
(1953) 07 CAL CK 0012

In the Calcutta High Court

Case No : A.F.O.D. (Mandamus) No's. 136, 158 and 159 of 1952

Shiva Nandan Sinha and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 21-07-1953

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 19(5), 20(2), 21

Police Act, 1861 — Section 35, 7

Police Regulations of Bengal, 1943 — Regulation 881

Citation : AIR 1954 Cal 60 : 58 CWN 18 : (1955) 2 ILR (Cal) 28

Hon'ble Judges : G.N. Das, J;Debabrata Mookerjee, J

Bench : Division Bench

Advocate : Jitendra Ch. Ghose, Ramprasanna Bagchi and Gouranga Sundar Chatterji, in No. 136 and Amarendra N. Mitra and Sachindra Kr. Basu Majumdar, in Nos. 158 and 159, for the Appellant;A.K. Sen and Jajneshwar Majumdar, for the Respondent

Judgement

G.N. Das, J.—This is an appeal from the judgment of Bose J, dated February 29, 1952 dismissing an application filed by the appellant under Article 226 of the Constitution.

2. The facts as they appear from the records of the case are as follows:

3. The appellant was appointed Assistant Sub-Inspector of Police and was promoted on 16-8-1937 to the rank of officiating Sub-Inspector of Police by the Superintendent of Police and continued as such till 2-1-1945 when he was made a Probationary Sub-Inspector of Police. The appellant was confirmed as a Sub-Inspector of Police on 2-1-1946. The appellant was, at all material times, the officer in charge of the Baranagar Police Station in the District of 24-Parganas. Under instructions from the Superintendent of Police, 24-Parganas, an inspection was made by the Sub-Divisional Police Inspector, Baranagore on 19-5-1951.

The inspection revealed several cases of irregularities, lack of supervision and control, breach of discipline and dereliction of duty on the part of the appellant.

A report was submitted to the Superintendent of Police who made a personal inquiry on 25-5-1951. The latter directed proceedings to be taken against the appellant and pending inquiry, passed an order of suspension on 27-5-1951. A telephonic message was sent on the same day to the appellant and an order placing the appellant under suspension from 1-6-1951 was issued by the Superintendent of Police on 27-5-1951. The order of suspension set out the charges and directed the appellant to join the Police lines and attend Rajira etc.

4. On 14-6-1951, the appellant applied to the Deputy Inspector General of Police, Central Range who ordered that "there was no reason to revise the order."

5. On 24-6-1951, a set of charges 50 in number, was served on the appellant and the latter was called upon to show cause why he should not be dismissed, discharged, reduced or otherwise severely dealt with for gross misconduct, disobedience of order and neglect of duty.

6. On 30-6-1951, the appellant was informed on the telephone that the Sub-Divisional Police Officer, Baranagar would hold the inquiry on the following day.

7. The appellant applied to the Superintendent of Police, 24-Parganas, praying that he might be sent up for trial before a Magistrate u/s 29, Police Act, 1861, but the prayer was rejected.

8. On 9-7-1951, the appellant moved this Court under Article 226 of the Constitution and obtained a Rule Nisi. As already stated, the application was ultimately dismissed.

9. The appellant has accordingly filed this appeal.

10. Mr. Mitra, learned Advocate who has appeared in support of the appeal has pressed certain contentions which I shall take up seriatim.

11. The first contention of Mr. Mitra is that the order of suspension made by the Superintendent of Police was in contravention of Article 311(1) of the Constitution. The point was not specifically raised in the petition under Article 226 of the Constitution. Moreover, Article 311(1) speaks only of dismissal or removal. Suspension is neither dismissal nor removal. As such Article 311(1) has no application.

12. Moreover, the appointing authority in the present case was the Superintendent, of Police and not the Deputy Inspector General.

13. Article 311(1) refers to the authority by which the holder of a civil post was appointed.

14. In the petition under Article 226, the appellant did not specifically state when he was first appointed and what was the rank of his first appointment.

15. The service records show that he was first appointed as Assistant Sub-Inspector and was later promoted to the rank of Sub-Inspector. The records show that he was appointed as Probationary Sub-Inspector in 1945 and was confirmed

in that rank in 1946. At the relevant dates, the Police Regulations of 1943 were in force. Regulations 741 and 830 (g) provide that in case of persons promoted from the rank of Assistant Sub-Inspector to that of Sub-Inspector, the appointing authority is the Superintendent of Police.

16. The first contention has, therefore, no force.

17. The second contention of Mr. Mitra is that the order of suspension was made by the Superintendent of Police without giving the appellant a reasonable opportunity of showing cause against the proposed action and as such the order contravenes Article 311(2) of the Constitution.

18. Now Article 311(2) speaks only of dismissal, removal or reduction in rank. The Sub-Article does not specifically mention suspension. It is contended that suspension is in Substance, reduction in rank. Reliance is placed on the decision in -- AIR 1949 118 (Nagpur) .

19. The view taken in the case last cited has been dissented from by Bose J, in --- Kali Prosanna Roy Vs. State of West Bengal, (B).

20. Mr. Mitra drew our attention to Regn. 861(g), note to Regn. 880, and Fundamental Rules 43 (b), 52, 53 and Bengal Service Rules 70 to 74 and 71 (Part I) in support of his submission that an order of suspension affects the pay and emoluments of the office. Reference was also made to Regn. 881 to show that the order of suspension also affects the privileges of the office.

21. It is true, as pointed out in the Nagpur case, that the order of suspension disentitles the holder of the post from discharging his duties and drawing his salary.

22. Undoubtedly the holder of the post does not enjoy, during the period of suspension, the privileges, pay and emoluments of his office. The deprivation is, however, temporary. The question is whether Article 311(2) contemplates only a temporary privation,

23. Article 311 is intended to provide constitutional safeguards against executive action which has a permanent disabling effect on the holder of a civil post.

24. The sub-article 311(2) operates at the final stage of the disciplinary proceedings entailing the consequences of either dismissal or removal. The sub-article is not intended to apply at the initial stage of the proceedings viz., suspension with a view either to dismissal or removal. The suspension may as well be followed by reinstatement. This view is supported by the nature of the other penalties prescribed viz., dismissal removal which have a permanent effect.

25. The exigencies of administration may require an immediate removal of the incumbent of an office pending inquiry. In such a case the very presence of the incumbent in the office, not to speak of his being permitted to discharge the functions of his office, may be undesirable. If in such a case, a reasonable opportunity of showing cause has to be given to the incumbent before the

incumbent can be placed under suspension, the consequence may be frustration of a proper inquiry. A construction which leads to unreasonable results, should be avoided.

26. It may also be pointed out that Section 7 of the Police Act, 1861, distinguishes between reduction in rank and suspension. The two forms of penalties are therefore separate. Article 311(2) of the Constitution must be presumed to have maintained the distinction.

27. For the above reasons, I respectfully agree with the views of Bose J. in the case cited above. I hold that an order of suspension is not equivalent to reduction in rank within Article 311(2) of the Constitution.

28. Moreover, as already stated, two inquiries were made in this case before the order of suspension was made.

29. On the above grounds, I overrule the second contention raised by Mr. Mitra.

30. The third contention of Mr. Mitra is that the proceedings are invalid inasmuch as the State Public Service Commission was not consulted as required by Article 320(3)(c) of the Constitution.

31. Article 320(3)(c) provides that the State Public Service Commission shall be consulted on all disciplinary matters affecting a person serving under the Government of a State in a civil capacity.

32. The first question is whether Article 320(3)(c) applies to all civil servants of the State.

33. Though the sub-Article is widely worded, in my opinion, the sub-Article was intended to apply only to the civil servants referred to in Sub-article (1) Article 320 viz., those civil servants for whose appointment an examination has to be held by the Public Service Commission. I cannot persuade myself to hold that a menial servant of the humblest category can claim the privileges conferred by Article 320(3).

34. Assuming however that Article 320(3)(c) is applicable to a civil servant like the appellant, two further matters have to be considered.

35. In the first place, whether the proceedings partake of the nature of disciplinary matters. In my opinion, the answer must be in the affirmative.

36. In the next place, we have to consider the consequences of a failure to comply with the provisions of - Article 320(3)(c).

37. Article 320(3)(c) is a reproduction of. Section 266 of the Government of India Act, 1935-with certain modifications.

38. In -- "Purnandu Nath v. Tapan KumarV Matter No. 7 of 1949 (Cal) (C) which fell to be decided u/s 266, Government of India Act, 1935, it was held by Banerjee J. that the provisions of Section 266 are directory and a failure to

consult the Public Service Commission before appointing Tapan Kumar Chatterji was held not to have invalidated the appointment.

39. In my opinion, a similar construction must be put on Article 320(3)(c).

40. The use of the word "shall" is not conclusive of the matter.

41. In -- AIR 1945 67 (Federal Court) it was held that the direction as to consultation laid down by Section 256, Government of India Act, 1935, which was also couched in similar terms, was directory and not mandatory and non-compliance with it did not render an appointment otherwise regularly and validly made inoperative.

42. Neither does the proviso in Clause (3) of Article 320 clinch the matter.

43. The fact that Article 320(3) requires consultation and that Article 323(3) assumes that the advice given by the Public Services Commission may not be accepted in certain cases, indicates that a failure to comply with the direction in Article 320(3) does not render the disciplinary proceedings inoperative. I

44. The observations of Bose J. in --"Munna Lal v. Harold R. Scott" 57 Cal WN 157 (E) to the contrary effect are obiter dicta.

45. In the last mentioned case, it was however held that The Bengal Public Service Commission Regulation 1937 has been saved by Article 313 of the Constitution, read with Clause 26 of the Adaptation of Law and Order 1950, issued under the Constitution, and that it was clear from the said regulation that it was "not necessary to consult the Public Service Commission when an Officer is suspended in order to facilitate proper investigation of a case against the suspended officer or for starting departmental proceedings against such Officer or for making an order of dismissal by an officer competent to pass such order" (p. 160).

46. The result of the above discussion is that the third contention raised by Mr. Mitra has no substance.

47. The fourth contention of Mr. Mitra is that Regulation 881 which provides for compulsory residence in the lines unless specially, exempted and presence in the line from Retreat to Reveille and attendance at all parades and roll calls during 24 hours, is void of Article 21 of the Constitution.

48. Reference was made to the decision in -- "Ram Gopal Ghosh v. King-Emperor" 2 Cal LJ 616 (F). That case is clearly distinguishable. The confinement directed in that case, was for an unlimited period; and as such it was contrary to Section 7(b), Police Act, 1861. The case of -- Ram Gopal Adhikari Vs. Emperor, , merely follows -- "Ram Copal"s case (G)", just cited.

49. As Bose J. pointed out in his judgment the argument is of academic importance in this case. It may be noted that on 26-9-1951 the appellant prayed for exemption from the requirements of the regulation. The prayer was granted

by an order passed in November 1951 and the appellant has been permitted to live with his family and has been exempted from roll calls and parades except the muster parade.

50. There is therefore no force in the fourth contention.

51. The fifth contention of Mr. Mitra relates to the invalidity of Section 7, Police Act, 1861.

52. It is first contended that Section 7 is void of Article 311 of the Constitution. It appears, however, that Section 7 was modified and the opening words of Section 7 now read as follows "subject to the provisions of Article 311 of the Constitution and to such rules". On Mr. Mitra's attention being drawn to the above fact, this ground was not persisted in.

53. It is also argued that Section 7(b) which provides for confinement to quarters for a term not exceeding fifteen days is void of Article 19(1)(d) of the Constitution which guarantees to every citizen the right "to move freely, throughout the territory of India". The scope of the sub-Article was explained in -- " A.K. Gopalan Vs. The State of Madras, (H). Article 19(1)(d) has "to be read with Article 21 which lays down, that a person may be deprived of his personal liberty according to procedure established by law, which means valid law. Section 7, Police Act, 1861 is valid law being saved by Article 19(5). The restriction imposed by Section 7 is reasonable and is necessary in the interest of the general "public. A contrary view will render all penal laws inflicting confinement in Jail invalid.

54. The argument has no force.

55. It is next contended that Section 7 is void of Article 14 of the Constitution.

56. It is pointed out that Section 7 provides for infliction of punishment by way of dismissal, suspension, reduction in rank on any police officer of the subordinate ranks.

57. It is urged that Section 7 thus discriminates between officers of subordinate ranks and superior ranks in the vital matter of infliction of punishments.

58. Article 14 reads as follows: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

59. Article 14 thus forbids legislation which improperly discriminates between classes of persons arbitrarily selected from person who stand in the same relation to certain privileges and confers such privileges on the class so selected where the classification is reasonably grounded, the mere fact that the impugned legislation confers special benefits on a class only, does not offend Article 14.

60. Reference may be made to the cases of -- " Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, (1); -- The State of West Bengal Vs. Anwar Ali Sarkar, (J); -- Kathi Raning Rawat Vs. The State of Saurashtra, (K).

61. I may usefully quote the following observations of Mukherjea J. in the last case:

"A legislature for the purpose of dealing with the complex problems that arise out of an infinite variety of human relations, cannot but proceed upon some sort of selection or classification of persons upon whom legislation is to operate. The consequences of such classification would undoubtedly be to differentiate the persons belonging to that class from others, but that by itself would not make the legislation obnoxious to the equal protection clause. The legislature is given the utmost latitude in making the classification but it is only when there is palpable abuse of power and the differences made have no rational relations to the objectives of the regulations, that the necessity of judicial interference arises."

62. The above principle was applied in -- Ameerunnissa Begum and Others Vs. Mahboob Begum and Others, (1) where the Waliuddowla Succession Act, 1950 was held to be discriminatory, the Act having shut out the rights of 2 groups of heirs of Nawab Waliuddowla,

63. The above principle was also applied in -- Ram Prasad Narayan Sahi and Another Vs. The State of Bihar and Others, (M) where it was held that the Sathi Lands (Restoration) Act, 1950 was discriminatory.

64. Mukherjea J. who delivered the leading judgment reaffirmed the principle enunciated in -- "Ameeroonnissa Begum"s case" (1) cited above. The learned Judge after referring to the presumption of constitutionality in favour of a legislative enactment observed:

"But when on the face of a statute, there is no classification at all, and no attempt has been made to select any individual or group with reference to any differentiating attribute peculiar to that individual or group and not possessed by others, the presumption is of little or no assistance to the State (p. 220)."

65. In the present case however, a classification between subordinate and superior police officers cannot be said to be unreasonable. The two classes of officers are not similarly circumstanced. Their duties are different. The need of control and discipline is different. Administrative convenience also demands such classification. Gradation of service is universal. Hence the classification made in Section 7, is both reasonable and necessary. In my opinion Section 7 is not hit by Article 14 of the Constitution.

66. The fifth contention of Mr. Mitra must be overruled.

67. The sixth contention of Mr. Mitra is that the charges laid against the appellant were of a serious nature and proceedings u/s 35. Police Act, 1861 and not merely departmental proceedings contemplated in Regn. 861 should have been resorted to.

68. A perusal of the Police Act 1861, shows that the Act contemplates two kinds

of proceedings viz., departmental proceedings u/s 7 of the Act and judicial proceedings u/s 35 of the Act.

69. Section 7 makes the superior police officers viz., The Inspector General, Deputy Inspector General, Assistant Inspector General and District Superintendent of Police the punishing authority. The section applies to police officers of the subordinate ranks. The punishments to be inflicted are dismissal, suspension, or reduction in rank, fine not exceeding one month's pay, confinement to quarters, for a term not exceeding fifteen days, with or without punishment drill, extra guard fatigue or other duty, deprivation of good conduct pay, and removal from any office of distinction or special emolument.

70. Section 7 deals with cases of carelessness or negligence in the discharge of duty or unfitness,

71. In case of serious charges, the provisions of Regn. 861 viz., framing of charges etc. apply.

72. Proceedings u/s 35, Police Act 1861 are, on the other hand, of a penal nature. Section 35 makes a Magistrate of the first class the trying authority vide Section 3(2), Criminal P. C. The section applies to a police officer above the rank of a constable. The charges should be those under the Act e.g., under Sections 28, 29. Section 29 contemplates violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or withdrawal from the duties of his office without permission, or failure to report oneself for duty on the expiration of leave, without reasonable cause, engaging without authority in any employment other than police duty or cowardice or any unwarrantable personal violence to any person in one's custody.

73. The penalty prescribed is penalty not exceeding three months' pay, imprisonment, with or without hard labour for a period not exceeding three - months or both.

74. Sections 7 and 35 are thus different in their scope and application. The proceedings are not alternative but cumulative, vide Regns. 862, 863.

75. There is no illegality in resorting to (either or both proceedings).

76. It is also contended that Regns. 862, 863 are void of Article 20(2) of the Constitution. The short answer is that Article 20(2) does not apply to departmental proceedings vide the cases of -- " Suresh Chandra Vs. Himangshu Kumar Roy and Others, (N); -- In Re: C. Devanugraham, (O) and -- Maqbool Hussain Vs. The State of Bombay, (P).

77. The sixth contention of Mr. Mitra accordingly fails.

78. The seventh contention of Mr. Mitra is that the Sub-divisional police officer had no power to hold the inquiry, as he was not the appointing authority.

79. The argument proceeds on a misconception of Article 311(1) of the

Constitution. Article 311(1) speaks of the passing of the order of dismissal, or removal. It does not apply to the preliminary stages of the proceedings viz., the stage of inquiry.

80. The sub-divisional Police Officer was thus competent to hold the inquiry. In this case, there was a further personal inquiry by the Superintendent of Police and the charges were framed and approved of and signed by him. The proceedings were also drawn up at his instance after he had applied his mind to the matter.

81. There is thus no force in the seventh contention of Mr. Mitra.

82. The eighth contention of Mr. Mitra is rested on a statement to the Press made by the Inspector General of Police a few days before the framing of the charges. The report appeared in the columns of the daily "Basumati" in its issue of 16-6-1951.

83. Bose J. has pointed out that the statement was made to the Press Reporters of the paper--in answer to certain allegations against the police authorities made by certain news-1954 Cal./9 & 10 papers. Bose J. has rightly observed that the above fact does not justify the presumption that the police authorities will not deal fairly with the case against the appellant.

84. In my opinion, there is no substance in the eighth contention of Mr. Mitra.

85. The ninth contention of Mr. Mitra is based on the allegation in the petition under Article 226 of the Constitution that the inquiring officer, the Sub-divisional Police Officer was inimically disposed towards the appellant and that the report submitted by him was biased and mala fide.

86. The charge of hostility has been denied in a counter affidavit sworn to by the sub-divisional police officer.

87. The further allegations made by the appellant in his affidavit in reply cannot be considered.

88. In any event, before the proceedings were initiated the Superintendent of Police himself made the inquiry and the charges were framed by him.

89. Moreover, the Sub-Divisional Police Officer has since been transferred and he would have no hand in the further stages of the proceedings which may have to be taken against the appellant.

90. In these circumstances, I agree with Bose J, in holding that there is no substance in the ninth contention of Mr. Mitra.

91. I have dealt with all the contentions pressed by Mr. Mitra in support of the appeal.

92. I have found that the contentions have no force.

93. The appeal must accordingly fail.

94. In the above view I have refrained from considering an argument put forward by Mr. Sen, the learned Junior Standing Counsel that the holder of Civil post under the State, as the appellant is, holds his office at the pleasure of the Governor and that he cannot in a civil action appeal to the rules framed by the State as a means of redress against executive action and that his remedy if any is by administrative process.

95. I have not also dealt with the question whether the proceedings under the Police Act and Regulations partake of the character of quasi-judicial proceedings and whether they can be reached by the issue of the writs prayed for.

96. In the result the appeal is dismissed but in the circumstances of the case, there will be no order for costs in this appeal.

97. F. M. A, 159 of 1952: This is an appeal from the judgment of Bose J. dated 29-2-1952 dismissing an application filed by the appellant under Article 226 of the Constitution.

98. The allegations made in the petition under Article 226 are as follows:

99. The appellant was appointed a constable in the Bengal Police Service on 4-8-1938 and was promoted to the rank of Assistant Sub-Inspector in March 1944 and was officiating as such at all material times; that on 5-3-1951. he received an order from the Superintendent of Police suspending him, pending enquiry into certain charges framed against him; that on April 26, 1951, he received a copy of charges signed by the Circle Inspector of Police; that the alleged charges were of extortion, illegal gratification and assault; that in his petition dated 18-5-1951 filed before the Superintendent of Police, he denied the charges and prayed for trial before a Magistrate, that the Superintendent of Police did not accede to the prayer, that his petition to the Deputy Inspector General was not forwarded on the ground that he will have opportunity of putting forward his grounds in an appeal before the Inspector General of Police, Central Range.

In his petition, the petitioner challenged the provisions for departmental inquiry as provided in the Police Act and Police Regulations as illegal and ultra vires on the grounds stated in the petition and prayed for the issue of appropriate writs.

100. On 9-7-1951, Bose J. issued a Rule Nisi.

101. The Rule Nisi was ultimately discharged on 29-2-1952.

102. The appellant has accordingly preferred this appeal.

103. Mr. Mitra learned Advocate for the appellant has urged most of the grounds raised in F. M. A, 158 of 1952. I have negatived them in my judgment in that appeal, just now pronounced.

104. In addition to the said points, Mr. Mitra has raised two other points.

105. It is contended that the appellant has been reduced in rank viz., from his post of Assistant Sub-Inspector to that of a constable, without affording him an opportunity of shewing cause.

106. This point was not made in the petition under Article 226 of the Constitution. The question involves an inquiry into facts and as such, the point can hardly be gone into, as was rightly pointed out by Bose J. Moreover at the time of hearing before Bose J. Mr. Banerji learned Senior Government Pleader pointed out that the appellant was an officiating Assistant Sub-Inspector (on probation). This has not been controverted. As such the substantive post of the appellant was that of a constable and no question of reversion arises. In such a case, no proceedings have to be taken under the Police Regulation, vide Regn. 743, clauses (g) (ii) and (iv).

107. It is further contended that the charges against the appellant include a charge of bribery which is a cognizable offence by virtue of the provisions of Anti-Corruption Act (11 of 1947) and that as such the appellant should have been placed on his trial before a competent Magistrate and not dealt with by departmental proceedings. Reference was made to --Regns. 25, 243 and 244 of the Police Regulations and Ss, 154, 157, Criminal P. C.

108. I have dealt with this point in a different context in dealing with the sixth contention of the appellant in F. M. A. 158 of 1952.

109. It is discretionary with the Police Authorities to choose the remedy available to them.

110. The contention of Mr. Mitra has therefore no Substance.

111. This appeal accordingly fails and is dismissed.

112. In the circumstances of the case, there will be no order for costs in this appeal.

113. F. M. A, 136 of 1952: This appeal is directed against a judgment of Bose J.

114. By his order Bose J, dismissed in limine an application moved before him on that day for the issue of appropriate writs under Article 226 of the Constitution.

115. The allegations in the petition are as follows:

116. The appellant was appointed a constable in the Bengal Police Service on 9-12-1933, He was appointed a Head constable with effect from 19-2-1949 in pursuance of order No. 21 dated 9-2-1951 of the Deputy Inspector General of Police, Western Range; that at the material time he was posted at Debipur Checking Gate, Burdwan along with six other constables; that on 7-5-1951, Mr. R. Gupta, the Superintendent of Police, Burdwan, accompanied by the Inspector, District Intelligence Branch came in a lorry loaded with rice and other articles, driven by Sasadhar Mukherji to the Debipur checking post; that the allegation of the respondents is that the appellant and one Kamalapati Missir Constable No.

734 who had driven a car occupied by the Sub-Inspector of Police and three armed constables to the place, demanded a sum of Rs. 15/- from Sasadhar Mukherji on the ground that the rear lights of the lorry driven by Sasadhar were not functioning effectively; that as rice was discovered on search the Civil Supply Officers arrested the Superintendent of Police, the Inspector District Intelligence-Branch and the driver Sasadhar; that thereafter the Superintendent of Police disclosed his identity and took down the names of the officer-in-charge and other members of the police force; that on 9-5-1951 the appellant was served with an order of suspension and thereafter on 12-5-1951 certain charges of illegal gratification were framed against the appellant under orders of the Superintendent of Police.

The charge-sheet was signed by the Deputy Superintendent of Police with an endorsement of approval by the Superintendent of Police, that thereafter the Deputy Superintendent of Police drew up proceedings being No. 28 of 1951 and recorded evidence of witnesses including that of the Superintendent of Police (P W. 3); that on 29-6-1952 the appellant's prayer for inquiry by another Superintendent of Police was rejected on the ground that "there is no bar in the P. R. B. against the S. P.'s complaining as well as passing final orders" that on a perusal of the records of the said proceedings, the Superintendent of Police dismissed the appellant from the date of his order dated 10-8-1951. The appellant was not given a hearing. The appellant preferred an appeal to the Deputy Inspector General, Western Range. The appeal was dismissed and the appellant came to know of the order on 30-11-1951. On 9-2-1952 the appellant moved this Court under Article 226 of the Constitution. Bose J. did not issue any Rule Nisi but dismissed the application by his order dated 5-2-1952.

117. Against the said order, the appellant has preferred this appeal.

118. Mr. Ghose, learned Advocate appearing on behalf of the appellant has raised several contentions, some of the contentions are as follows:

(1) The appellant was dismissed by an authority subordinate to that by which he was appointed. The allegation on behalf of the appellant is that he was appointed to his present substantive post by the Deputy Inspector General, Western Range. The order of dismissal was made by the Superintendent of Police who is subordinate to the Deputy Inspector General. This argument involves an inquiry into facts viz., who was the appointing authority.

(2) The allegation in the petition is that the order of dismissal was made without giving the appellant a hearing, that the prosecutor, the Superintendent of Police, was himself the Judge, and that in passing the order of dismissal, the Superintendent of Police relied on his own testimony. This question also involves an inquiry into facts. A question of law also arises viz., whether an order of dismissal made in violation of the principles of natural justice can be quashed under Article 226 of the Constitution.

(3) Whether on an application under Article 226 of the Constitution the Court can

issue a writ where the proceedings have been initiated and carried on in violation of Regn. 861 (O) of the Police Regulations.

119. Certain other points were also raised. It is not necessary to specify these grounds; because in my opinion, this is a case where the respondents should be asked to shew cause in view of the fact that some of the question's are not pure questions of law but involve questions of fact.

120. In my opinion, the judgment of Bose J., "must be set aside and the case remitted to the learned Judge hearing applications under Article 226 of the Constitution. Notice should be given to the respondents to shew cause. The respondents will be given an opportunity to file their affidavit if any and the appellant will also have opportunity to file an affidavit in reply if any.

121. The application will then be heard and disposed of in accordance with law.

122. The appeal is accordingly allowed and the case remitted to the learned Judge as stated.

123. There will be no order for costs in this appeal.

Debabrata Mookerjee, J.

124. I agree.