. The Division Bench of the Bombay High Court was considering the relevant provisions of Clause (11) of Regulation 64 of the Central Provinces and Berar Police Regulations, which provided that the Police Officers shall act with respect and deference towards all officers of Government, and with forbearance, kindness and civility towards private persons of all ranks and in a private life he shall set an example of peaceful behaviour and shall avoid all partisanship. The Division Bench considering the said clause, was of the view that such behaviour is one of the conditions of service of the Police Officer and therefore, he is required to conduct himself during the course of his employment as well as outside his employment with civility and courteousness and acting otherwise, though in private life, would be inconsistent with the general conditions of his service. After extrating the observations of Lord Esher M.R. and Lord Justice Lopes in *Pearce v. Foster* (1886) 17 QBD 536, it is observed that the ratio deducible is that in order to enable a master to take disciplinary action against his servant it is not a condition precedent that the misconduct on the part of the servant must arise within his employment and not outside his employment. The test in each case will be whether the servant is conducting himself in a way inconsistent with the faithful discharge of his obligations undertaken by him either expressly or impliedly in accepting the service. The inconsistency may arise on account of any act of the servant, either in the course of his employment or outside it, which injures or has the tendency to injure his master's business or interest or reputation. There is no reason why this principle should not apply to public servants. There is however, one very material difference between the two and that must be kept in view. In case of a private servant it is the master who in his own discretion decides the question of the disciplinary action to be taken against his servant. In the case of a public servant it is not the master but certain officers of the common master who decide this question, but their powers in that respect are regulated by the Act or Rules framed thereunder. "The offence alleged to have been committed must, therefore, be such as specified in the rules. Even if the offence is committed not during the discharge of duty, it should be serious offence, as specified in the Gujarat Police Manual. Even for other act of misconduct it must be such as to be inconsistent with the faithful discharge of the obligations undertaken either expressly or impliedly by the public servant in accepting the service. Chapter XI of the Gujarat Police Manual provides for the conduct of the Government servants, including the Police Officers. So far as the behaviour of Police Officers towards the public is concerned, specific instructions are in Rule 354. Sub-rule (1) of Rule 354 provides that "every member of the Police force should regard himself as a servant and guardian of the general public and treat all law abiding citizens, irrespective of their social position, with unflinching patience, courtesy and tact. While addressing members of the public, all officers and men must use the honourific plural (AAP) and not the singular (TU) with reference to the person addressed. The aim should be to secure a Police

force trusted and respected by the people". Sub-rule (2) of Rule 354 provides that the Police Officer should always remember to keep his temper and if he does so he is likely to be much more respected and more efficient if he does so". Considering Rule 354 it is apparent that these instructions are for behaviour in discharge of duty. Section 28 of the Bombay Police Act clearly provides that every Police Officer, not on leave or under suspension, shall be deemed to be always on duty. As the petitioner was on leave, he was not deemed to be on duty at the relevant time. Apart from that, it is required to be considered as to whether the behaviour contrary to the instructions provided in Rule 352 of the Gujarat Police Manual would amount to misconduct warranting the disciplinary action. As not required. I do not consider this aspect.

13. Miss Doshit, referred the judgment in Hariprasad Raghuram Dave Vs. State of Gujarat and Others, in which the facts were that the Police Constable proceeded on hunger strike to press for his demands as a Police Constable. The Division Bench of this Court was considering the relevant provisions of Section 25 of the Bombay Police Act as it was contended that the punishment u/s 25 of the Bombay Police Act for breach of discipline can be meted out only if found to have been committed in the discharge of his duty and not otherwise. Closely scrutinising the provisions of Section 25 of the Act it was observed that the phrase "in the discharge of his duty" only governs the words "any act which render him unfit" and not the words "breach of discipline or misconduct". It was accordingly held by the Division Bench that the breach of discipline need not be "in the discharge of his duty" to attract the penalty contemplated by Section 25. The Division Bench therefore, found it difficult to accept the reasoning behind the contention that merely because a Police Constable happens to be on leave, even if he commits any breach of discipline, he cannot be dealt with u/s 25 of the Bombay Police Act. In view of the Division Bench, a Police Constable on casual leave is also bound to follow the rules of discipline of the service, and it will not be unreasonable to assume that the intention of the legislature in enacting the provision is to empower the authority to deal with all cases of breach of discipline by a Police Officer. For this proposition of law, based on interpretation of specific provisions of Section 25 of Bombay Police Act, there cannot be any dispute but that was a case of punishment u/s 25 Bombay Police Act, for the breach of the discipline and the Division Bench was considering as to whether the disciplinary action can be taken under the said provision for the breach of discipline committed even not in the discharge of duty by the Police Officer. In the instant case the allegations are not for the breach of the discipline or misconduct but suspension is ordered under Rule 3(IA)(1)(b) of the said Rules as complaint is filed against the petitioner and it is not stated in suspension order that the petitioner is being suspended for any act of misconduct or breach of discipline. The law laid down in the judgment is, therefore, not applicable to the point under consideration.

14. The suspension during the course of inquiry can be resorted to only if the evidence is such that prima facie case is for the dismissal, removal or compulsory

retirement from service. Even if the act of commission of offence or the act of making entries in the diary, are accepted as they are, can it be said that they are such acts which would ultimately entail dismissal or removal or discharge from the service. A mere wish of the disciplinary authority is not sufficient for coming to even such a tentative conclusion. The allegations for which disciplinary action is under contemplation, are relevant factors required to be considered. Even though it may be subjective satisfaction of the competent authority, it should be based on objective consideration and relevant circumstances and allegations on record. It is true that in given case if the allegations are proved it is ultimately, for the disciplinary authority to take decision for the punishment including that of dismissal, removal or discharge from service, but even at that stage also subjective satisfaction should be based on objective considerations like gravity and nature of proved act of misconduct and relevant circumstances. The allegations in the instant case are not such for which, it can be said that ultimately the penalty of dismissal or removal or discharge from service is even prima facie warranted.

15. The second ground for the suspension is that the petitioner made some alterations in the Weekly Diary, which was kept with the petitioner. The copy of the Weekly Diary for the week starting from January 31, 1988 to February 6, 1988, was submitted on February 19, 1988 to the concerned Officer and in that it was stated that the petitioner was on sick leave on January 31, 1988. In fact the petitioner was on sick leave. It is submitted that the copy of weekly diary is to be sent to the concerned Officer and the diary is to be retained by the concerned Police Officer. Accordingly the copy of diary was sent by the petitioner to the District Superintendent of Police and diary was retained by him. It appears that during the inquiry in the complaint, the diary which was kept with the petitioner was seen by the inquiry Officer on August 5, 1988 and it was found that in that, in second column, it was stated that the petitioner was sick, while in the last column regarding proceedings, it was stated that the petitioner had proceeded from Ahmedabad at 9.00 a.m., and reached Godhra at about 13 hours. In the copy of diary which was submitted, the second column was blank but in the last column regarding proceedings, it was stated that the petitioner was on sick leave. It is alleged that the petitioner made the entry in the diary kept by him with a view to create alibi and to show that he had left Ahmedabad at about 9.00 a.m., and that is an act of misconduct for which he is suspended. Admittedly, the petitioner was on sick leave on that day, and therefore, he rightly made that entry and sent the copy of diary.

16. The proceedings are required to be maintained for narrating as to what was the work done by the police officer in the discharge of his duty. The statutory obligation of a Police Officer investigating offence to maintain diary of proceedings in investigation is u/s 172 Code of Criminal Procedure. The Police Officer is required to enter in diary the particulars specified in that section. The purpose of maintaining such case diary is well known and does not require discussion. In Rule 245, Gujarat Police Manual Vol. III, relating to Weekly Diary,

the direction to the Police Sub-Inspector is that such an officer should maintain diary in own handwriting showing his personal movements and work, campus, the distances he travelled and the time of arrival and departure from each place. The Sub-Inspector of Police has to submit copy of his weekly diary to Sub-Divisional Police Officer. It appears that the entries are required to be made to indicate the work done in discharge of duty and movement from particular place to another place and time for that in discharge of duty. There cannot be any purpose to enter movement and time of Police Sub-Inspector who is on leave. Even if subsequently the petitioner made entry in the diary retained by him to the effect that he had proceeded from Ahmedabad at 9-00 a.m. and reached Godhra at 13 hours, that cannot be considered an act of misconduct warranting suspension of the petitioner, as the petitioner was not making any false entry regarding the act performed by him in the discharge of his duty. Apart from that, from that one fact it cannot be inferred that in future the petitioner will make false entries in the diary and therefore with a view to preventing him from committing such repetitive act he should be suspended. Even if it is accepted that making entry in diary retained by the petitioner is an act of misconduct, such an act of misconduct by itself does not satisfy above discussed criteria, principles and instructions by Government for suspension.

17. The petitioner has made allegations of mala fide against the respondent No. 1 District Superintendent of Police, as, according to the petitioner, the brother of the petitioner who is a Member of the Legislative Assembly, has made some public statement against the respondent No. 1 regarding the malpractices committed in the recruitment of the Police Constables. The respondent No. 1 in his affidavit has denied this fact and has stated that the vigilance department had inquired into the matter and on the basis of the record the order of suspension is passed by him. It is very easy to make the allegation about mala fide but difficult to make out. I am, therefore, not prepared to accept the contention about mala fides.

17.1. It is contended that the suspension order is passed after more than one year after the alleged act of commission of offence and that by itself is sufficient to negative circumstances warranting suspension. It is true that elapse of time reduces the gravity of misconduct warranting immediate action of suspension so as to prevent the delinquent from discharging duty and consequently to prevent such repetitive act or tamper with evidence or hamper inquiry etc. but each case is required to be considered with specific reference to the facts and allegations and no general proposition of law can be laid down that suspension during disciplinary action or contemplated disciplinary action cannot be resorted to after elapse of particular time. It is clear that the inquiry was being held by the concerned department as the complaint was made by the complainant to the Director General & Inspector General of Police and, therefore, it took some time to complete the inquiry. The papers were received by the respondent No. 1 only in February 1989 and immediately thereafter the order is passed. The suspension order is therefore, not vitiated on account of delay or inaction.

18. For all these reasons the suspension of the petitioner is not warranted and is accordingly quashed and set aside. Rule is made absolute accordingly, with no order as to costs.