
(2010) 10 AHC CK 0412

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 59956 of 2008

A.P. Satish Yadav (Constable 221)

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Advocates Act, 1961 — Section 31

Citation : (2011) 1 ADJ 709

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Arvind Srivastava and Krishna Kumar Singh, for the Appellant;

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—This matter is pending for last two years, but despite time having been granted to the respondents, no counter-affidavit has been filed. The question raised by the learned counsel for the petitioner is purely legal, therefore, as agreed by learned counsel for the parties, the matter is being heard and decided finally at this stage under the Rules of the Court. The submission is that lacking control over the family by one cannot constitute any misconduct at all so as to warrant the disciplinary proceedings including suspension and any instruction or action by the higher authorities in this regard would also not amount to a matter relating to service of the concerned employee attracting any disciplinary proceedings. In the case in hand, the impugned order of suspension dated 5.10.2008 has been passed by Sri S.K. Bhagat, Senior Superintendent of Police, Moradabad placing the petitioner under suspension in a contemplated enquiry on the following allegations:

2. Under his instructions, the Reserve Police Inspector, Moradabad has also passed an order on 4.10.2008 directing the petitioner to vacate the official accommodation No. G. 1-25 within two hours otherwise disciplinary proceedings shall be taken against him. Learned counsel for the petitioner submit that the allegation, as contained in the impugned order of suspension, by no stretch

imagination amount to misconduct warranting any disciplinary proceedings and, therefore, the impugned order of suspension is wholly without jurisdiction. Learned Standing Counsel despite of his best efforts could not show anything as to how one can be said to be guilty of a misconduct warranting disciplinary proceeding, if he has failed to exercise effective control over his family.

3. Having heard learned counsels for the parties, in my view also the order of suspension impugned in this petition is nothing but a mockery of disciplinary power conferred upon the higher police authorities and in particular in the present case as exercised by Senior Superintendent of Police, Moradabad and it appears that the authority concerned do not understand as to how and in what manner he can exercise such a power. Suspension in a contemplated or pending enquiry though ex facie is not a punishment but if such a power is exercised in such a flimsy and irrational manner, it amounts to misuse of power on the part of the disciplinary authority. The term "misconduct" is no more res integra having been considered in a catena of decisions.

4. The meaning of "misconduct" came up for consideration before the Apex Court in the case of Union of India (UOI) and Others Vs. J. Ahmed, , wherein, explaining the term "misconduct" the Hon"ble Court held as under:

It would be appropriate at this stage to ascertain what generally constitutes misconduct, especially in the contest of disciplinary proceedings entailing penalty. (para 10)

Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pearce v. Foster*) (1988) 17 QBD 536 (at p. 542). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (Indicator Newspaper)*]. (1959) 1 WLR 698. This view was adopted in *Sharda Prasad Tiwari and Others Vs. Divisional Superintendent, Central Railway, Nagpur Division, and Satubha K. Vaghela Vs. Moosa Raza, The District Development Officer, .* The High Court has noted the definition of misconduct in *Stroud's Judicial Dictionary* which runs as under:

Misconduct means, misconduct arising from ill motive; Act of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in *Management Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik, ,* in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive, In *Govinda Menon Vs. Union of India (UOI), ,* the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting

misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in *P.H. Kalyani Vs. Air France Calcutta*, , wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar (examples) instances of which (are) a railway cabinman signalling in a train on the same track where there is a stationary train causing headlong collision; a nurse giving intraveinous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashing causing heavy loss of life. Misplaced sympathy can be a great evil (see *Navinchandra Shakerchand Shah Vs. Ahmedabad Co-operative Department Stores Ltd.*,). But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty. (para 11)

5. Again in the case of *State of Punjab and Others Vs. Ram Singh Ex. Constable*, , the Hon"ble Apex Court has held as under:

Thus it could be seen that the word "misconduct" though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious

effect in the maintenance of law and order. (para 6)

6. In the context of Section 31 of Advocates Act, 1961, the Apex Court in *Noratanmal Chouraria Vs. M.R. Murli and Another*, , said:

Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, "improper behaviour, intentional wrongdoing or deliberate violation of a rule or standard of behaviour".

Misconduct is said to be a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand, it is a violation of definite law.

7. In *Baldev Singh Gandhi Vs. State of Punjab and Others*, , with reference to the provisions of Punjab Municipal Act, the Apex Court, considering the term "misconduct", held as under:

"Misconduct" has not been defined in the Act. The word "misconduct" is antithesis of the word "conduct." Thus, ordinarily the expression "misconduct" means wrong or improper conduct, unlawful behaviour, misfeasance, wrong conduct, misdemeanour etc.

8. It appears that the police authorities, though have been conferred with such power of disciplinary action against the subordinate police officials, but appropriate training has not been imparted to them as to how such power can be exercised by them and in the present case, it shows total non application of mind and grossest misuse of power on the part of Sri S.K. Bhagat, Senior Superintendent of Police, Moradabad. This is a matter where the petitioner has been made to suffer for the fancy of the authority concerned not only by facing stigma of suspension in the society but also facing an order of eviction from official accommodation, therefore, the writ petition deserves to be allowed with exemplary cost.

9. The writ petition is, accordingly, allowed. The suspension order dated 5.10.2008 (Annexure 2 to the writ petition) passed by respondent No. 4 and the order for evicting official accommodation dated 4.10.2008 (Annexure 1 to the writ petition) are hereby quashed. The petitioner shall be entitled for all consequential benefits. The petitioner shall also be entitled to exemplary cost which is quantified to Rs. 25,000/- against respondent No. 4, Though this amount shall be paid to the petitioner from State exchequer but respondent No. 1 shall be entitled to recover the said amount from the officer concerned due to whose fault this cost has to be paid to the petitioner. Registrar General of this Court shall send a copy of this order to Principal Secretary, Home and Director General of Police for their information and necessary action in the matter