

(1974) 09 BOM CK 0002
In the Bombay High Court
Case No : S.A. No. 72 of 1972

State of Maharashtra

APPELLANT

Vs

Bhimrao Vithal Jadhav

RESPONDENT

Date of Decision : 21-09-1974

Acts Referred:

Bombay Police Act, 1951 — Section 1, 23, 24, 25(2), 6(1)
Bombay Prohibition Act, 1949 — Section 66(1)
Civil Procedure Code, 1908 (CPC) — Section 80
Penal Code, 1860 (IPC) — Section 161

Citation : (1976) 2 LLJ 365 : (1976) MhLj 475 : (1974) MhLj 807 : (1973) MhLj 39

Hon'ble Judges : P.M. Mukhi, J;B.N. Deshmukh, J

Bench : Division Bench

Judgement

Deshmukh, J.—This appeal has been referred to a Division Bench as it was stated by the Assistant Government Pleader before the learned single Judge that the question as to who is the head of the Police Department is a matter of general importance and an authoritative pronouncement of the High Court is necessary for the guidance of the Government. On that statement being made the appeal itself has been referred to a Division Bench.

2. The facts leading to this litigation are very few and are not in dispute. The respondent, original plaintiff, was a police constable attached to the Juna Rajawada Police Station at Kolhapur. While he was returning after seeing a cinema show in the night of August 15, 1959, he was accosted by the Officers and men of the Anti-Corruption Bureau. As he was smelling of alcohol he was produced before the Civil Surgeon and his blood was obtained for examination. The clinical examination showed that though the pupils were dilated and he was smelling of alcohol, he was able to control himself, and was not under the influence of alcohol. The chemical analysis of the blood showed that the concentration of alcohol in his blood was 0.49 per cent W/v. As the Officer-in-Charge of the investigation felt that this was below the percentage of 0.5 which

required to raise a presumption for having drunk prohibited liquor so as to constitute an offence under S. 66(1)(b) of the Bombay Prohibition Act, 1949, he made a report to the judicial Magistrate claiming "C" summary. That was granted.

3. However, the Superintendent of Police district Kolhapur, felt that a departmental enquiry was necessary for the alleged misconduct of the constable in consuming alcohol. He was of the view that the misconduct if proved, was of a nature where the constable was no fit to be retained in the Police force. He, therefore directed that a departmental enquiry be held. Accordingly a departmental enquiry was held which resulted in the dismissal of the constable. He, thereafter, served an appropriate notice under S. 80 of the CPC and filed the present suit.

4. Before the trial Judge, the first question that was raised was that the granting of "C" summary amounted to a judicial order acquitting the plaintiff-respondent. The next question raised was that after such an acquittal by a criminal Court, the State Government or the Superintendent of Police was incompetent to hold a departmental enquiry. Such an action suffered from the vice of double jeopardy. The third point raised was that assuming a departmental proceeding was permitted even after an acquittal by a criminal Court, provisions of para 445 of the Bombay Police Manual have not been followed and an officer who was the departmental head has not applied his mind to the facts and circumstances of the case before sanction was accorded to start a departmental proceedings. To be more explicit, it was alleged that the Inspector General of Police was the head of the department and without his application of mind and without his order that, in spite of an acquittal by a criminal Court, departmental proceedings was necessary with a view to consider whether it was in the public interest to retain the plaintiff-constable in service, the proceedings were unauthorised and bad.

5. The learned trial Judge held in favour of the plaintiff on all the points. In the appeal carried to the District Court, the learned District Judge came to the conclusion that there is no prohibition to hold a departmental enquiry even though there is an acquittal by the criminal Court. He, however, agreed with the conclusion of the trial Judge that granting "C" summary was a judicial order and it amounted to an acquittal of the plaintiff-respondent. On the third point he also agreed with the trial Judge and held that the departmental head for the purpose of para 445 was an Inspector General of Police so far as the police force was concerned. Since there was no evidence that the Inspector General had ever applied his mind to the facts and circumstances of the case, and it further appeared that it was the District Superintendent of Police who decided to hold an enquiry, it was an unauthorised proceeding and had to be quashed. The final conclusion of granting a decree in favour of the plaintiff respondent was thus upheld by the District Court. Being aggrieved the State Government has filed this appeal.

6. Only two questions of law are being raised in the second appeal. The first is whether a departmental enquiry could be undertaken for the purpose of deciding

whether a delinquent is fit to be retained in public service, even though he has been acquitted by a criminal Court in respect of the charge framed against him, and the second important question raised related to the real departmental head so far as the police force is concerned. It is sought to be argued that the District Superintendent of police will be the appropriate officer, who has the power and the right to appoint a constable in service and therefore, to dismiss him and it is not necessary that the Inspector General of Police must apply his mind after an acquittal by criminal Court for deciding whether a departmental proceeding should be undertaken. In other words, so far as a person in the position of the plaintiff-respondent is concerned, a District Superintendent of Police should be treated as departmental head and not the Inspector General of police.

7. So far as the first point is concerned, the matter seems to be concluded by the earlier judgment of this Court. In *Babarao Dagadu v. The State* 1972 Mah. L.J. 604 by a Division Bench of this Court to which one of us was a party (Deshmukh, J.) a view has been taken that an acquittal in a criminal trial is no bar per se to the holding of a departmental enquiry for the purpose of determining the desirability of retaining a particular delinquent in public service. That was a case relating to the police department and is more in point when a public servant like a police constable is under consideration. In that case the appellant who was a member of the police force was prosecuted before a Special Judge for an offence under S. 161 of the Indian Penal Code of accepting bribe. The trial Judge disbelieved the prosecution evidence that the appellant had accepted the bribe and acquitted him. Thereafter a departmental proceedings was instituted against him, more or less based upon a same evidence on which the criminal charge and trial were based. As a result of the departmental proceedings he was dismissed from the Government service. On the only question raised in that litigation as to whether it was open to the dismissing authority to record a finding contrary to the one in the criminal trial and dismiss the appellant, it was held that under Rule 445 the dismissing authority was entitled to hold inquiry and consider the evidence taken afresh for deciding as to whether the appellant should be retain in service or not. In a detailed reasoning the judgment proceeds to point out that the nature of proceedings before a criminal Court and nature of a departmental enquiry before a domestic Tribunal is quite different. The two proceedings are not inconsistent with each other and a criminal trial per se is no prohibition for holding a departmental enquiry. Such a procedure does not suffer from any legal defect nor is there any prohibition to do so. This is not double jeopardy and the accused or the delinquent is not being punished twice or tried twice for the same offence or misconduct.

8. The departmental enquiry is not a trial, the result whereof leading to some punishment being inflicted does not amount to a conviction. The Division Bench of this Court referred to several other judgments of other High Courts, but in our view it is not necessary to reproduce the entire reasoning as the point is clearly covered by the authority in question. The mere fact that a criminal prosecution was undertaken and it resulted in an acquittal does not seem to be a bar to the

subsequent proceeding of the purpose of ascertaining departmentally whether the delinquent deserves to be retained as a member of the police force. It is not being doubted before us that the granting "C" summary was a judicial order and that the granting of that summary amounts to an acquittal of plaintiff-respondent in the present case. That aspect of the matter is also covered by the judgment of this Court and the trial Court as well as the lower appellate Court have relied upon those authorities of this Court, so far as holding departmental proceedings are concerned. Therefore, it is clear that there is no automatic bar for holding departmental proceedings.

9. The second question appears to be some importance because the District Superintendent of police appears at first sight a high officer being the Head of police Organisation in the district. The District and Sessions Judge and the Collector who are in fact and in law the Heads of their respective departments. From this general knowledge an impression is gained at first sight that the District Superintendent of police would also be occupying the same position. However, the examination of the provision in that behalf would at once show that the approach in relation to the police department is slightly different than the other departments of Government. It appears that entire police force of the State is being treated as one organisation bound by a common discipline. There are hierarchy of officers from lowest to highest but the organisation does not seem to contemplate any departments within it. The District Superintendent of police thus might be a head of the Police Officers stationed in the District but that does not make him a departmental head. What are departmental heads are defined by the provisions of the Bombay Civil Service Rules. Chapter II thereof which consists of only one rule No. 9 relates to definitions. At serial No. (23) of that rule there is a definition of Heads of Departments which is as follows :

(23) Heads of Department - this term includes the officers mentioned in Appendix II and any others whom Government may from time to time declare to be Heads of Departments.

10. In view of this definition, one has to refer of Appendix II which is contained in Volume II of the B.C.S.R. At serial No. 38. Appendix II, the officer mentioned so far as the police department is concerned is Inspector General of Police. At Entry No. 14 earlier there is the commissioner of police, Bombay. No other officer from the police Department much less the District Superintendent of police has been enumerated in the long list of officers who are to be deemed as heads of departments. The original list has been improved upon an amended form time to time and in place of the original 55 officers we have now 67. The learned Assistant Government Pleader after verifying the record admitted that till now the list has not been amended to include the District Superintendent of Police. It is, therefore, clear that so far as the heads of the departments of police force are concerned the names of only two officers appear in Appendix II to the B.C.S.R. viz., the Commissioner of Police at Entry No. 14 and the Inspector General of Police at Entry No. 38.

11. There is ample other evidence to show that the Inspector General of Police and the Commissioner of Police, Bombay, are alone being treated as heads of departments with respect to certain areas of the State. So far as the Police force stationed in Greater Bombay is concerned, the Commissioner of police is also the Head of the Department. For the Police force in the entire State, including Greater Bombay the Inspector General of Police would be the Head of the Department.

12. The Bombay Police Act, 1951, which deals with the organisation of the Police force and its obligations and powers, deals with the hierarchy of the officers. In S. 6, sub-s. (1) it is stated that for the direction and supervision of the Police force, the State Government shall appoint an Inspector General of Police who shall exercise such powers and perform such functions and duties and shall have such responsibilities and such authority as may be provided by or under the said. Act. There is therefore, no doubt that the Inspector General of police is the highest officer in the police force and that office must be created by the State Government for the purpose of direction and supervision of the police force. Section 23 of this Act enables framing of Rules and Regulations for the various purposes, S. 23 vests the power of making Rules consistent with the Act in the Inspector General of Police but the exercise of that power is subject to the orders of the State Government. The Commissioner in the case of Police Officers allocated to the Greater Bombay has also some power, but the Inspector General of police has further power to call for returns, reports and statements, etc., contemplated by S. 24 but subject to the Rules and order of the State Government. Powers of suspending, punishing various men and officers of police forces are vested in different officers as enumerated in sub-s. (2) of S. 25. The appointing authorities are also enumerated for the purpose of recruiting members of the police force at different levels of the organisation. However, it is clear that so far as heads of the departments are concerned, it is primarily the Inspector General of Police of the whole State and also the Commissioner of Police in relation to the force stationed in Greater Bombay.

13. Consistent with these provisions of law and for the purpose of guidance to the Police Department, the Bombay Police Manual has been compiled. It is a compilation consisting of orders, circulars issued by the Inspectors General of Police, the Commissioner of Police and the State from time to time. After the passing of 1951 Bombay Police Act, the Manual has been revised and a copy of the same is made available to us. It is a print of the year 1959. Paragraph 30 of Chapter I of this Manual says that the Inspector General of Police is the head of all the Police force in the State including the Bombay City Police. He is the Head of the Police Department and the Adviser to the Government on all questions of police administration. He is responsible for the internal economy, general training and discipline of the police force, and for its efficient organisation as a means of preventing and checking crime and preserving law and order. This paragraph in terms relies on the provisions of S. 6 of the Bombay Police Act, 1951.

14. Chapter II starting with S. 1 deals with recruitment. After pointing out the classification of various personnel belonging to the different departments in para 32, various appointing authorities for recruiting the members of the Police force are indicated in para 33. An appointing authority has ordinarily the right of dismissal and removal from service or inflicting lesser punishment contemplated by the B.C.S.R. In normal circumstances these principles would operate and there is no doubt that the appointing authority may take disciplinary steps to hold departmental enquiry and to inflict various punishments. What is, however, clear from the survey of all these provisions is that so far as the State of Maharashtra is concerned, the Inspector General of Police is the Head of the Department for the entire State and the Commissioner of Police, Bombay, is also Head of the Department in relation of the Police force stationed in greater Bombay. There does not seem to be any other Officer who could be described as the Head of the Department so far as the Police force is concerned.

15. The plaintiff-respondent was initially tried before the trial Court in the sense "C" summary was obtained in his behalf from a Judicial Magistrate, First Class. As we have already pointed out, it is not being doubted that this amounts to an acquittal of the plaintiff-respondent by a criminal Court. We have also pointed out that even in the case of a person who is acquitted by the criminal Court, it is open to the State or the appropriate authority to hold a departmental enquiry. When, however, a departmental enquiry is to be decided after a judgment of acquittal by a criminal Court, the provisions contained in the Bombay Police Manual Volume I at para 445 lay down a specific procedure to be observed. In fact the relevant provision starts from para 441. That paragraph deals with the holding of preliminary enquiry, for the purpose of ascertaining whether there is a prima facie case for holding a departmental enquiry, and if there is one, to pass appropriate orders for holding a departmental enquiry by appointing an officer in that behalf. Paragraph 442 deals with the provision of suspension and allowances pending holding of departmental enquiry. The next two paras 443 and 444 may be noted in their proper spirit to understand the provisions of para 445. Paragraph 443 relates to criminal prosecution and says that when the preliminary inquiry discloses a serious offence, application for permission to prosecute should at once be made to the authority competent to dismiss, and that authority should promptly grant the permission if it agrees that there is prima facie case for a prosecution. This shows that where a serious criminal offence is being alleged against a member of the Police force and there is prima facie case to go to Court, preference is given to undertake prosecution and stay the departmental proceedings. This being so it is obvious that a criminal prosecution might end in an acquittal or in a conviction. Sub-paragraph (1)(i) of para. 444 directs that in cases of fraud, embezzlement or similar offenses, departmental proceedings should be taken at the earliest moment. Sub-paragraph 1(ii) of that paragraph says that if the accused is convicted, the departmental proceedings against him should be resumed and formally completed. The further provisions of that sub-paragraph are very important. It says that if the accused is not convicted, the

departmental proceedings against him should be dropped, unless the authority competent to take disciplinary action is of the opinion that the facts of the case disclose adequate grounds for taking departmental action against him. It, therefore, appears that if the departmental head sees no reason to differ from the criminal Court's findings he might drop the proceedings as directed by sub-para 1(a) of para 444. However, if the competent authority forms an opinion the record that, in spite of the acquittal in a criminal Court, it is a fit case to start departmental enquiry, he could do so. Who that competent authority is for the purpose of commencing departmental action on termination of judicial proceedings is laid down in para 445. Sub-paragraph (1) of para 445 lays down that on sanction to prosecute being obtained, the officer incriminated shall be dealt with according to law. Sub-paragraph (2) thereof says that on the termination of the judicial proceedings, it will be the duty of the "departmental head" to consider the evidence and findings and determine whether the retention of the subordinate in service is desirable or not. This is a matter entirely for his consideration subject to an appeal to higher departmental authority. He is responsible for the retention or dismissal of his subordinates as may be expedient in the interests of the public service. In the case of an acquittal by a Court, while he must carefully consider the reasons, he is not justified in retaining the servant whom he believes on the evidence to be corrupt or otherwise so discredited as to be unfit for retention in the public service.

16. It is, therefore, clear that under these proceedings it is only a departmental head who has been entrusted with the responsibility to undertake the departmental proceedings if he comes to the conclusion after examining the whole record and findings of the criminal Court that is necessary to do so. It is the "departmental head", as referred to in sub-para (2) of para 445, who will be the competent authority for considering the propriety of holding a departmental inquiry after an order of acquittal has been passed by a criminal Court.

17. Discussion earlier showed that so far as the Maharashtra State Police Force is concerned, the only relevant departmental head would be the Inspector General of Police so far as a constable serving in the district of Kolhapur is concerned. This compilation of Police Manual is under the provisions of the Bombay Police Act and as such they have a statutory force and they bind the members of the Police force. It was not, therefore, open to undertake a departmental proceedings against the plaintiff-respondent unless a decision was so taken by his departmental head, who happens to be the Inspector General of Police.

18. Admittedly the Inspector General of Police has not applied his mind to the facts and circumstances of the present case before the departmental enquiry was started. It appears that after examining the record of the case after the granting of "C" summary, the District Superintendent of Police, Kolhapur, took upon himself the responsibility of commencing the present departmental proceedings. They were clearly unauthorised and illegal. In this view of the matter the appeal fails and stands dismissed with costs.

19. During the course of the hearing, we are told that in spite of the decree in the trial Court as well as in the appellant Court, the respondent has not been allowed to join service and is not reinstated nor paid any salary or allowance. The incident now is more than fifteen years old and the present litigation is pending in Courts for upwards of ten years. It is distressing to find that in spite of judicial pronouncement and without obtaining stay order from the Court, the decree has not been implemented by the State. We hope that State will make amends even now and immediately reinstate the respondent. He appears to be hardly 44 years or 45 years of age and can still render more than ten years of useful service to the State. Needless to add that the respondent has certainly suffered enough and it is time that some amends are made to him and he is allowed to resume his service and career.