

(1991) 01 GUJ CK 0001

In the Gujarat High Court

Case No : Special Civil Application No. 6372 of 1990

Parsottambhai Parmabhai

APPELLANT

Vs

Shivanand Jha, D.S.P., Kheda

RESPONDENT

Date of Decision : 09-01-1991

Acts Referred:

Bombay Civil Services Rules, 1959 — Rule 156
Bombay Police (Punishments and Appeals) Rules, 1956 — Rule 3(1A)
Bombay Police Act, 1951 — Section 135
Constitution of India, 1950 — Article 226, 317(1)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 354

Citation : (1991) 2 GLR 1265 : (1992) 2 LLJ 709

Hon'ble Judges : C.K. Thakker, J

Bench : Single Bench

Judgement

1. This petition under Art. 226 of the Constitution of India is filed by the petitioner for an appropriate writ, direction or order quashing and setting aside an order of suspension dt. August 20, 1990, Annexure "A" to the petition passed by the District Superintendent of Police, Kheda-respondent herein.

2. It is the case of the petitioner that he is serving as Armed Police Constable. According to him, a First Information Report (FIR) was filed by one Surajben, wife a Nanjibhai Punjabhai before Kapadvanj (Rural) Police Station on August 9, 1990. In the said First Information Report, it is alleged by her that a number of persons had committed various offences mentioned in the said complaint. The petitioner - Parsottambhai is one of them.

3. It is the case of the complainant in the FIR that the accused persons had committed offences punishable under Secs. 147, 148, 149, 354, 323, 504 and 506 of the Indian Penal Code read with Section 135 of the Bombay Police Act, 1951 (herein referred to as "the Act"). It is alleged that two incidents had taken place on August 7, 1990 and August 8, 1990 respectively. So far as the first incident is concerned, it took place on August 7, 1990 at village Charannikol. It is the case of the complainant that she is a poor lady of backward community. The

petitioner is her neighbour. According to her, at about 2-00 p.m. on that day, she was at her residence all alone as her husband had gone for labour work. She was feeding her son and at that time, taking undue advantage of her loneliness the petitioner committed house-trepass, threw away her son on one side and by forcibly throwing the complainant on earth, sat on her and outraged her modestly by putting his hand on her breast. Moreover by putting his hand on the mouth of the complainant so that she cannot shout for help, the petitioner attempted to commit rape also. She could, however, succeed in escaping and in shouting for help. Hearing her shouts, Madhuben and other persons reached there and the petitioner ran away.

4. At about 7-00 p.m. when her husband returned, she narrated the above incident to him. Her husband went to the house of the petitioner but the petitioner was not there. His father requested the husband of the complainant not to file any complaint against the petitioner till the petitioner would return and went to Kheda to fetch him.

5. But on the next day, i.e. on August 8, 1990, at about 6-00 p.m., again the petitioner along with other eight accused persons who were relatives of the present petitioner formed an unlawful assembly and in furtherance of common object to assault and beat the complainant as well as her relatives came with Dharia, Sticks, Bhalas and other lethal weapons. The accused abused the husband of the complainant, took him outside the house and had beaten him. Even at that time, the petitioner physically assaulted the complainant by using force. Other persons who tried to pacify accused were also beaten. The accused persons also administered threat and if anybody would disclose or narrate the incident which had taken place, dire consequences would follow. The petitioner was arrested on August 10, 1990 in connection with the above offences and was placed under suspension by the first respondent on August 20, 1990. The said order (Annexure "A") is challenged by the petitioner in this petition.

6. I am not expressing any opinion on merits about the alleged incident since a competent Criminal Court will decide it in accordance with law. The short question for may consideration is whether on the basis of the allegations levelled against the petitioner, there is a prima facie case for his suspension. In other words, whether in the facts and circumstances of the case, the impugned order passed by the authority can be said to be arbitrary, unreasonable or perverse.

7. In my opinion, a preventive action of suspension of the petitioner in the facts and circumstances can never be said to be arbitrary, unreasonable or contrary to law. Looking to the allegations levelled against the petitioner in First Information Report the impugned action appears to be just, proper and lawful. The allegations are such that they will be established, the same would result into a major punishment of dismissal of the petitioner. In these circumstances, it cannot be contended that the power has been exercised by the authority irrationally, arbitrarily or unreasonably.

mentioned in the affidavit-in-reply that the petitioner is a head-strong person and it would not be in the interest of justice to allow him to continue in active service. If he will be allowed to discharge duties, it would have adverse effect on the administration of law and order situation also. It is further stated that to ensure that the petitioner does not tamper with any evidence and does not repeat such acts, it was thought fit to suspend him. These grounds are certainly germane and relevant for taking a preventive action of suspension of the petitioner. Again, I am not exercising an appellate power. I cannot substitute my opinion for the opinion formed by the competent authority.

10. It is also contended by the learned Counsel for the petitioner that the incident had taken place not while he was on duty. The petitioner is serving at Kheda which is about 80 kms. from village Charannikol, where the incident had taken place. In fact the petitioner was on leave on that day. For that reason also, no action of suspension can be taken against him.

11. I am afraid, I cannot uphold the above contentions of the petitioner. An identical question arose before this Court in Hariprasad Raghuram Dave Vs. State of Gujarat and Others, In that case, the petitioner Police Constable who was on leave had gone on hunger strike. It was, therefore, contended that the alleged misconduct had not taken place while he was in the discharge of his duties and, therefore, he should not be punished. Negating the said contention, and considering the ambit and scope of Section 25 of the Act, the Division Bench observed :

"It is difficult to accept the reasoning behind the contention that merely because a Police Constable happens to be on leave, even if he commits any breach of discipline he cannot be dealt with u/s 25 of the Act. A Police Constable on casual leave is also bound to follow the rules of discipline of the service. It would not, therefore, be unreasonable to also assume that the intention of the legislature in enacting the provisions is to empower the authority to deal with all cases of breach of discipline by a Police Officer. The construction tried to be put by the petitioner on the section if accepted, defeats the very purpose for which the provision is made."

12. In Madhosingh v. State of Bombay, reported in 61 BLR 1537, a single Judge of the High Court of Bombay had made the following pertinent observations :

"When a person accepts an employment, by necessary implications he agrees to so conduct and behave himself as would not be inconsistent with the nature of his service. If he behaves and conducts himself in a manner which would be inconsistent with the nature of his service then that would affect or at any rate would be likely to affect the interest or the good name of his employer. If and when it happens it is reasonable to hold that it would entitle the employer to take such disciplinary action against his employee as the nature and degree of misconduct would require and law would permit. It is not that interest or good name of an employer is likely to be adversely affected only by an act of an

employee during the course of an employment."

13. In such Menon cases, as held by the Court in Govinda Menon Vs. Union of India (UOI), the test is not whether the act or omission was committed by an employee in course of the discharge of his duties as servant of the Government. The test is whether the act or omission has some reasonable connection with the nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the service for integrity or devotion to duty as a public servant.

14. From the aforesaid binding decisions the principle of law appears to be well settled that it is not necessary that the alleged misconduct must have taken place while a Government servant is actually discharging duty or during the course of employment but that the misconduct must be such that by that misconduct the interest or good name of the employer is likely to be adversely affected or the act or omission has cast any reflection upon the reputation of the members of the service on public at large.

15. Therefore, the material question for my consideration is whether the act alleged to have been committed by the petitioner is of such a magnitude that it would adversely affect the reputation of members of Police force on general public.

16. Again, in this point also, no rigid rule of universal application can be laid down. It depends upon the nature of act or omission, the work or employment undertaken by the employee, the circumstances under which the act is said to have been committed and so on. In the leading case of Pearce v. Foster, reported in (1886) 17 QBD 563, Lord Esher, M.R. rightly observed :

"The rule of law is, that where a person has entered into the position of servant, if he does anything incompatible with the due or faithful discharge of his duty to his master, the latter has a right to dismiss him. The relation of master and servant implies necessarily that the servant shall be in a position to perform his duty duly and faithfully and if by his own acts he prevents himself from doing so, the master may dismiss him What circumstances will put a servant into the position of not being able to perform, in a due manner, his duties, or of not being able to perform his duty in a faithful manner, it is impossible to enumerate. Innumerable circumstances have actually occurred which fall within that proposition, and innumerable other circumstances which never yet occurred, will occur, which also will fall within the proposition. But if a servant is guilty of such a crime outside his service as to make it unsafe for a master to keep him in his employ, the servant may be dismissed by his master : and if the servant's conduct is so grossly immoral that all reasonable men would say that he cannot be trusted the master may dismiss him."

17. Thus, in Hariprasad Raghuram's case (supra) an act of going on hunger strike by a Police Constable was held to be misconduct by this Court for which punishment of removal could be imposed. Similarly, in Madhosingh's case

(supra), an act of rude behavior towards a superior officer by a member of Police force was held to be misconduct by the High Court of Bombay.

18. The same principle is reiterated very recently by the Supreme Court in In Reference under Art. 317(1) of the Constitution of India, reported in Smt. Santosh Chowdhary, Chairman, Punjab Public Service Commission Vs. Krishna Saini a Member of the Commission, . In that case, a Member of the Public Service Commission slapped the lady Chairperson of the Commission. In spite of the fact that the provocation was offered by the Chairperson, the conduct of the Member was held to be "misbehaviour" within the meaning of Art. 317(1) of the Constitution and it was held that he was liable to be removed. The Court observed (p. 383) : "Whatever the provocation offered by the Chairperson, the respondent was not justified in losing his cool to the extent of indulging in physical violence. That the violence should have been directed against a lady makes his conduct all the more reprehensible. In our view, Shri Saini miserably failed in maintaining the standard of conduct expected of a Member of the Commission and thereby brought great disrepute to his office

I am in respectful agreement with the following observations of Lord Lopes in Pearce v. Foster, (supra). The learned Law Lord propounded :

"If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct according to my view, need not be misconduct in carrying on of the service or the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master."

19. Now, if the principles laid down in the aforesaid decisions are applied to the facts of the present case, the misconduct alleged against the petitioner can certainly be said to be of a serious nature. It is not the number of acts that is material, but the nature and the magnitude which is relevant. Now, the petitioner belongs to Police force, i.e. disciplined force. Utmost obedience of law is expected of the members of this force. The petitioner has miserably failed to keep up those standards. And again, what the petitioner has done ? By ignoring and keeping aside all the standards of the Police force and instead of maintaining law and order situation, he himself has committed criminal trespass in the house of poor lady who was alone there, threw away her tender aged son and taking undue advantage of her loneliness, attempted to commit rape. The matter, however, did not end there. When the husband of the complainant legitimately complained against such rude behavior, the petitioner instead of repenting and improving his behavior formed an unlawful assembly, attacked the complainant, her husband and inmates with lethal weapons and caused injuries to them. Taking any standard, such a conduct on the part of a member of Police force would certainly amount to a grave and serious misconduct not expected of a Police personnel for which only the extreme penalty of dismissal is called for. By such misconduct, the reputation of the members of the Police force as a whole has been adversely affected and lowered down. Now for such an act, if the

petitioner if suspended, by no stretch of imagination, the impugned action can be said to arbitrary, unreasonable or unjust.

20. I, therefore, do not find any substance in any of the contentions raised by the petitioner. I do not see any reason to interfere with the order of suspension and dismiss the petition. The petition is, accordingly dismissed and the notice is discharged with costs.