
(1960) 10 KL CK 0028
In the High Court Of Kerala
Case No : A.S. No. 220 of 1960

Raghava Menon

APPELLANT

Vs

Inspector General of Police, Kerala

RESPONDENT

Date of Decision : 13-10-1960

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : AIR 1961 Ker 299

Hon'ble Judges : M.A. Ansari, C.J; M. Madhavan Nair, J

Bench : Division Bench

Advocate : K.S. Sebastian, for the Appellant; C.M. Kuruvilla, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ansari, C. J.

1. The appellant's writ petition under Article 226 has been rejected by a learned Judge of this Court. He had entered the police service in 1941, and was serving till 1953. In that year a complaint about the appellant's having contravened the Police Standing Order No. 134, due to misbehaviour under the influence of drink, was investigated by the Circle Inspector; and the Superintendent of Police, on the report furnished by the investigating officer, dismissed the appellant. The order was made on January 15, 1954, and the appellant submitted against the order several representations to the higher authorities. On May 18, 1958, the Inspector General of Police cancelled the dismissal order placing the appellant under suspension with effect from the date of the removal from service.

The Inspector General of Police has, in the same order, come to the conclusion about the earlier order being without jurisdiction, and had proposed the appellant being dismissed from the date of his removal from service. The Inspector General has, therefore, directed the appellant to show cause, within 13 days of the receipt of the order, why the proposed punishment should not be inflicted.

For purposes of making the representation, a copy of the minutes drawn up against the appellant was also furnished. On June 18, 1958, the appellant filed a long explanatory statement, and on September 10, 1958, the Inspector General of Police, after being satisfied about the charge of being drunken and misbehaviour being proved beyond doubt, dismissed the appellant from the date he had been placed under suspension.

Immediately the appellant filed the writ petition in this court, complaining the suspension and dismissal with retrospective effect to be illegal, and the decision by the Inspector General of Police not to be after proper judicial enquiry in so far as the Inspector General had not recorded the evidence, on which the appellant has been dismissed. The learned Judge has dismissed the writ petition on the short ground of the appellant's having the alternative relief of appeal against the conclusions of the Inspector General of Police to the Government, and the case, therefore, not being one, in which the relief under Article 226 should be given.

2. The appellant's learned advocate has pressed the appeal before us further on the ground that the order of the Inspector General was without jurisdiction, because it was made to operate retrospectively; and secondly, because it rested on material not personally recorded by the Inspector General. He has urged that where absence of jurisdiction be clear, the refusal to exercise power under Article 226, would be incorrect. In support of this last contention, reliance has been placed on *U. P. State v. Mohammad Nooh*, AIR 1958 SC 86, where it has been held that, should the illegality touching jurisdiction or procedure committed by an inferior court or tribunal, be so patent and loudly obtrusive as to leave on the decision an indelible stamp of infirmity Or vice, that cannot be obliterated or cured on appeal or revision, the superior Court would properly exercise the power to issue a writ of certiorari.

The appellant's learned Advocate has further, urged that the Superintendent or Assistant Superintendent alone, can under the rules governing the Police force, inquire into complaints against the constables; and as the inquiry had been by a subordinate officer, the dismissing authority could not act on the records so prepared, that the dismissal would be on material got contrary to the aforesaid direction and this would vitiate the dismissal order. In support of this contention, he has relied on *Amulya Kumar Sikdar Vs. L.M. Bakshi and Others*, where the learned Judge has held that decisions in administrative matters, which be (sic) based on evidence recorded by persons other than inquiring authorities, would constitute error of jurisdiction.

He has further relied on *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, where the majority of the learned Judges have held that even administrative tribunals, when dealing with rights of a party, must hear, and that, if one person were to bear and another pass orders, the procedure would be contrary to the basic principles-of judicial proceedings. He has further referred to *Morgan v. United States* (1935) 298 US 468 , where it has been observed that the hearing is designed to afford the safeguard of the

deciding authority being bound in good conscience to consider the evidence, to be guided by that and to reach the conclusion uninfluenced by extraneous considerations. He particularly relies on the observation of Chief Justice Hughes that the one who decides must hear." We do not think the observation of our Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, lays down the rule that the evidence should have been taken by the officer, who makes the final decision; for in Pradyat Kumar Bose Vs. The Hon"ble The Chief Justice of Calcutta High Court, the argument was rejected, and the observation of Lord Haldane in the Local Government Board v. Arlidge 1915 AC 120 133, has been described as instructive. That observation we would extract here:

"The Minister at the head of the Board is directly responsible to Parliament like other Ministers. Ho is responsible not only for what he himself does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through, his officials and he has discharged his duty if he sees that they obtain these materials for him properly.

* * * * *

Unkil a Judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff. When, therefore, the Board is directed to dispose of an appeal, that does not mean that any particular official of the Board is to dispose of it."

3. We do not think the Supreme Court in the later case meant to overrule what has been decided in the earlier, and by use of the word "hearing" in She later case their Lordships were sustaining the principle that the deciding authority must himself consciously and satisfactorily deal with the records, on which the order is being passed; nor do we think the principle of "the one who decides must hear", has been treated even in America as insisting on record of evidence being made by the authority, who decides; for, in Pettiford v. State Board of Education 1950 SC.62 780) it has been observed :

"The Morgan case docs not hold, as it is sometimes cited as holding, that the administrative agency which renders a decision in a quasi-judicial proceeding, must actually hear the evidence and see the witness".

Therefore, ail what is meant by the rule is that the administrative agency, making the findings, must address itself to the evidence; and, upon the evidence before it, must conscientiously reach a conclusion which it deems such evidence to justify. It follows that "the appellant would only succeed should he establish that the order challenged was without any directing of the mind to the evidence by the deciding functionary, and that is not the ease. The argument, therefore, that every evidence must be collected by the dismissing authority, in our opinion, has no force.

4. The next argument of the appellant's learned Advocate is that retrospective dismissal and suspension cannot be ordered. We think the error is not such as cannot be obliterated by the appellate authority; and, in this case, the appellant has filed an appeal before the Government. We would not prejudice the fair hearing of that appeal by any observation in the writ petition, but it is clear that the error is not of jurisdiction, or of such far reaching effect, as to justify exercise of power under Article 226. In these circumstances, the appeal is dismissed with costs.