
(1988) 05 AHC CK 0052
In the Allahabad High Court
Case No : Writ Petition No. 3573 of 1988

Ram Raj Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-05-1988

Acts Referred:

Constitution of India, 1950 — Article 311
Police Act, 1861 — Section 7

Citation : (1988) 12 ACR 646

Hon'ble Judges : V. Kumar, J; S.C. Mathur, J

Bench : Division Bench

Advocate : Amit Bose, for the Appellant;

Final Decision : Dismissed

Judgement

1. This petition is directed against the order dated 12th January, 1988, passed by Circle Officer, Mahmoodabad, district Sitapur, whereby he has reduced the Petitioner from the rank of Head Constable to the rank of Constable in departmental proceedings. On the question of alternative remedy the learned Counsel for the Petitioner submits that since he has challenged the vires of para 479(f) of the U.P. Police Regulations, alternative remedy is not efficacious as the (Services) Tribunal is not competent to decide the question of vires. We accordingly take up the question of vires first.

2. The learned Counsel for the Petitioner has submitted that the Circle Officer has obviously assumed jurisdiction to pass the impugned order in view of the provision contained in para 479(f) of the U.P. Police Regulations which is in conflict with Section 7 of the Police Act. Para 479 prescribes the officers who may impose punishments on Police Officers of different ranks. Under Clause (a) Governor has reserved full powers of punishment with reference to all officers. In Clause (b) it is mentioned that the Inspector General may punish Inspectors and all Police Officers of lower ranks. In Clause (c), (d) and (e) is mentioned the jurisdiction of Deputy Inspector General and the Superintendent of Police. Then

comes Clause(f) which reads as follows:

(f) Subject to the provisions of paragraph 491 (i) (all such permanent Assistant Superintendents of Police as have completed four years of service all such permanent Deputy Superintendents of Police as have crossed the first efficiency bar in the time scale of pay applicable to them), and (ii) other Assistant Superintendent of Police and Deputy Superintendents of Police specially authorized in this behalf by the Deputy Inspector General of Police so far as his Range is concerned; may exercise all the powers of a Superintendent of Police as detailed in sub-paragraphs (d) and (e) of this paragraph other than powers relating to the punishment of Inspectors of Police and powers under Fundamental Rules 24 and 25.

It is not disputed that Deputy Superintendent of Police is equivalent to Circle Inspector. Therefore if Clause(f) is not ultra vires of Section 7 the impugned order cannot be faulted on the plea of competence of the officer to pass the order.

Section 7 of the Police Act, 1861 reads as follows:

7. Subject to 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;....

3. The submission of the Petitioner's learned Counsel is that the authorities who may impose the punishments mentioned in Section 7, which includes the punishment of reduction in rank also, are specified in the Section 7 itself and it is not possible for the rule making authority to specify any authority different from the said authorities. He also points out that the Deputy Superintendent of Police (Circle Officer) is lower in rank to all the authorities mentioned in Section 7.

4. The submission is misconceived. The language of Section 7 makes it abundantly clear that the authorities mentioned therein will exercise jurisdiction only till such time as the State Government does not frame rules. As soon as the State Government frame rules, the matter will be governed by rules. This is apparent from the use of the words "Subject to the provisions of Article 311 of the Constitution and to such rules as the State Government may from time to time make" (emphasis supplied). Section 7 is subject to two things- (1) Article 311 of the Constitution and (2) the rules framed by the State Government. In view of the first provision an authority lower in rank than the appointing authority cannot dismiss or reduce in rank a Police Officer of the subordinate ranks, although the said authority may be one of the authorities mentioned in Section 7. Similarly, in view of the second provision, if the rules provide for an authority different from those mentioned in Section 7 as competent to impose the punishments mentioned therein, the said authority will be the competent authority and not the authorities mentioned in Section 7. This will be not because

the rules prevail over the Act, but because the Act provides for it. When the Act provides for it, there is no question of the rule being in conflict with the Act. Rather it is in consonance with the Act.

5. It may be that the Circle Officer is lower in rank than the lowest authority mentioned in Section 7 but that does not make any difference, so long as Article 311 is not violated. It is not the Petitioner's case that Article 311 is violated.

6. Learned Counsel for the Petitioner however submits that the emphasised portion in Section 7 refers to procedural matters and not to matters of substance like the authority competent to impose punishment. Learned Counsel might have been correct if Section 7 had prescribed any matter of procedure. Section 7 does not prescribe any matter of procedure. It refers merely to three matters- first, the authorities competent to impose punishments second, the punishments that may be imposed; and, third, when the said punishments may be imposed. All these are matter of substance and not of procedure. Therefore the submission of the learned Counsel cannot be accepted.

7. In view of the above, in our opinion paragraph 479(f) of the U.P. Police Regulations is not ultra-vires of Section 7 of the Police Act.

8. After upholding the vires of paragraph 479(f), we do not consider it necessary to take up the Petitioner's challenge against the merits of the impugned order. For that the Petitioner must avail of the alternative remedy, whether provided under Rules or under the U.P. Public Services Tribunals Act.

9. In view of the above, the petition fails and is hereby dismissed in limine.