
(1991) 04 KL CK 0002
In the High Court Of Kerala
Case No : O. P. No. 3496 of 1987

Jestin Jacob

APPELLANT

Vs

State of Kerala and another

RESPONDENT

Date of Decision : 03-04-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 2 KLJ 121

Hon'ble Judges : Varghesb Kalliath, J

Bench : Single Bench

Advocate : Ajaya Kumar, for the Appellant;

Judgement

Varghesb Kalliath, J.—Petitioner challenges the punishment imposed on him after disciplinary proceedings. By Ext. P3, the Commissioner of Police imposed the punishment of compulsory retirement of the petitioner, who was a Police Constable attached to City Traffic Police Station, Calicut. Copy of the order imposing punishment is Ext. P3. Petitioner filed an appeal before the Deputy Inspector General of Police, The Deputy Inspector General of Police confirmed the order" of punishment. Further an appeal was filed before the 2nd respondent-The Director General of Police, Tri van drum. The 2nd respondent also confirmed the order of the lower authorities. Thereupon, petitioner submitted a review petition before the Government. Government also rejected the review petition. Copy of the order rejecting the review petition is Ext. P7. In Ext. P7 it is seen stated that the Government have examined the petition under KPD (IPA) Rules 1958 and have taken a provisional decision to reject the review petition and consulted with the Public Service Commission for advice. The Public Service Commission has agreed to the provisional decision of the Government to reject the petition filed by the petitioner. So in the circumstances, Government confix me d their provisional decision and ordered that the review petition submitted by the petitioner to be rejected.

2. Petitioner challenges the orders, Exts. P3, PS and P7, Petitioner was served

with a memo of charge for grave misconduct in having taken one Sarada and Sita inmates of After Care Home, Thiuvannur, Calicut to the police quarters. This happened on 16-9-1980. The charge is that the petitioner has taken Sarada and Sita in Room No. 3, Block No. 4 in the police line near City Police Office, Calicut which he was unauthorisedly occupying and that he tried to outrage the modesty of Sita and wanted to get involved in sexual intercourse with Sarada.

3. A detailed enquiry into the matter was conducted by the Assistant Commissioner, Traffic Calicut City. In the report of enquiry, the Assistant Commissioner found that the charges against the -petitioner are partly proved. In respect of the same incident, a crime was registered, but it ended in acquittal. On the basis of the departmental enquiry report, a show cause notice was issued to the petitioner for dismissal from service. Petitioner submitted his explanation. The explanation was considered by the Commissioner of Police, Calicut City and the Commissioner of Police imposed the penalty of compulsory retirement on the petitioner.

4. Petitioner filed an appeal before the Deputy Inspector General of Police, Northern Range. The appeal was rejected. Petitioner filed a further appeal before the Director General of Police and a review petition before the Government, but was not successful.

5. Counsel for the petitioner submitted that the punishment awarded by the authorities is disproportionate to the offence proved. He also submitted that though in the disciplinary proceedings, the offence was found proved and even if it is found that the charge framed in the disciplinary proceedings is different from the charges which were tried before the criminal court there cannot be any dispute that both the charges tried by the criminal court and the disciplinary authorities arose from the same incident and that this fact also ought to have been taken into account in awarding the punishment. There is no clear evidence, according to counsel for petitioner, for holding that the petitioner has done anything to two girls who have been taken to Room No.3 in Block No. 4 of the Police line. Counsel for the petitioner was not successful to convince me that the punishment was on the same charge for which a criminal case was tried wherein the petitioner was acquitted Ultimately counsel submitted that this Court has got ample jurisdiction to consider the question whether the punishment awarded is proportionate to the offence proved. He also submitted that the question regarding application of the doctrine of proportionality has to be considered in a broad spectrum, particularly in the case of disciplinary proceedings. He submitted that it is a relevant fact that out of four persons involved in the Offence alleged to have been committed, one person Was reinstated in service without any punishment and another- parson was given only a very minor punishment. Only two persons alleged to have involved in the offensive act were given a deterrent punishment of compulsory retirement.

6. The court in exercising its reviewing power normally concerned more with, the question how the decision maker has arrived at the decision. In this case, there is

no procedural impropriety to quash the punishment awarded to the petitioner. It is true that the process under Article 226 of the Constitution cannot be limited to an examination of the procedure adopted by the decision maker. It is now well settled that the reviewing power extends to examine the well-known three grounds—legality, procedural propriety and rationality.

7. Lord Diplock in *Council of Civil Service Unions v. Minister of State for the Civil Service* (1985) A. C. 374 usefully classified three; grounds of judicial review of administrative action and very prophetically alluded to a possible fourth ground, that of "proportionality". In an earlier case Lord Diplock, though not referring directly to proportionality, counselled against the use of a "steamhammer to crack a nut" vide *R. v. Goldsmith* (1983) 1 W. L.R. 151.

8. In *Ranjit Thakur Vs. Union of India (UOI) and Others*, Venkatachaliah, J. reviewing the jurisdictional content of Article 226 of the Constitution, observed that judicial review, generally speaking, is not directed against a decision but is directed against the decision making process. But His Lordship said that the decision itself can be subjected to judicial review, if the question of the choice of quantum of punishment is disproportionate to suit the offence and the offender. In fact, His Lordship was following the doctrine of proportionality as part of the concept of judicial review and said that the question of punishment is not humane from correction under the power of judicial review of the court under Article 226 of the Constitution. His Lordship said that "the punishment also strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review".

9. It is true that this Court in differentiative and diacritical circumstances can interfere with an order of the Government or of a disciplinary authority imposing a penalty on certain findings against a delinquent officer, if the punishment awarded is disproportionate to the offence proved. In this case, all the authorities found that the petitioner does not deserve to continue in police service and so a penalty of compulsory retirement has been imposed in the case. A police constable may be one in the last step in the ladder of hierarchy of the police officers, nevertheless, considering the high responsibility of the police department & standard of high probity, moral excellence, integrity and rectitude are expected of from all members of the police force, since they are endowed with the power to keep law and order and that power takes in great authority and will give circumstances wherein a misuse of that power will cause great injury to the fabric of the society, A police officer, it has to be remembered, can act without taking orders from superior officers if circumstances need it. This fact has to be borne in mind when we deal with a case of a police constable also. The truth is that a police constable holds a public position as that of a peace officer in which he owes obedience to no executive power outside the police force. Considering the magnitude of the power vested with the police force any sort of leniency when it is found that a police officer has misbehaved will certainly frustrate the object of enforcing discipline and obedience in the police force. As I

said earlier, all the high police officials and the Government found that the punishment awarded is a deserving one and I do not want to say exercising my power under Article 226 of the Constitution that this is a fit case where doctrine of proportionality should be invoked and the punishment should be reduced.