
(1998) 01 AHC CK 0061
In the Allahabad High Court
Case No : C.M.W.P. No. 4265 of 1990

Vijay Prasad Pandey

APPELLANT

Vs

State of U. P. and others

RESPONDENT

Date of Decision : 21-01-1998

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Penal Code, 1860 (IPC) — Section 302, 323, 34
Police Act, 1861 — Section 7
Uttar Pradesh Police Regulations, 1948 — Regulation 492, 493

Citation : (1998) 1 AWC 636 : (1998) 2 UPLBEC 1043

Hon'ble Judges : Aloke Chakrabarti, J

Bench : Single Bench

Advocate : S. P. Srivastava and H. N. Singh, for the Appellant; S. C., for the Respondent

Final Decision : Allowed

Judgement

Aloke Chakrabarti, J.—The petitioner came to this Court challenging the order dated 30.10.1989 passed by the Senior Superintendent of Police, Varanasi (Annexure-2 to the writ petition) terminating the service of the petitioner. Facts involved are that the petitioner while he was a civil police constable was involved in a criminal case under Sections 302/34 and 323/34. I.P.C., when the first information report was lodged on 5.3.1983 relating to an occurrence taking place at 8 a.m. on 5.3.1983. The petitioner along with his nephew, brother and another were named in the first information report as accused persons. Resulting Sessions Trial No. 176 of 1983 led to suspension of the petitioner on 6.3.1983 under para 496 of the Police Regulations. By judgment dated 28.9.1985 in the said sessions trial, the petitioner was convicted u/s 302 read with Section 34 and Section 323 read with Section 34 of the Indian Penal Code and was sentenced to imprisonment for life u/s 302 read with Section 34, I.P.C. and to rigorous imprisonment for six months u/s 323 read with Section 34, I.P.C. directing both the sentences to run concurrently. Petitioner preferred Appeal No. 2606 of 1985

before this Court challenging the judgment. The appeal was admitted on 30.9.1985 and on the same day, the petitioner was ordered to be released on bail.

2. The Senior Superintendent of Police. Varanasi passed order dated 30.10.1989 terminating the service of the petitioner on the ground of his conviction in the sessions trial (Annexure-2 to the writ petition).

3. Respondents filed counter-affidavit denying the claim of the petitioner though facts have not been disputed. Petitioner filed rejoinder-affidavit.

4. Heard Mr. H.N. Singh, learned counsel for the petitioner and the learned standing counsel for the respondents.

5. The contention of the petitioner as argued by his learned counsel mainly is that Regulation 492 of the Police Regulations indicates that the impugned order under Regulation 493 is bad. The said two Regulations run as follows :

"492. Whenever a police officer has been judicially tried, the Superintendent must await the decision of the judicial appeal, if any, before deciding whether further departmental action is necessary.

493. It will not be permissible for the Superintendent of Police in the course of a departmental proceeding against a police officer who has been tried judicially to re-examine the truth of any facts in issue at his judicial trial, and the finding of the Court on these facts must be taken as final.

Thus, (a) if the accused has been convicted and sentenced to rigorous imprisonment, no departmental trial will be necessary, as the fact that he has been found deserving of rigorous imprisonment must be taken as conclusively providing his unfitness for the discharge of his duty within the meaning of Section 7 of the Police Act. In such cases the Superintendent of Police will without further proceedings ordinarily pass an order of dismissal, obtaining the formal order of the Deputy Inspector General when necessary under paragraph 479 (a). Should he wish to do otherwise he must refer the matter to the Deputy Inspector General of the range for orders.

(b) If the accused has been convicted but sentenced to a punishment less than of rigorous imprisonment a departmental trial will be necessary, if further action is thought desirable, but the question in issue at this trial will be merely (1) whether the offence of which the accused has been convicted amounts to an offence u/s 7 of the Police Act. (2) if so, what punishment should be imposed. In such cases the Superintendent of Police will (i) call upon the accused to show cause why any particular penalty should not be inflicted on him, (ii) record anything the accused officer has to urge against such penalty without allowing him to dispute the findings of the Court, and (ii) write a finding and order in the ordinary way dealing with any plea raised by the accused officer which is relevant to (1) and (2) above.

(c) If the accused has been judicially acquitted or discharged, and the period for filing an appeal has elapsed and/or no appeal has been filed the Superintendent of Police must at once reinstate him if he has been suspended ; but should the findings of the Court not be inconsistent with the view that the accused has been guilty of negligence in, or unfitness for, the discharge, of his duty within the meaning of Section 7 of the Police Act, the Superintendent of Police may refer the matter to the Deputy Inspector General and ask for permission to try the accused departmentally for such negligence or unfitness."

6. It is contended with reference to the aforesaid provisions that when the judicial appeal in respect of the criminal case is lying pending before this Court, the Senior Superintendent of Police ought to have waited for the decision of the said appeal before passing the impugned order. Reference has been made to the case of *Shyam Narain Shukla v. State of U.P.* (1989) 2 UPLBBC 418 and the case of *Union of India and Another Vs. Tulsiram Patel and Others*, . With reference to the aforesaid law, the learned counsel for the petitioner contends that the protection under Article 311(2) of the Constitution of India has not been made available to the petitioner while the impugned order was passed and this vitiates the said order.

7. Contention has also been made by the petitioner that after the judgment was passed in the sessions trial on 29.9.1985, the then Senior Superintendent of Police decided to continue the suspension of the petitioner awaiting the result of the appeal pending before this Court and it is stated that the same was done in view of the provisions of Regulation 492 as the order under Regulation 493 could not be passed until the judicial appeal is decided. It is stated, therefore, that after such a decision the impugned order could not be passed by the officer holding the same post particularly when there was no development of facts enabling him to pass order under Regulation 493.

8. The learned standing counsel contended that the petitioner having been convicted with a rigorous imprisonment, the impugned order passed under Regulation 493 is valid and proper and no proceeding was required for the purpose of passing the impugned order in view of the provisions of Regulation 492, it is also stated that any decision to continue the suspension at any earlier stage did not debar the authority concerned from passing appropriate order under Regulation 492.

9. After considering the respective contentions of the parties, it appears that in the present case the petitioner had been judicially tried and, therefore, applying the law as contained in Regulation 492, the concerned authority should have waited till the decision in the judicial appeal was passed. Admittedly the petitioner has preferred an appeal which has been admitted and the same is pending. Therefore, before deciding whether departmental action was necessary, the authorities should have waited till the decision of the said appeal. A perusal of the Regulations 492 and 493 of the said Regulations indicates that in the present case the provision of sub-clause (a) of Regulation 493 had been applied

in passing the impugned order of dismissal and, therefore, no enquiry was held. Therefore, while exercising the said power, the restraint contained in the provisions of Regulation 492 ought to have been applied and authorities should have waited till the decision of the appeal which admittedly is pending.

10. In view of the aforesaid findings, the impugned order dated 30.10.1989 at Annexure No. 2 to the writ petition is hereby quashed. But, I make it clear that this order will not prejudice any right of the respondents under law in any appropriate proceeding or even in exercise of power under Regulation 493 after the decision of the appeal filed by the petitioner. This writ petition is thus allowed. There will be no order as to costs.