

(1988) 05 AHC CK 0029

In the Allahabad High Court

Case No : Writ Petition No's. 3949 and 3958 of 1988

Chaman Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-05-1988

Acts Referred:

Constitution of India, 1950 — Article 311

Police Act, 1861 — Section 15A, 2, 23, 46, 46(2)

Citation : (1988) 2 AWC 1490

Hon'ble Judges : S.C. Mathur, J; Kamlshwar Nath, J

Bench : Division Bench

Advocate : S.D. Singh and Amarjit Karu, for the Appellant;

Final Decision : Dismissed

Judgement

S.C. Mathur, J.—These writ petitions are directed against the award of adverse entry to the Petitioners, The Petitioner Rajendra Bahadur Singh has also challenged the suspension order passed against him. Petitioner Chaman Singh was holding the post of Platoon Commander in the Provincial Armed Constabulary, while the Petitioner Rajendra Bahadur Singh was holding the post of Constable posted at Police Line Barabanki. The learned Counsel for the Petitioners was asked as to why the Petitioners have not availed of the alternative remedy available before the U.P. Public Services Tribunal constituted under the U.P. Public Services (Tribunals) Act. The learned Counsel submitted that the Petitioners have challenged the vires of paragraph 478(bc) and paragraph 478-A of the Police Regulations and this challenge cannot be entertained by the Tribunal and therefore approach of the Petitioners to the Tribunal will be futile. The learned Counsel stated that on the question of vires this Court has entertained writ petition No. 4496 of 1987. It was pressed that since these Petitioners are of similar nature, they may also be admitted and connected with the earlier petition. We accordingly summoned the record of Writ Petition No. 4496 of 1987. A perusal of the record indicated that a number of

questions have been raised in the said petition including the vires of paragraph 478(bc) and paragraph 478-A. It is not possible to ascertain from the admission order whether the writ petition has been admitted on the question of vires or on any other question. Accordingly it is not possible to admit these petitions merely on the basis of the admission order passed in Writ Petition No. 4496 of 1987. We accordingly called upon the learned Counsel for the Petitioners to make submissions on the question of vires.

2. The learned Counsel, Kumari Amarjeet Kaur submits that the Regulations contained in Chapter XXXII of the Police Regulations have been framed u/s 7 of the Police Act, 1861, for short Act, and are in the nature of subordinate legislation and such a legislation cannot go against the provisions of the Act. It is pointed out that paragraphs 478(bc) and 478-A fall under Chapter XXXII. For the legal propositions that the Rules framed in exercise of the power conferred by statute, cannot go against the provisions of the statute, she has invited our attention to the statement contained in Sri Jagdish Swarup's Legislation and Interpretation 1974 Edition at page 560. Before we proceed further, we may reproduce relevant portions of Section 7 and paragraph 478.

Section 7 reads as follows:

Subject to the provisions of Article 311 of the Constitution and 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 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 ranks 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,-

- (a) fine to any amount not exceeding one month's pay;
 - (b) confinement to quarters for a term not exceeding fifteen days, with or without punishment drill, extra guard, fatigue or other duty;
 - (c) deprivation of good-conduct pay;
 - (d) removal from any office of distinction or special emolument" (emphasised)
- The State of U.P. has inserted Clause (e) also which is as follows:

(e) withholding of increments or promotion including stoppage of an efficiency bar.

Paragraph 478 of the Police Regulations provides the punishments which are liable to be imposed upon police officers appointed u/s 2 of the Police Act. In Clause (bc) the punishment prescribed is "misconduct entry in the character roll.

3. The submission of the learned Counsel for the Petitioners is that Section 7 of the Police Act is exhaustive of the punishments which may be imposed upon

police officers appointed u/s 2 of the Police Act and since misconduct entry in character roll referred to in Clause (bc) of paragraph 478 is not one of the punishments mentioned in Section 7, the said clause is against Section 7 of the Act and therefore ultra vires thereof.

4. It cannot be disputed that an authority empowered by statute to frame rules, cannot while exercising that power, act in excess of the power conferred. The question arising for consideration is whether, while framing the aforesaid Regulations, the State Government has gone beyond the scope of the power conferred by the Act.

5. Section 7 is not the provision conferring right upon the State Government to frame rules or Regulations. That provision is Section 46(2) of the Act which reads as under:

46. (1)...

(2) When the whole or any part of this Act shall have been so extended, the State Government may, from time to time, by notification in the official Gazette, make rule consistent with this Act-

(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;

(b) to prescribe the time, manner and conditions within and under which claims for compensation u/s 15-A are to be made, the particulars to be stated in such claims, the manner in which the same are to be verified, and the proceedings (including local enquiries if necessary) which are to be taken consequent thereon; and

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

(3)...

6. Under Clause (a) and (b) power has been conferred to frame rules in respect of specific matters, the matters specified in the said clauses, but the power conferred under Clause (c) is general and is of wide amplitude. There is of course, the restriction that the exercise of the power should be "for giving effect to the provisions of the Act."

7. Section 23 of the Act prescribes the duties of police officers. It reads as follows:

23. Duties of police officers.--It shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the public peace; to prevent the commission of offence and public nuisances; to detect and bring offenders to justice, and to apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient ground exists; and it shall be lawful for every police officer, for any of the purposes mentioned in this Section without a warrant, to enter and inspect any drinking shop, gaming-

house or other place of resort of loose and disorderly characters." For effective enforcement of the above duties, superior officers should have power to punish for dereliction of duty. This would entail power to prescribe the punishments and the authorities who may impose the punishments. Paragraph 478 of which (bc) is a clause prescribes the punishments that may be awarded to police officers appointed u/s 2. Paragraph 478, including Clause (bc), is therefore referable to Section 23 of the Act. It cannot therefore be said that it is not "for giving effect to the provisions of this Act." The provision contained in paragraph 478, including its Clause (bc) is therefore not in excess of the power conferred by Section 46(2). Let us now examine whether it conflicts with Section 7.

8. Section 7 itself provides that its provisions are subject to the rules framed by the State Government. This is apparent from these words used in the Section--"subject...to such rules as the State Government may from time to time make." When Section 7 itself makes its provisions subordinate to the rules it cannot be said that paragraph 478 is not "for giving effect to the provisions of the Act." When it adds to the punishments mentioned in Section 7 nor can it be said that the punishments mentioned therein are exhaustive of the punishments that may be awarded to a police officer governed by the Act.

9. It is true that in paragraph 477 with which Chapter XXXII opens it is mentioned that the rules in that Chapter have been framed u/s 7 of the Act, but thereby it cannot be said that there has been no exercise of power u/s 46(2). In fact the rules have been framed u/s 46(2) read with Section 7. Section 46(2) necessarily comes into picture as Section 7 does not say "Subject to the rules framed under this Section" but says "Subject...to such rules as the State Government may from time to time make under this Act." In taking this view we are fortified by the decision of their Lordships of the Supreme Court in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, . In paragraph 27 of the report their Lordships have observed--

...Section 7 empowers specified officers to punish specified subordinate officers who are remiss or negligent in discharge of their duties or unfit for the same. Section 46 enables the Government to make rules to regulate the procedure to be followed by the magistrates and police officers in discharge of any duty imposed on them by or under the Act; u/s 7, read with Section 46 of the Police Act, the Police Regulations embodied in Chapter XXXII have been framed... (Emphasis supplied).

10. In respect of the punishments prescribed in Clause (bc) of paragraph 478, it is provided in paragraph 478-A that the said punishment may be awarded after giving opportunity of hearing to the concerned officer. This is in consonance with the principles of natural justice. Section 7 does not say that punishments will have to be awarded without giving opportunity of hearing. Accordingly paragraph 478-A also cannot be said to be ultra vires of Section 7.

11. In view of the above we are of the opinion that neither paragraph 478(bc)

nor paragraph 478-A is ultra vires of Section 7 of the Act.

12. Nothing else was relied upon for by-passing the alternative remedy. The plea of vires having been negatived, the Petitioners should approach the Public Services Tribunal. On account of the availability of this alternative remedy, the petition fails and is hereby dismissed in limine.