
(2003) 08 AHC CK 0049
In the Allahabad High Court
Case No : C.M.W.P. No. 12953 of 2003

C.P. Mushir Khan

APPELLANT

Vs

Senior Superintendent of Police

RESPONDENT

Date of Decision : 26-08-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 311, 311(2)
Penal Code, 1860 (IPC) — Section 201, 218, 342, 364, 409
Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules,
1991 — Rule 8, 8(2)

Citation : (2003) 6 AWC 4976

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Ashok Khare and V.K. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the impugned order dated 13.3.2003 and record.

2. The Petitioner was recruited as a constable in civil police in the year 1983. When he was posted in District Pilibhit, Criminal proceedings were initiated against him in 1988 u/s 342/409/218/201 of the I.P.C. at police station Bilsanda, district Pilibhit, and were registered as Case Crime No. 233 of 1988.

3. The VI Ith Additional Sessions Judge, Pilibhit, vide judgment dated 22.5.2001 in Session"s Trial No. 208 of 1997 convicted the Petitioner for a period of one year for an offence u/s 342, I.P.C., for a period of three years for an offence u/s 218 along with a fine of Rs. 1,000 and for a period of six months for an offence u/s 201 with further stipulation of all convictions running simultaneously.

4. A perusal of the judgment shows that Sita Ram, younger brother of the complainant Babu Ram used to run a small cycle repair shop. On 11.7.1988, Inspector Bahadur Singh Pangati along with Petitioner came on his shop and took

him away with them on the motorcycle. When he did not return home, the family members of Sita Ram contacted the police station. They were not given any satisfactory reply by the accused. An F.I.R. was lodged with great difficulty on 12.7.1978 by the family members at about 4.50 p.m. against Inspector Bahadur Singh Pangati and the Petitioner along with co accused had taken away Sita Ram with them but there is no trace of him. It was registered as Crime No. 233 of 1988 u/s 364, I.P.C.

5. The case of the complainant was that since local police was involved they were not investigating the matter properly and as such, the Director of Police, U.P., Lucknow on their request passed the orders for getting the matter investigated by the Crime Investigation Department, Bareilly.

6. In short the case against the applicant(s) was that the documents were fabricated and prepared to conceal the offence and the accused have misused their position as public servants by making wrong and incorrect entries in the record of the police station. The Sessions Court gave the findings, as under:

other language

7. The Petitioner was thereafter heard on the quantum of punishment. He submitted that he is an employee of the police department and his case may be considered sympathetically. After considering the facts and circumstances of the case, the Court held that the Petitioner Mushir Ahmad and Inspector Bahadur Singh Pangti while working on responsible post as public servants have committed offences, which was in itself a serious case. The Court considered the facts that Sita Ram, who is alleged to have been murdered by these persons has neither returned nor there is any trace of him. The accused was awarded punishment of conviction for a period of one year for an offence u/s 342, I.P.C. for a period of three years for an offence u/s 218 along with a fine of Rs. 1,000 and for a period of six months for an offence u/s 201. The order of punishment is as under:

other language

8. Aggrieved the petitioner filed Appeal No. 1850 of 2001 before this Court, which is pending. It appears from the averments made in the writ petition that after the order of conviction dated 22.5.2001, the petitioner continued to function and discharge his duties. Thereafter by order dated 13.3.2003 the Senior Superintendent of Police, Budaun, dismissed the petitioner from service in exercise of power under Rule 8 (2) of U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, which is impugned in the writ petition and is reproduced below :

other language

9. The Petitioner has challenged the aforesaid order dated 13.3.2003 on the grounds that it has been passed in an arbitrary and discriminatory exercise of power, which is in violation of Articles 14 and 311 of the Constitution of India.

Further that his dismissal under Rule 8 (2) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, is without jurisdiction and consider that the authority has failed to appreciate that conviction does not lead to order of dismissal. The relevant Rule 8 of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, is as under:

8. Dismissal and removal.--

(1) No Police Officer shall be dismissed or removed from service by a authority subordinate to the appointing authority.

(2) No Police Officer shall be dismissed, removed or reduced in rank except after proper inquiry and disciplinary proceedings as contemplated by these rules:

Provided that this rule shall not apply--

(a) where a person is dismissed or removed or reduced in rank on the ground of misconduct which has led to his conviction on a criminal charge ; or

(b)

(c)

(3)

(4)

(a)

(b) Every officer convicted by the Court for an offence involving moral turpitude shall be dismissed unless the punishing authority for reasons to be recorded in writing considers it otherwise.

10. The contention before this Court is that the order impugned has been passed without affording any opportunity of hearing to the Petitioner, that dismissal has not been preceded by any notice to show cause to him and that there was no justification after passing the order of lapse of almost 2 years of the conviction.

11. It is not in dispute that the Petitioner was convicted in Case Crime No. 233 of 1988 by the Additional Sessions Judge, Pilibhit, for committing serious offence of fabricating and preparing incorrect public documents by misusing their position as public servants. Appeal against the conviction is pending. The Petitioner has been dismissed from the service by the Senior Superintendent of Police for being convicted in Case Crime No. 233 of 1988.

12. Crime is on the rise in the country. The involvement of police officials with criminals and in criminal acts certainly is a demoralization factor for the police forces as well as cause for loss of faith and confidence of the public. The solemn duty of the police forces is to protect the general public. For the past some years, it is felt that public has lost confidence in police forces due to the involvement of police personnel as partners in commission of crime with the anti-social

elements. This trend is alarming and eye opening for "plugging the holes" in the law and take stringent action against such erring members of police force which may prove a deterrent and they may not get benefit from their criminal association/nexus.

13. Article 311(2) of the Constitution of India provides that it will not apply to the person(s) who have been dismissed, removed or reduced in rank on the ground of misconduct. As stated above the criminal offence/crime committed by the Petitioner has led to his conviction. After conviction it is for the State Government to hold departmental enquiry or to pass order on basis of conviction. In case of dismissal without departmental enquiry the order will remain defunct on conviction by High Court in appeal while dismissal on basis of departmental enquiry will not be affected by result of appeal.

14. Rule 8 of the U.P. Police Officers of the Subordinate Rank (Punishment and Appeal) Rules, 1991, provide that no Police Officer shall be dismissed, removed or reduced in rank except after proper enquiry and disciplinary proceedings as contemplated by the rules. Conviction of criminal charges means final conviction by court of law. Admittedly, the appeal of the applicant is pending before the High Court and it cannot be said that the conviction has attained finality but the police forces are disciplined forces and keeping such type of persons on active service in police forces would not be proper. The reasons given in the impugned order of termination of service cannot be faulted with at present. The jurisdiction of the High Court under Article 226 is equitable, therefore, balance has to be struck at one side in maintaining the public confidence and moral of the police force on one side and continuation of such police personnel in service on the other side. In a catena of cases, it has been held that interim order should not be passed granting final relief.

15. Equity and law is two faces of the same coin. In the instant case, the question of reinstatement in service can arise only after the conviction has attained finality in which either the question of conviction could be upheld or any other order can be passed. For the reasons stated above, it is not a fit case for exercise of power under Article 226 of Constitution of India. Thus, the writ petition fails and is dismissed.

No order as to costs.