SUPREME COURT OF INDIA

State of Madras

Vs.

G. Sundaram

C.A.No.400 of 1964

(P. B. Gajendragadkar, C.J.I., K. N. Wanchoo, M. Hidayatullah, Raghubar Dayal and J. R. Mudholkar, JJ.)

09.10.1964

JUDGEMENT

RAGHUBAR DAYAL, J.:

1. This appeal, by the State of Madras, on certificate granted by the High Court of Madras, raises the question about the power of the High Court, when exercising jurisdiction under Article 226 of the Constitution, to consider the propriety and correctness of a finding of fact arrived, by the Government on the basis of an enquiry conducted by the Tribunal appointed under the provisions of the Madras Civil Services (Disciplinary Proceedings Tribunal) Rules, 1948, hereinafter referred to as the Tribunal Rules, framed by the Governor of Madras in connection with complaints against government servants of the State. The question arises in this way.

2. Sundaram, respondent, was an Inspector of Police in the Madras State on August 30, 1951, when he is said to have demanded bribe from one Muniswamy Chetty, hereinafter referred to as Munuswamy. The latter approached the authorities who arranged a trap. In pursuance of that scheme, Muniswamy paid Rs.750 to the respondent after night-fall on September 4, 1951. The officers taking part in the trap proceedings reached the spot on getting the pre-arranged signal from Muniswamy. The Government ordered an enquiry by G. O. Ms. No. 911 (Home) dated March 8, 1952 and the Tribunal made the enquiry and submitted its report on July 17, 1952. It found two charges, viz., charges Nos. 1 and 4 established and recommended the respondent's dismissal from service. In making this recommendation the Tribunal said :

"Without even taking his misconduct under Charge IV into consideration, the only punishment that would sufficiently meet his misconduct under Charge I is his dismissal from service".

3. Charge I was that the respondent actuated by corrupt motives and in abuse of his position and authority, had on threats of prosecution for perjury, demanded an amount of Rs. 1,000 from Munuswamy on August 30, 1951 and ultimately received an amount of Rs. 750 from him in the early part of the night of September 4, 1951 at the respondent's house at Vaniyambadi. Charge IV related to 7 items and the Tribunal found that the presents, by three Sub-Inspectors, were received personally by the respondent, that the presents referred to in three other items were given but it had not been proved that the respondent had knowledge of the presents and that the seventh item was not proved.

4. The Government, by its order dated June 25, 1953 directed the compulsory retirement of the respondent from service instead of ordering his dismissal from service as recommended by the Tribunal. This order was passed after the Government had considered the findings and recommendations of the Tribunal, the representation of the respondent on the show cause notice issued to him and the fact that the Tribunal, when consulted about the contemplated alteration in the punishment, had adhered to its previous recommendation that the respondent be dismissed.

5. The respondent thereupon presented a writ petition under Art. 226 to the High Court challenging the order of the Government retiring him compulsorily, on various grounds, including the competency of the Government to pass an order retiring him compulsorily, in view of the provisions of the Madras District Police Act, 1859 (Central Act XXIV of 1859), hereinafter called the Police Act, read with the Madras Police Subordinate Service (Discipline and Appeal) Rules, 1950, hereinafter referred to as the Police Rules, and the absence of any acceptable evidence to support the findings of the Tribunal accepted by the Government. The learned Single Judge who heard the writ petition, repelled both the contentions holding that the Government had jurisdiction to inflict the punishment of compulsory retirement and that the findings of the Tribunal were based on acceptable evidence of payment of the bribe to the respondent. The learned Judge could not accept the contention that there was no evidence at all on record to support the finding of fact arrived at by the Tribunal. It does not appear from the record that the finding on Charge IV was questioned before the single Judge. He accordingly, dismissed the writ petition.

6. The respondent then preferred a Letters Patent Appeal which was allowed. The High Court repelled the contention about the Government being not competent to order the compulsory retirement of the respondent, but held that the evidence about the respondent's demanding and accepting the bribe from Munuswamy was not sufficient to establish beyond reasonable doubt that he had actually demanded the bribe and received it. It formed the same opinion about the evidence with regard to Charge IV and stated that even if this charge was established it would have been insufficient by itself to merit the punishment that had been inflicted upon the respondent. It, therefore, set aside the order of the learned Single Judge and ordered the issue of a writ quashing the order of the Government compulsorily retiring the respondent from service. It is against this order that the State of Madras sought leave to appeal to this Court and the High Court granted the certificate as it considered the question whether the High Court, in a petition under Art. 226, could examine the findings of a Disciplinary Tribunal and come to the conclusion whether the Government servant could be held to be guilty of any of the charges laid against him' to be a matter of general public importance.

7. It is well settled now that a High Court, in the exercise of its jurisdiction under Art. 226 of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence. It was so held in State of Orissa v. Murlidhar, AIR 1963 SC 404, where it was said at p. 408 :

"Whether or not the evidence on which the Tribunal relied was satisfactory and sufficient for justifying its conclusion would not fall to be considered in a writ petition. That in effect is the approach initially adopted by the High Court at the beginning of its judgment. However, in the subsequent part of the judgment the High Court appears to have been persuaded to appreciate the evidence for itself, and that, in our opinion, is not reasonable or legitimate."

8. Similar view was emphatically expressed in State of Andhra Pradesh v. Sree Rama Rao, AIR

1966 SC 1733, wherein it was said at p.1726 :

"The High Court is not constituted in a proceeding under Art. 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servants; it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is no some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Art. 226 to review the evidence and to arrive at an independent finding on the evidence..... But the departmental authorities are if the enquiry is otherwise properly held the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or realibility of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Art. 226 of the Constitution.

9. It is, therefore, clear that the High Court was not competent to consider the question whether the evidence before the Tribunal and the Government was insufficient or unreliable to establish the charge against the respondent. It could have considered only the fact whether there was any evidence at all which, if believed by the Tribunal, would establish the charge against the respondent. Adequacy of that evidence to sustain the charge is not a question before the High Court when exercising its jurisdiction under Art. 226 of the Constitution. This view was reiterated in Union of India v. H. C. Goel, AIR 1964 SC 364.

10. It is, therefore, clear that the High Court was in error in reappreciating the evidence before the Tribunal and recording the conclusion that that evidence did not establish the charges against the respondent. This is the only ground on which the Letters Patent Appeal has been allowed by the Division Bench, all other points urged by the respondent having been rejected by it. In the present appeal, the respondent has attempted to support the decision of the High Court under appeal on the ground that the findings recorded by the High Court on the said other points are erroneous. We will, therefore deal with the said points one by one.

11. It is urged for the respondent that he is governed by the Police Act and that an order of compulsory retirement amounts to an order of dismissal which could be passed only by one of the officers specified in S. 10 of the Police Act and not by the State Government which is not given any power to pass such order. S. 10 of the Police Act reads:

"Subject to the provisions of Art. 811 of the Constitution and to such rules as the State Government may, from time, to time make under this Act, the Inspector-General, Deputy Inspector General and District Superintendents of Police may at any time dismiss, suspend or reduce to a lower post, or time scale, or to a lower stage in time scale, any officer of the Subordinate Police whom they shall think remiss or negligent in the discharge of his duty or otherwise unfit for the same and may order the recovery from the pay of any such Police Officer of the whole or part of any pecuniary loss caused to Government by his negligence or breach of orders."

12. Firstly, an order of compulsory retirement does not amount to an order of dismissal and, therefore, does not come within the language of this section. Secondly, the provisions of this section are subject to the provisions of Art. 311 of the Constitution, and to the rules framed by the State Government under the Police Act. If the order of compulsory retirement amounts, in the circumstances of this case, to an order of dismissal, the Constitutional requirement of Art. 311 that

the respondent could not have been dismissed from service by an authority subordinate to that by which he was appointed has been satisfied. The respondent must have been appointed to the Police Service in 1929 by an authority subordinate to the State Government and, therefore, the State Government was competent to dismiss him.

13. The Police Rules were framed by the State Government in exercise of the powers conferred by S. 10 of the Police Act and by certain other provisions including the proviso to Art. 309 of the Constitution. R. 2 of the Police Rules mentions the various penalties which can be imposed among the members of the service and mentions 'compulsory retirement' in Cl. (g) as one such penalty. R. 4 specifies the authority which may impose any of the penalties prescribed in R. 2 on a member of the service specified in column 1 of the Schedule to the Rules and states that it shall be the authority specified in the corresponding entry under columns 2 to 8, therefore, whichever is relevant or any higher authority. According to the entry in the Schedule, the authority competent to order compulsory retirement, removal or dismissal of an Inspector of Police in the districts, is the Deputy Inspector-General of Police. The State Government is an authority higher than the Deputy Inspector-General of Police. This cannot be gainsaid. It is, however, urged for the respondent that the higher authority contemplated by R. 4 is the authority higher in rank according to the provisions of the Police Act and that such an authority could be only the Inspector-General of Police. We do not agree with this contention.

14. The State Government can pass the various orders of punishment dealt within the schedule and this is clear from R. 5 which describes the forum to which a member of the service can appeal from an order imposing any of the penalties specified in R. 2. According to Cl. (c), an appeal lies to the Governor if such an order imposing a penalty specified in R. 2 is passed by the State Government. We, therefore, agree with the High Court that the State Government was competent to order the compulsory retirement of the appellant.

15. Lastly it was urged that the Government had no power to refer the case against the respondent to the Tribunal and act on its report and that the enquiry against him could be held only in accordance with the Rules. It is further urged that even if the enquiry could be made either in accordance with the rules or by the Tribunal, the procedure provided for the enquiry by the Tribunal and the subsequent proceedings differs from similar procedure under the Rules in a way which is prejudicial to the interests of the Police Officer. We need not elaborately deal with these contentions as this Court had to deal with substantially the same contentions in Jagannath Prasad Sharma v. State of Uttar Pradesh, (1962) 1 SCR 151 : (AIR 1961 SC 1245). That case related to a Police Officer in Uttar Pradesh. The contentions raised were that the order dismissing him was unauthorized because the Governor had no power under S. 7 of the Police Act V of 1861 and the regulations framed thereunder to pass the order and further, even if the Governor could dismiss the Police Officer, a mode of enquiry prejudicial to the appellant in that case had been adopted out of two alternative modes of enquiry and, therefore, the proceedings of the Tribunal which enquired into the charges against him were void on account of the equal protection clause of the Constitution. It may be mentioned that the appellant in that case was a Deputy Superintendent of Police and the Act applicable to him was the Police Act of 1861. Section 7 of that Act is practically identical with S.10 of the Madras Act. The rule making power under both the Acts is with the State Government. The rules made by the Uttar Pradesh Government, are known as the Police Regulations. The U. P. Government made the Administrative Tribunal Rules in the exercise of powers conferred inter alia by S. 7 of the 1861 Act just as the Madras Tribunal Rules were framed by the Governor of Madras in the exercise of powers conferred by S. 211 of the Government of India Act, 1935 and of all other powers enabling the Governor to make rules. Such powers include the powers under S.10 of the

Police Act. In Jagannath Prasad's case. (1962) 1 SCR 151 : (AIR 1961 SC 1245), it was said at p. 159 : (at p. 1250 of AIR) :

"By virtue of Art. 313, the Police Regulations as well as the Tribunal Rules in so far as they were not inconsistent with the provisions of the Constitution remained in operation after the Constitution. The authority vested in the Inspector-General of Police and his subordinates by S. 7 of the Police Act was not exclusive. It was controlled by the Government of India Act 1935, and the Constitution which made the tenure of all civil servants of a Province during the pleasure of the Governor of that Province. The plea that the Governor had no power to dismiss the appellant from service and such power could only be exercised by the Inspector General of Police and the officers named in S. 7 of the Police Act is, therefore, without substance."

16. It can be similarly said in the present case that the Tribunal rules are applicable to the respondent, that the Governor had the power to retire him compulsorily and that consequently the Governor could refer the enquiry into the allegations against the respondent to the Tribunal.

17. We have carefully compared the provisions of R. 8 of the Tribunal Rules with R. 3(b) of the Police Rules which lay down the procedure to be followed is substantially the same. The Police officer proceeded against is furnished with the appropriate charges he has to meet. The enquiry is conducted in his presence. The Police Officer is entitled to cross-examine the witness examined to give evidence in person and to have such witnesses called as he may wish. He can put in a written statement of defence and can argue orally in person. The procedure followed agrees in substance with what is laid down in the rules and is in accordance with the requirements of natural justice. It is not complained that there had been any irregularities in the course of the enquiry which prejudiced the respondent. The only difference between the provisions of the Tribunal Rules and the Police Rules is said to be that the Tribunal Rules do not provide for an appeal against the order of the Government while under the Police Rules an appeal is provided under R. 5.

18. If the order is of compulsory retirement passed by the State Government, the appeal lies to the Governor. The Tribunal Rules do not say that the order of the Government which is the authority competent to impose a penalty in cases enquired into by the Tribunal would be appealable or not. There is no reason why R. 5 of the Police Rules will not apply to the order passed by Government after having the enquiry into the allegations against the Police officer conducted by a Tribunal when an appeal lies against its order on the basis of an inquiry conducted through any other authority. The rules do not specify the authority which is to enquire into the various complaints against a Police officer governed by those rules. They provide an appeal against the order of the State Government imposing any penalty referred to in R. 2 which would include an order made by the Government after considering the report of the Tribunal.

19. The record in the present case shows that the respondent did prefer an appeal to the Governor of Madras for reinstatement and that that appeal was rejected. It follows, therefore, that this contention about the enquiry by the Tribunal being prejudicial and about the respondent having been prejudicial has no substance as an appeal against the State Government is not barred under the Tribunal Rules and as factually the respondent did prefer an appeal against the order of compulsory retirement.

20. We are, therefore, of opinion that the High Court was in error in quashing the order of the State Government retiring the respondent compulsorily on the ground that the evidence during the inquiry proceedings by the Tribunal was not sufficient to establish the charges against him beyond

reasonable doubt. We accordingly allow the appeal, set aside the order of the Court below and restore the order of Government, dated June 25, 1953 ordering the compulsory retirement of the respondent from service. There will be no order as to costs.

Appeal allowed.

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