Madhosingh Daulatsingh Vs State of Bombay

Court: Bombay High Court (Nagpur Bench)

Date of Decision: July 13, 1959

Acts Referred: Constitution of India, 1950 â€" Article 226, 227
Police Regulations â€" Regulation 217, 219, 220, 221, 222

Citation: (1960) 1 LLJ 291

Hon'ble Judges: D.J. Jagannadha Raju, J; D.G. Tambe, J

Bench: Division Bench

Judgement

Tambe, J.
This is a petition under Arts. 226 and 227 of the Constitution of India by police constable Madhosingh. It is directed against the

order of the District Superintendent of Police, Wardha, respondent 2 hereto, made on 8 May, 1958, whereunder the petitioner is reduced in pay

by Rs. 2 per month, for a period of two years beginning with the month of May 1958 and with a further order that this reduction will have the

effect of postponing his future increments and the affirming orders in appeal and revision made on 29 July, 1958 and 17 January, 1959 by the

Deputy Inspector-General of Police and the Inspector General of Police, respondents 3 and 4 respectively.

2. Facts in brief are that the petitioner at the material time was posted as police constable in Wardha, a district place in the Vidarbha region. The

petitioner was residing on the ground floor of a house. In the same house on the upper floor Sri Desai, Company Commandant of the Home

Guards, Wardha, and one Bhagwansingh were residing. This house had no pacca latrine. A temporary latrine was, therefore, put up by the said

Bhagwansingh and it was used by Bhagwansingh and Sri Desai. They also did not raise any objection to the use of that latrine by the petitioner. It

appears that on 9 February, 1958 the petitioner was trying to prevent Sri Desai"s children from using the latrine and there was some altercation in

this respect between the petitioner and Dashrath, peon of Sri Desai. Sri Desai, who was near about, getting ready to go out, intervened and asked

the petitioner as to what the matter was. The petitioner then lost his temper and replied ""Have you no eyes, the latrine is full, it is smelling and who

is going to cleat it."" Sri Desai told him that there was a sweeperess and that she would clean it. The petitioner then advanced towards Sri Desai in a

threatening attitude and talked to him rudely in the first person singular. Sri Desai then went to the police lines and reported the matter to the lines

officer. Later Sri Desai also reported the incident to the District Superintendent of Police, who asked the station house officer to inquire into the

matter. The station house officer submitted his report on 10 February, 1958, and the petitioner was suspended on that very day by the District

Superintendent of Police, Wardha. On 11 February, 1958 a chargesheet was served on the petitioner and the charge the petitioner was called

upon to answer was ""rude and improper behavior with Sri Desai, Company Commandant, Home Guards, Wardha, on 9 February 1958, over the

use of common latrine in the house of one Bhandekar of Gandhi Nagar."" A departmental inquiry was then held by the District Superintendent of

Police, Wardha. It was inter alia contended by the petitioner that the misbehaviour, even if any, being outside the employment, disciplinary action

could not be taken against him. The District Superintendent of Police held that there was no proper justification for the petitioner to behave as he

did with Sri Desai, Company Commandant, Home Guards. He further took the view that the default on the part of the petitioner was of a very

serious nature. He negatived the contention of the petitioner that no disciplinary action could be taken against him for misconduct outside the

employment. The District Superintendent of Police, therefore, issued a notice on 17 April, 1958 calling upon the petitioner to show cause why he

should not be dismissed from the police force. The petitioner by his reply showed cause. Respondent 2 then made the following order on 8 May

1958 :

Constable Mahadevsing No. 125 of lines is reduced in pay by Rs. 2 per month for a period of two years beginning with the month of May 1958.

The reduction will have the effect of postponing his future increments. The constable is reinstated in service but his period of suspension so far will

be treated as such.

3. The petitioner then took an appeal to the Deputy Inspector-General of Police and the same contention was again reiterated by the petitioner in

appeal. The contention was negatived by the Deputy Inspector-General of Police and he dismissed the appeal on 29 July 1958. In the course of

the order he observed :

It is true that there is an appreciable distinction between the two capacities of a police officer, one as a member of the public and the order as

police officer. At the same time, these cannot be regarded as watertight compartments. The appellant''s acts as a member of the public do have a

bearing on his character as a police officer and being a police officer the appellant should have acted with unfailing patience, courtesy and tact and

refrained from losing his temper.

4. The petitioner then filed a revision application before the Inspector-General of Police. This application was dismissed by the Inspector-General

of Police on 17 January, 1959 The petitioner has, therefore, preferred this petition in this Court.

5. Mr. Ranade, learned counsel for the petitioner, in the first instance, contends that the misconduct as found was committed by the petitioner not

during the course of the employment but was outside the employment and, therefore, it was not open to the police authorities to take any

disciplinary action against the petitioner in that respect.

6. We find it difficult to accept this contention. It is true that the misconduct in respect of which disciplinary action is taken against a servant must

have reasonable relation to the nature of the service, but it need not necessarily arise in the course of employment. When a person accepts an

employment, by necessary implications he agrees to so conduct and behave himself as would not be inconsistent with the nature of his service. If he

behaves and conducts himself in a manner which would be inconsistent with the nature of his service, then that would affect or at any rate would be

likely to affect the interests or good name of his employer. If and when it happens, it is reasonable to hold that it would entitle the employer to take

such disciplinary action against his employee as the nature and degree of misconduct would require and law would permit. It is not that interests or

good name of an employer is likely to be adversely affected only by an act of an employee during the course of an employment. We also do not

find any provision either in the Police Act of Regulations to restrict recourse of taking disciplinary action against a police officer''s action to acts

done by him during the course of employment only.

7. Regulation 64 of the Police Regulations deals with general conditions of service of a police officer and Clause (11) thereof provides that the

police shall act with respect and deference towards all officers of Government, and with forbearance, kindness and civility towards private persons

of all ranks. In a private life he shall set an example of peaceful behaviour and shall avoid all partisanship. This clause makes it clear that it is one of

the conditions of his service that a police officer conducts himself both during the course of his employment as well as outside his employment with

civility and courteousness. It necessarily follows that his acting otherwise, though in private life, would be inconsistent with the general conditions of

his service. The law relating to the disciplinary action which could be taken by a private individual against his servant is not that no disciplinary

action can be taken by his master against the servant for any misconduct of his servant outside the employment. In considering the case of dismissal

of a private servant Lord Esher, M. R. in Pearce v. Foster (1886) 17 Q.B.D. 536 observed :

The rule of law is, that where a person has entered into the position of servant, if he does anything incompatible with the due or faithful discharge

of his duty to his master, the latter has a right to dismiss him. The relation of master and servant implies necessarily that the servant shall be in a

position to perform his duty duly and faithfully, and if by his own act he prevents himself from doing so, the master may dismiss him ... What

circumstances will put a servant into the position of not being able to perform, in a due manner, his duties, or of not being able to perform his duty

in a faithful manner, it is impossible to enumerate. Innumeraable circumstances have actually occurred which fall within that proposition and

innumerable other circumstances which never have yet occurred, will occur, which also will fall within the proposition. But if a servant is guilty of

such a crime outside his service as to make it unsafe for a master to keep him in his employ, the servant may be dismissed be his master; and if the

servant"s conduct is so grossly immoral that all reasonable men would say that he cannot be trusted, the master may dismiss him.

8. Dealing with the same question in the same case Lord Justice Lopes observed :

If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate

dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service or the business. It is sufficient if it is

conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master.

9. We are not aware of any decision taking a contrary view, and none is shown to us.

10. The ratio deducible then is that in order to enable a master to take disciplinary action against his servant it is not a condition precedent that the

misconduct on the part of the servant must arise within his employment and not outside his employment. The test in each case will be whether the

servant is conducting himself in a way inconsistent with the faithful discharge of his obligations undertaken by him either expressly or impliedly in

accepting the service. The inconsistency may arise on account of any act of the servant, either in the course of his employment or outside it, which

injures or has the tendency to injure his master"s business or interests or reputation. There is no reason why this principle should not apply to public

servants. There is however one very material difference between the two and that must be kept in view. In case of a private servant it is the master

who in his own discretion decides the question of the disciplinary action to be taken against his servant. In the case of a public servant it is not the

master but certain officers of the common master who decide this question, but their powers in that respect are regulated by the Act or rules

framed thereunder.

11. In the instant case, as we have already shown, it was expected of the petitioner, being a police officer, to behave with civility and

courteousness with a member of the public even in his private life. It has been found that he was very rudely behaved with Sri Desai. There is no

doubt that the petitioner has conducted himself in a way inconsistent with the faithful discharge of his service inasmuch as he acted contrary to the

discipline prescribed for a police officer in Clause (11) of Regn. 64. Such a conduct is likely to bring disrepute to the police force. He has,

therefore, exposed himself to a disciplinary action.

12. The second contention raised relates to the jurisdiction or powers or respondents 2 to impose the punishment he has imposed for the offence

of which the petitioner has been found guilty. It has, therefore, to be seen whether respondents 2 has acted within his authority in awarding the

punishment which he awarded for the misconduct found. If he has, we are not concerned with its quantum.

13. Section 7 of the Police Act provides that subject to such rules as the Provincial Government may from time to time make, the Inspector-

General of Police, Deputy Inspector-General of Police, Assistant Inspector-General and District Superintendent of Police may impose on police

officers certain punishment mentioned therein. In exercise of the powers conferred by this section the Provincial Government has made certain rules

(referred to as regulations). They are contained in Chap. VIII of the book ""Central Provinces and Berar Police Regulations"" published under the

authority of the Government of the Central Provinces and Berar. Regulation 214 enumerates the various kinds of punishments which could be

imposed on police officers belonging to the Subordinate Police Service. The punishment imposed on the petitioner is twofold :

(1) there is reduction in his pay by Rs. 2 per month for a period of two years beginning with the month of May 1958, and

(2) this reduction is to have the effect of postponing his future increments.

14. On the language of Regn. 214 the punishment imposed falls within Cls. (ii) and (iii) of Regn. 214, that is, withholding of increments and

reduction to a lower stage in a time-scale. Regulation 215 deals with certain additional penalties which could be imposed on non-gazetted officers.

We are, however, not concerned with those punishments in the instance case. Regulation 216 enumerates certain additional punishments which

could also be imposed on head constables and constables. Regulation 217 enumerates some more punishments which could also be imposed on

constables. In the instant case, the petitioner is a constable. Clause (a) of this regulation provides that a constable may also be punished with

deprivation or with-holding of increment (for a period not exceeding one year at any one time). In the instant case, the punishing authority, i.e.,

respondent 2, has at one time withheld the increment of the petitioner for a period of two years, which is contrary to the provisions of Clause (a) of

Regn. 217. Regulations 219 to 233 deal with the powers of punishment conferred on various officers. Regulations 224 and 225 contain general

instructions relating to award of punishment. Regulation 226 lays down rules to be observed by the disciplinary authority in determining what

penalty should be awarded for any particular offence.

15. It would thus be seen that the power of the disciplinary authority to impose a penalty is regulated and controlled by the provisions of the

aforesaid regulation which is a complete code by itself. It would, therefore, be not open to it to impose a penalty which it deems proper, unless it is

authorized by the regulation.

16. The offence of which the petitioner has been found guilty by respondent 2 is that his (petitioner''s) behaviour was rude and improper towards

Sri R. R. Desai, Company Commandant of the Home Guards, and in the words of respondent 3 the appellant (petitioner) being a police officer he

should have acted with unfailing patience, courtesy and tact and refrained from losing his temper. It has to be seen whether the penalty imposed by

respondent 2 on the petitioner and confirmed by respondent 3 and 4 is warranted under any one or more clauses of Regn. 226.

17. It will be convenient at this stage to refer to certain other facts that weighed with respondent 2 in awarding the punishment which he has

awarded. From Paras. 21 and 22 of the preliminary order dated 17 April, 1958 it appears that respondent 2 after coming to the conclusion that

the petitioner was guilty of the aforesaid offence, looked into his service record and from it he found that during his twelve years'' service he had

received 2 major punishments and 11 minor punishments and had 18 rewards. Miscellaneous remark in his service record was that the petitioner

was a constable of an average caliber. One of the previous major punishments which was awarded in 1950 related to misbehavior with a member

of the public and for indisciplinary conduct in the presence of his station officer. The punishment imposed was reduction in pay from Rs. 31 to Rs.

30 per month for a period of six months. Second default occurred in 1952 when he was reduced from Rs. 32 to Rs. 31 per month for a period of

twelve months for conniving at a breach of Motor Vehicles Rules committed in his presence and for insolently refusing to submit his explanation to

the station officer. Two of the minor punishments related to quarrelling and indisciplinary behavior towards the station officer (years not

mentioned). On account of this previous record respondent 2 thought that the previous punishments have not deterred the petitioner from

improper, rude and indisciplinary behaviour towards others and in his opinion it was not likely that he would improve thereby. He further was of

opinion that the present default was of a very serious nature and he did not see any case for showing any leniency to the petitioner. He further

issued a notice to the petitioner to show cause why he should not be dismissed from the police force. In the final order in awarding the punishment

respondent 2 observed :

I, however, feel that the punishment of dismissal stated in my show-cause notice is a little too serve especially in view of the fact that in Vidarbha

area constables have not yet become fully used to the idea of police behaviour towards the members of the public. I, therefore, feel that one more

chance may be given to the accused constable to mend his ways. If such behaviour is repeated in future, it will be necessary to dismiss him from

service.

18. And in this view of the matter, respondent 2 imposed on the petitioner the aforesaid punishment. It, therefore, appears that the punishment

imposed by respondents 2 is not merely on account of the offence of which the petitioner has been found guilty but also on account of the previous

record which, in the opinion of respondent 2, merited dismissal but on second thought he thought it too severe and, therefore, imposed the

aforesaid punishment.

19. Now, turning to the provisions of Regn. 226, rude or discourteous behaviour towards a member of the public in private life outside

employment, even if repeated, does not afford a ground for even imposing any penalty under Cls. (ii) to (iv) of Regn. 226, much less of dismissal

under Clause (i) of Regn. 226. Reading first and second clauses together, it appears that the punishment of dismissal or reduction in rank is

awarded or could be awarded for incompetence, or cases of serious dereliction of duty. Clause (iii) provides that punishment of withholding of

increment, either temporary or permanent, can be imposed only in the case of serious dereliction of duty or for culpable ignorance of police

procedure, laziness or apathy in conducting the work of the station-house, and the like. Clause (iv) provides that an increment which has fallen due

may be with-held for a definite period for inefficiency or unsatisfactory service. It, however, specifically prohibits withholding of increments of

constables for a period more than one year in the first instance. Discourteous or rude behaviour towards a member of the public in private life can

hardly be termed as incompetence in the discharge of his duty as police constable or serious dereliction of duty, or culpable ignorance of police

procedure or other offences mentioned in Cls. (iii) and (iv). Clause (v) relates to imposition of fines. It, however, prohibits fining of constables.

20. After going through the entire Regn. 226 we do not find any clause under which the instant case would fall, except Clause (vi). We have no

advantage of knowing from the orders of any of the respondents the clause or clauses of the Regn. 226 under which respondent 2 purported to act

in imposing the punishment on the petitioner. We asked the learned counsel for the respondents to point out to us the clause which would be

attracted to the facts of the present case. He frankly conceded that there is no clause in Regn. 226 which would get attributed to the facts of the

case except clauses (vi). It reads :

(vi) In the case of head constables and constables, minor offences against discipline should be dealt with, firstly, by the warning, and if this proves

ineffectual, by the infliction of the minor punishments specified in Regns. 216 and 217(b), or by detailing the offender to a course of more irksome

and unpopular duties.

21. Now, punishment specified in Regns. 216 and 217(b) are not withholding of increment or reduction to a lower stage in a time-scale, but, on

the other hand, they are :

(i) confinement to quarters for a term not exceeding 15 days,

(ii) punishment drill,

(iii) extra guard duty,

(iv) tent pitching,

(v) drain digging

(vi) cutting grass, clearing jungle and cleaning parade grounds,

(vii) repairing huts and butts and similar work in the lines,

(viii) cleaning arms.

22. In our opinion, therefore, though the conduct on the part of the petitioner entitled respondent 2 to take a disciplinary action against him, the

punishment awarded by him to the petitioner is in excess of his authority and powers conferred on him under the provisions of Regn. 226, and

further the punishment awarded contravenes the specific provisions of Clause (a) Regn. 217. The orders of respondents 2, 3 and 4, therefore,

cannot be sustained.

23. In the result, the petition is allowed, and the aforesaid of 8 May, 1958, 29 July, 1958 and 17 January, 1959 are quashed. We want to make it

clear that we should not be understood to have said that it is no more open to the respondents to take such disciplinary action against the petitioner

as could be taken against him under the regulations.

24. We make no order as to costs as, in our opinion, the petitioner is not free from blame.