

(2000) 12 GUJ CK 0119

In the Gujarat High Court

Case No : Special Civil Application No. 363 of 1993

Amrutlal B. Prajapati

APPELLANT

Vs

Police Commissioner and Another

RESPONDENT

Date of Decision : 27-12-2000

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2001) 21 GLH 263

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : S.N. Sinha, for the Appellant; Digant P. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

Ravi R. Tripathi, J.—The petitioner who was serving as an unarmed Police Constable under the Police Commissioner, Shahi Baug, Ahmedabad since 1978 was sent for training at the Police Training School, Vadodara. On the completion of the training, petitioner was to appear at an examination and the petitioner appeared in the said examination on 7-11-1979. It is the case of the petitioner that while he was appearing in the said examination, the Supervisor while taking a round, suddenly asked the petitioner as to why a piece of paper was lying near the Bench on which the petitioner was sitting. The petitioner took up the paper and handed over the same to the Supervisor. The Supervisor asked the petitioner as to whether the paper was in the handwriting of the petitioner, to which the petitioner denied. It is also the case of the petitioner that to the best of the petitioner's recollection, the paper was in the handwriting of the person sitting in front of the petitioner. It is also the case of the petitioner that in the said examination some other persons were also caught on the charge of cheating who were from Vadodara and Surat. The petitioner has then put up his case to the effect that the petitioner was asked to sign some statements which the petitioner insisted on reading before signing, but the petitioner was not given any opportunity to read the same. When the petitioner requested that the petitioner

be permitted to read the statement, the petitioner was abused and threatened with dire consequences.

2. It is further the case of the petitioner that thereafter the petitioner was sent back to Ahmedabad on the very same day for resuming duty at Ahmedabad. But on his return to Ahmedabad, the petitioner was not permitted to join duty in spite of repeated requests. The petitioner then made a representation to the Police Commissioner, respondent No. 1 herein and also to the Honorable Home Minister, a copy of which is not produced along with the petition, but leave is sought to rely upon the same as and when it is produced. It is the case of the petitioner that thereafter, the petitioner was served with an order dated 7-7-1980, whereby the petitioner was discharged from service with retrospective effect from 7-11-1979. It is this order which is challenged in this petition. The petitioner has challenged the said order on the ground that the said order was passed without giving any opportunity to the petitioner to show-cause or without giving any personal hearing or conducting any inquiry whatsoever into the allegations made against the petitioner. The petitioner has made an averment in the petition to the effect that three other persons from Vadodara and Surat who were caught cheating on the same day, i.e. 7-11-1989 were allowed to join duty. The petitioner has not furnished details of the same.

The petitioner then preferred an appeal against the aforesaid order dated 7-7-1980 on 11-8-1980, a copy of which is produced at Annexure "B" to the petition. The petitioner then sent a reminder on 10-2-1982 and a further reminder on 29-10-1982. The petitioner then received a communication, dated 20-11-1982 stating that the petitioner's appeal is dismissed. The case of the petitioner is that the petitioner is dismissed from service without having been heard or without giving an opportunity to be heard before passing of the impugned order. The petitioner has also contended that no inquiry whatsoever was conducted by the respondent before passing of the impugned order and that the petitioner has been victimised for no fault of the petitioner. The petitioner then set out the name of one Hussain Rahim of Vadodara and another Constable from Surat (whose details are not given in the petition), who according to the petitioner were found to have been copying on the same day and they are still in service.

3. An affidavit-in-reply is filed by Shri N.V. Jadeja, Deputy Commissioner of Police Shahibaug, Ahmedabad. The averments made in the petition are denied and it is set out that --

"... While the examination was going on the Supervisor, Asstt. Police Prosecutor, Shri C.K. Patel suspected some malpractice on the part of the petitioner and on his physical search, one chit written in Gujarat pertaining to some answer in respect of the papers to be answered in the examination was traced out between his thigh and the bench on which he was sitting. Shri C.K. Patel thereupon recorded the statement of the petitioner on the day, i.e. 7-11-1979, in which he confessed to have brought the said chit from his barrack for copying in the

examination of Cr. P.C. paper. He has also admitted in his above statement that the said chit is in his handwriting.... "

The affidavit-in-reply further proceeds to state that,

"... It may be stated that there was no reason for the Asstt. Police Prosecutor to set the signature of the petitioner under coercion or threat. The petitioner after his statement was recorded has not given any complaint of the type which he has alleged in this petition before the principal. The plea, therefore, now made out by is an after thought to cover up his guilt which in no way can lend any legitimate support to his case. "

4. It is rightly submitted in the affidavit in-reply that looking to the gravity of default and that too at the start of the career in the disciplined force, the action of discharge from service of the petitioner is just and fair and it cannot be said that any injustice has been done to the petitioner. It is also rightly pointed out in the affidavit in-reply that there is no other Police Constable of Ahmedabad City. Police who was found copying and retained in service. It is further pointed out in the affidavit-in-reply that so far as the cases pertaining to Vadodara and Surat are concerned, the same cannot be considered inasmuch as the same must have been dealt with by the respective District Supdt. of Police on merits of the individual case.

5. The petitioner has filed an affidavit in-rejoinder wherein the petitioner has set out that in spite of all efforts of the petitioner, the matter could appear on Board only thrice between 25-1-1983, i.e. on the day it was filed and 12-12-1995. When it appeared for the fourth time, it did not reach hearing. It is also set out in the affidavit that on 12-12-1995 the matter was adjourned to 16-1-1996, but then the matter did not appear on the cause list and when the petitioner made strenuous efforts to trace the matter it was learnt that the file was missing and therefore the petitioner was constrained to file a Civil Application No. 2650 of 1998 on 16-3-1998 for reconstruction. However, the matter was traced and therefore, the petitioner filed Civil Application No. 333 of 2000 saying that reconstruction was not required as the matter is traced. That is how the matter now appeared on the cause list for final hearing.

6. Learned Assistant Govt. Pleader cited a judgment of this Court (Coram: M.R. Calla, J.) in Special Civil Application No. 3723 of 1999 dated 18-11-1999, wherein it is held that so far as termination of service of a probationer without any stigma on the ground that the services of the probationer are no longer required and that the petitioner is paid salary for a period of seven days in lieu of notice, there was nothing wrong and that order cannot be rendered illegal.

7. Learned Advocate appearing for the petitioner placed reliance on a decision of the Apex Court in the matter of Hardeep Singh v. State of Haryana and Others, reported in 1987 (suppl.) SCC 295. Said authority has no application to the facts of the present case inasmuch as in the case before the Supreme Court the service of the petitioner were terminated on account of his participation in union

activities and the order of removal was projected as an order simpliciter. The Supreme Court on perusal of facts of the case found that the order was punitive in substance and the same was held to be illegal in absence of compliance of Article 311 (2) and statutory rules. In the facts of the present case said decision has no application. Learned Advocate for the petitioner then sought reliance on a judgment between Shanker Dan Charan v. State of Rajasthan and Others, reported in 1998 (4) SLR 190. Said authority also has no application to the facts of the present case inasmuch as in the said case the order of removal from service passed against the petitioner of that case along with another Constable was confirmed by the appellate authority and the appeal of the other constable was accepted and punishment of removal from service was converted into stoppage of one annual increment with cumulative effect. It so happened that the review petition filed by the petitioner of that case was dismissed by the reviewing authority. It was this action of the authorities which was challenged before the High Court by filing Civil Writ Petition. The High Court was pleased to remand the case back to the reviewing authority to pass a fresh order. On such remand the reviewing authority was pleased to put the petitioner of that case at par with other Constables. However, the period from the date of removal was treated as, "leave without pay". It was against this order of treating the period from the date of removal as leave without pay, which had resulted into forfeiture of pay for a period more than 16 years. The High Court was pleased to hold that the order passed by the Appellate Authority was not only unjustified and unwarranted but also discriminatory and hence arbitrary. The High Court was pleased to direct the respondent-authorities to pay the petitioner 50% back wages for the said period. In the facts of the present case, there is no question of this authority being of any assistance.

8. Learned Advocate for the petitioner also sought reliance on the judgment of Madras High Court in the matter of M.M. Vatappan v. Commissioner, Madurai Municipal Corporation, Madurai and Another, reported in 1999 II CLR 265. Learned Advocate submitted that as decided in that case power to impose punishment should be exercised objectively with due application of mind to various relevant circumstances, such as, past conduct, total length of service, gravity of offence and materials available to point guilt, etc. It was also submitted that in addition to the aforesaid factors the authority shall also consider as to whether the misconduct alleged was the first one. Said authority has no application to the facts of the present case inasmuch as in the present case, the petitioner was at the start of his career in the disciplined force and was found to have been indulging in grave misconduct of copying in the examination. In light of that the action of discharge from service is not only just and proper but it is the only punishment which could have been imposed for such a misconduct on the petitioner.

9. No other point is pressed by learned Advocate for the petitioner. In view of the aforesaid discussion, the petitioner does not deserve any relief to be granted. Petition is dismissed. Rule is discharged with no order as to costs.