
(1963) 10 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 41 of 1958

Shivabasappa Shivappa

APPELLANT

Vs

State of Mysore and Others

RESPONDENT

Date of Decision : 11-10-1963

Acts Referred:

Bombay Police Rules — Rule 17, 18
Constitution of India, 1950 — Article 226, 310, 311

Citation : (1964) 1 LLJ 693 : (1964) 1 MysLJ 15

Hon'ble Judges : K.S. Hegde, J; Ahmed Ali Khan, J

Bench : Division Bench

Advocate : V.S. Malimath, for the Appellant; B. Venkataswami, High Court Government Pleader, for the Respondent

Judgement

Hegde, J.—This petition under Art. 226 of the Constitution came up before this Court for hearing on 26 March, 1959. This Court allowed the petition and set aside the punishment imposed on the petitioner on the sole ground that the inquiry held against the petitioner was vitiated because, the examination-in-chief of the witnesses examined during the inquiry was not made in the presence of the petitioner. Aggrieved by that order, the State took up the matter in appeal to the Supreme Court. The Supreme Court set aside the decision of this Court and remanded the case for disposing of the questions which had not been considered at the earlier hearing. The decision of the Supreme Court is in State of Mysore Vs. S.S. Makapur, . In the last paragraph of the judgment, the Supreme Court observed thus :

"This finding (finding relating to the validity of the enquiry held) does not dispose of the entire matter. It is contention of the respondent that the Deputy Inspector-General of Police was not entitled in revision to enhance the punishment and this question has not been decided by the learned Judges. It is, therefore, necessary to remand this case for hearing on this and all other issues which might arise for decision. We accordingly set aside the order in appeal and remand the case for

hearing on the other points in this case. Costs of this appeal will abide the result of the hearing in the Court below."

2. It is not necessary to set out the facts of the case in detail. Those facts are available from the decision of this Court rendered on 26 March, 1959. But in order to make our order self-contained, we may briefly refer to the material facts.

3. The petitioner was a sub-inspector of police in the former Bombay State. On 24 May 1954 certain charges were framed against him on the allegation that he was guilty of dereliction of duty. The District Superintendent of Police, Belgaum, inquired into those charges. After the enquiry the District Superintendent of Police issued on 14 December, 1954 a notice to the petitioner proposing to reduce his salary by Rs. 5 per month and that for a period of two years. The petitioner made his submissions as regards the proposed punishment. After taking into consideration the submissions made by the petitioner, the District Superintendent of Police ordered, by his order dated 5 January, 1955, the reduction of the salary of the petitioner from Rs. 125 to Rs. 120 per month for a period of one year. Unfortunately for the petitioner, he appealed against the order to the Deputy Inspector-General of Police who not merely dismissed his appeal on 8 September, 1955, but at the same time issued a notice to him requiring him to show cause why he should not be removed from service. After considering the explanation offered by the petitioner, the Deputy Inspector-General of Police passed orders on 5 July, 1956 removing the petitioner from the force. The petitioner's appeal to the Government as against the order of the Deputy Inspector-General of Police was unsuccessful. Ultimately he came up to this Court in Writ Petition No. 41 of 1958.

4. The only question that we have to consider now is whether the Deputy Inspector-General of Police had jurisdiction to enhance the punishment imposed by the Superintendent of Police. When the petitioner filed his appeal to the Deputy Inspector-General of Police, the rules framed under the Bombay Police Act, 1950, were in force. But those rules were replaced by new rules on 27 April, 1956. There is some controversy between the parties as to whether the old or the new rules are applicable to the facts of this case. It is unnecessary to pronounce on that controversy, as, in our view, the Deputy Inspector-General of Police had no power to enhance the punishment either under the Old rules or under the new rules. Before proceeding to consider the relevant rules, it will be useful to refer to the decision of the Supreme Court in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, . Therein the Court laid down that :

"Rules made under a statute must be treated for all purposes of construction of obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation. Subject to the overriding power of the President or the Governor under Art. 310 of the Constitution as qualified by the provisions of Art. 311, the rules governing disciplinary proceedings cannot be treated as administrative directions, but shall have the same effect as the provisions of the

statute whereunder they are made, in so far as they are not inconsistent with the provisions thereof. The statutory rules cannot be described as, or equated with, administrative directions. Rules made under the Police Act are not administrative directions. The Police Act and the rules made thereunder constitute a self-contained code providing for the appointment of police officers and prescribing the procedure for their removal. It follows that where the appropriate authority takes disciplinary action under the Police Act or the rules made thereunder, it must conform to the provisions of the statute or the rules which have conferred upon it the power to take the said action."

5. It is admitted that the punishment imposed on the petitioner by the District Superintendent of Police, Belgaum, is a punishment which is appealable. It is also admitted that the appeal lay to the Deputy Inspector-General of Police. The provision under which the appeal appears to have been filed is contained in rule 555 and the scope of the appellate power is mentioned in sub-rule (9) to rule 557. That sub-rule reads :

"(9) On every petition of appeal the appellate authority, after examining the proceedings, may either annul, reverse, modify or confirm the order appealed from, or may require such further inquiry as it may think necessary to be made by the authority passing the order. The appellate authority should invariably follow the instructions in Clause (b) sub-rule (30) of rule 545 in passing its order in appeal. The instructions in sub-rule (20) of the rule as regards "brief facts of the case" and "summing and final orders" should be followed, with the necessary changes, in passing orders in appeal."

6. The sub-rule does not empower the appellate authority to enhance the punishment imposed by the disciplinary authority. Sub-rules (13) and (14) of rule 554 provide for the exercise of revisional powers. Sub-rule (13) reads :

"(13) On reviewing the returns the Inspector-General may call for and examine the papers in any case of punishment where an officer appears to him to have been improperly punished and may confirm, reduce, enhance, alter or cancel the punishment inflicted."

"(14) The appellate powers of the Deputy Inspector-General do not include powers of revision. He is, however, competent to exercise the power of revision in cases in which a head constable or constable has been punished by a Superintendent of Police. In any case in which the Deputy Inspector-General on a scrutiny of the return considers that the Superintendent of Police's order should be revised he should call for the papers of the proceedings and; if competent to do so, revise the order himself and in other cases bring it to the notice of the Inspector-General of Police."

7. From these rules it is clear that the Deputy Inspector-General of Police had no power to enhance the punishment imposed. Even under the old rules, the enhancement could only have been ordered by the Inspector-General of Police. Therefore, the old rules do not help the respondents. The learned Government

Pleader invited our attention to an order said to have been issued by the Government of Bombay in 1949 empowering the Deputy Inspector-General of Police to exercise powers of revision even in cases where sub-inspectors have been punished by the Superintendent of Police. The old rules to which we have referred, as mentioned earlier, were framed under the Bombay Police Act, 1950. That being so, any order made by the Government prior to the passing of the said Act cannot be considered to have been in force at the material time. If they were in force they would have been incorporated in the rules framed under the Bombay Police Act, 1950.

8. Now coming to the new rules, they make matters much worse for the respondent. Rule 11 of the rules that came into force on 27 April 1956 lays down :

"No police officer to whom these rules apply shall be departmentally punished otherwise than in accordance with the provisions of these rules."

9. Rule 6 deals with the appellate power. The appellate authority is not conferred with any power to enhance the punishment imposed by the disciplinary authority. On the other hand, such a power is conferred on the State Government as can be seen from rules 17 and 18. Rule 17 says :

"Rule 17. - (1) The State Government shall alone have the power of revision and revision shall lie only in respect of punishment which are appealable.

(2) The State Government may of its own motion or otherwise call for the record of any case in which an order has been made by an authority subordinate to it in the exercise of any power conferred on such authority by these rules and may :

- (a) confirm, modify or reverse the order,
- (b) direct that further enquiry be held in the case,
- (c) reduce or enhance the punishment inflicted by the order,
- (d) make such other order in the case as it may deem fit :

Provided that where it is proposed to enhance the punishment inflicted by any such order the police officer concerned shall be given an opportunity of showing cause against the proposed enhancement.

(3) Every application for revision shall be made within two months of the date on which the applicant was informed of the orders complained against, the State Government may, in its discretion for good cause shown, relax that period."

Rule 18 lays down :

"The Inspector-General may in respect of punishments which are appealable, call for records of the case of his own motion or otherwise to satisfy himself about the propriety or correctness of an order passed and if he is of the opinion that the order passed is improper, he may forward the proceedings to the State

Government with his report containing recommendations for revision."

10. For the reasons mentioned above, we are of the opinion that the Deputy Inspector-General of Police was not competent to enhance the punishment imposed on the petitioner. Therefore, we quash the order of the Deputy Inspector-General of Police made on 5 July, 1956 dismissing the petitioner from service. The order passed by the Superintendent of Police on 5 January 1955 will stand.

11. The respondent shall pay the costs of the petitioner both in this Court as well as in the Supreme Court. Advocate's fee in this Court is fixed at Rs. 100.

Ahmed Ali Khan, J.

12. I agree.