

State of Madhya Pradesh

v.

Syed Qamarali

(Supreme Court Of India)

HON'BLE MR. JUSTICE P.B. GAJENDRAGADKAR HON'BLE MR. JUSTICE A.K. SARKAR HON'BLE MR. JUSTICE K.N. WANCHOO HON'BLE MR. JUSTICE K.C. DAS GUPTA HON'BLE MR. JUSTICE N. RAJAGOPALA AYYANGAR

Civil Appeal No. 284 Of 1960 | 08-03-1961

(1) On 22/12/1945, the Inspector General of Police, central Provinces and Berar made an order dismissing the respondent then a Sub-Inspector in the central Province Police Force from service with 230 effect from that date. His appeal against this order to the Provincial government, central Provinces and Berar was dismissed on 9/04/1947. The respondent brought the suit which has given rise to the present appeal on 8/12/1952, on the allegation that the order of dismissal was contrary to Para 241 of the central Provinces and Berar Police Regulations and as such contrary to law and void and praying for recovery of Rs. 4,724/5.00 on account of his pay and dearness allowance as Sub-Inspector of Police for the three years immediately preceding the date of the institution of the suit.

(2) The defences raised on behalf of the appellant, the State of Madhya Pradesh, the defendant in the suit, were that the order, was not contrary to Para 241 of the Police Regulations and was valid in law; and secondly that the plaintiff's dismissal becomes effective on 22/12/1945, and consequently the suit was barred by limitation.

(3) To understand the respondent's case that the order was contrary to Regulation 241 and the appellant's contention that it was not, it is necessary to state a few facts.

(4) As the officer-in-charge of Tendukheda Police Station the respondent took up the investigation of a case of theft alleged to have been committed at the house of Gokal Kalar of village Sainpura within the jurisdiction of the Police Station. In the course of the investigation from 5/02/1944 to Feb. 8/02/1944, one Mouji Kalar who was suspected of having committed this theft was sent for by the respondent and questioned. Mouji Kalar's dead body was discovered on 10/02/1944, inside a well at the village Sainpura; thereafter the respondent alongwith Gokal, Gokal's brothers

Nanha and Sundar and three constables of that Police Station was put on trial for offences under ss. 304, 201 and 331 read with s. 34 of the Indian Penal Code. The trying Magistrate held that there was no evidence in the case that "Mouji met his death at the hands of the accused" as alleged by the prosecution. Accordingly, he found all the accused not guilty of the charges and acquitted them. This order of acquittal was made on 7/07/1944. No appeal was preferred against the Magistrate's order, but on 9/10/1944, the Sub-Divisional Police Officer, without having obtained the sanction of the Inspector General of Police, commenced a departmental inquiry against the respondent on the following charge: "Concealment of facts as to the cause of the death of deceased Mouji Kalar of Sainpura, a suspect of a House-Breaking case, who was alleged to have met his death at the hands of the Sub-Inspector and other Police Officers during their investigation". The Sub-Divisional Police Officer came to the conclusion that the charge had been proved against the respondent and forwarded this report to the District Superintendent of Police, who in turn forwarded the same to the Deputy Inspector General of Police. The Deputy Inspector General of Police held agreeing with the report of the Sub-Divisional Police Officer that the charge made against the respondent in the inquiry had been established and ordered his removal from the service. Against this punishment the respondent preferred an appeal to the Inspector General of Police, central Provinces and Berar, who rejected the appeal and passed an order 17/05/1945, enhancing the punishment to one of dismissal from service. Later it was discovered that the provisions of s. 240 (3) of the Government of India Act had not been observed in that the Sub-Inspector had not been given an opportunity of showing cause why he should not be dismissed and the District Superintendent of Police, Saugar, was directed to ask the Sub-Inspector to show cause why he should not be dismissed. After consideration of the respondent's representation the Inspector General of Police adhered to his opinion that there was sufficient evidence on record to prove the departmental charge against Sub-Inspector, Qamarali, and ordered his dismissal from service.

(5) The respondent's case was that the charge made against him in the departmental inquiry was the same as the charge on which he had been tried and acquitted by a court of competent jurisdiction and if any inquiry could be made against him after the acquittal it could be made only after sanction had been given by the Inspector General of Police for holding such an enquiry. The case of the State government, the appellant, on the contrary was that the charge in the departmental inquiry was not identical with the charge for which the plaintiff was tried and so no sanction was required to be obtained from the Inspector General of Police.

(6) The trial Judge accepted this defence contention and accordingly held that departmental enquiry was not without jurisdiction and the order of dismissal was legal. He also held that in order to ' obtain relief sought in the plaint a suit for a

declaration that the order was not valid was necessary and so under Article 120 of the Limitation Act the suit brought more than six years after the date of dismissal was barred by time.

(7) The respondent Qamarali preferred an appeal limiting his claim now, however, to Rs. 1,000.00 only. The appeal court, the District Judge, Chhindwara, agreed with the Trial Judge that para 241 of the Police Regulations had no application and the order of dismissal passed against the appellant after such enquiry was valid. On the question of limitation the learned Judge observed that if there was a contravention of Para 241 of Police Regulations the order of dismissal would be void altogether and the claim in the suit would not be barred by time. In view of his finding however that the order of dismissal was valid the court dismissed the appeal.

(8) In second appeal the Nagpur High court was of opinion that in view of the order of acquittal made by the Magistrate the charge framed in the departmental inquiry could not at all be framed and that the order of dismissal was void and inoperative. The High court also held that the suit was not barred by time. It accordingly decreed the suit for the sum of Rs. 1,000.00 to which the plaintiff had limited his claim. The High court has also given a direction that as regards the appellant's salary from the date of the suit, namely, 8/12/1952, the respondent shall settle the same on the basis that the appellant was in service and on duty.

(9) Against this decision of the Nagpur High court the State government has preferred the present appeal after having obtained special leave from this court.

(10) Two contentions were raised before us in appeal. First, it was contended that the High court was wrong in thinking that Para 241 of the Police Regulations applied to the facts of the case. Secondly, it was urged that in any case the departmental enquiry and the order of dismissal even if contrary to the provisions of Paragraph 241 of the Police Regulations remained valid until and unless an order was obtained from a competent court setting aside the same and so no relief in respect of salary could be granted when the time for obtaining an order setting aside the order of dismissal had elapsed whether the period of limitation for such a suit be under Art. 14 or Art. 120 of the Limitation Act.

(11) The first question that arises for consideration therefore is whether the departmental enquiry and the order of dismissal were contrary to Para 241 of the Police Regulations. Para 241 of the Police Regulations is in these words : "When a

Police Officer has been tried and acquitted by a Criminal court, he must as a rule be reinstated. He may not be punished departmentally when the offence for which he was tried constitutes the sole ground for punishment. If however the acquittal, whether in the court of original jurisdiction or of appeal, was based on technical grounds, or if the facts established at the trial show that his retention in government service is undesirable, the District Superintendent may take departmental cognizance of his conduct, after obtaining the sanction of the Inspector General".

(12) The regulation thus prohibits departmental punishment for the offence of which an officer has been acquitted by a competent court. It however makes an exception in the case where acquittal was based on technical grounds. But the exception itself is made subject to a condition precedent that no departmental enquiry should be held without obtaining the sanction of the Inspector General of Police. Another provision in the para is that when an officer has been acquitted but the facts established at the trial show that his retention in government service is undesirable, departmental action can be taken; but there also subject to the condition precedent that the sanction of the Inspector General of Police must be obtained in the first instance.

(13) In the present case Qamarali's acquittal was not based on technical grounds and so any departmental action against him for the offence of which he had been acquitted would be clearly in breach of the prohibition in Para 241 of the Police Regulations.

(14) On behalf of the appellant it was strenuously contended before us that the charge of which the respondent has been found guilty and punished in the departmental enquiry is entirely different from the charges of which he had been acquitted. It is true that in form the charge in departmental enquiry, which has been set out above, does not accuse Qamarali of having caused Mouji Kalar's death, or beaten him up or having caused disappearance of the evidence of culpable homicide. On closer examination, however, it 233 becomes clear that "the concealment of facts as to the cause of death" of which the respondent was being charged was being alleged on the basis that the true fact was that the Sub-Inspector himself had been responsible for Mouji Kalar's death. When we read the order of the Inspector General of Police it becomes clear that that is how he understood the charge and he tried to find out for himself whether the Trial court had been right in acquitting the respondent. His conclusion was that the Trial court had made an error, and this is how he expressed himself: "With all due deference to the trying court, there is in my opinion, not the least doubt that Mouji met his death at the hands of the Police and in no other possible way. By avoiding any decision as to whether the deceased's death was homicidal or suicidal, the court was also able to avoid all considerations as to how the deceased managed to get his ribs fractured and his spleen ruptured, or as to who tied his hands-

together and threw him in the well. For the purpose of departmental enquiries which are held to regulate the conduct of the police common sense and equity must always be our guide. If in such cases as the present very strong action is not taken, there will not be a sufficient deterrent to officers and men who may think of indulging in the brutal and cowardly practice of torturing prisoners in order to extract confessions".

(15) There can be little doubt that in holding that the charge as made in the departmental enquiry had been established, the Inspector General of Police proceeded on the basis that the charge was that though Qamarali had himself taken part in the torture of Mouji Kalar, causing to him injuries which resulted in his death, he had concealed those facts.

(16) The High court was therefore right in holding that the respondent has been punished in respect of the very offence of which he had been acquitted. This is in clear contravention of the provisions in para 241 of the Police Regulations that "when a police officer has been tried and acquitted by a Criminal court, he must as a rule be reinstated. He may not be punished departmentally when the offence of which he was tried constitutes the sole ground of punishment".

(17) The further question which was raised in the pleadings of the parties as regards the necessity of the sanction of the Inspector General of Police being obtained before the enquiry could be held, does not really arise in the present case. For neither was the acquittal of the respondent "based on technical grounds" nor was this departmental enquiry one as regards "facts established at the trial which show that his intention in government service was undesirable". As the enquiry was held in respect of the very charge of which the respondent had been acquitted at the trial, even the Inspector General could not grant sanction to hold the enquiry on this charge.

(18) The question then is whether the contravention of the above provisions of Para 241 makes the order of dismissal wholly invalid. On behalf of the appellant it has been urged that the order of dismissal was made by the Inspector General of Police in exercise of the powers conferred on him by s. 7 of the Police Act and that the contravention of any part of the Police Regulations cannot invalidate the exercise of that power. This argument however overlooks the words "subject to the rules" with which section 7 of the Police Act opens. In *State of Uttar Pradesh and others v. Babu Ram Upadhyaya* (Civil Appeal No. 119 of 1959) this court held that the rules made under s. 7 of the Police Act read with s. 46(2) of the Police Act must be treated for all purposes of construction or obligation exactly as if they were in the Act and as a result of this it was held in the same case that an order made in purported exercise of the

power under s. 7 of the Police Act if made in breach of a mandatory provision of the rules made thereunder is invalid.

(19) On the authority of Babu Ram Upadhyya's case (Supra) we must hold that if the provision in Para 241 that a police officer on acquittal by a criminal court "may not be punished departmentally when the offence for which he was tried constitutes the sole ground of punishment" is mandatory and not directory, the order of dismissal is wholly invalid. It is quite clear that the words "may not be punished" in the collocation of words used is equivalent to "shall not be punished". The obvious object of the rule-making authority was that the Police officer in holding the departmental enquiry should not sit in review over a considered decision of a criminal court of competent jurisdiction. It is only reasonable to think that having decided on such an object the rule-making authority had also the intention that the object should be fully achieved. Reading the words used in the rule in the light of these considerations we have no hesitation in holding that the intention of the rule-making authority was to make this provision against departmental punishment on a charge of which a police officer had been acquitted by a criminal court mandatory, that is, it could be broker only on pain of the order made in breach becoming invalid.

(20) We therefore hold that the order of dismissal having been made in breach of a mandatory provision of the rules subject to which only the power of punishment under section 7 could be exercised, is totally invalid. The order of dismissal had therefore no legal existence and it was not necessary for the respondent to have the order set aside by a court. The defence of limitation which was based only on the contention that the order had to be set aside by a court before it became invalid must therefore be rejected.

(21) The High court was therefore right in decreeing the suit for the sum of Rs. 1,000.00 to which the respondent had, when preferring the appeal to the District Judge, reduced his claim. The direction made by the High court as regards the appellant's salary from the date of the suit was however outside the scope of the suit and is therefore set aside. With this modification in the High court's order the appeal is dismissed with costs.

(22) We wish to make it clear that this decision would not preclude the appropriate authorities from taking action in accordance with Regulation 241, if it is so advised, on being satisfied that some facts were established at the respondent's trial, which made his retention in government service undesirable. On the question whether any such action should be taken or not, we express no opinion.

