Channabasappa Basappa Happali

Vs

The State of Mysore

Civil Appeal No. 485 of 1967

(CJI M. Hidayatullah, A. N. Ray JJ)

16.10.1970

JUDGMENT

HIDAYATULLAH, C. J. -

The appellant files his appeal by special leave against the judgment of the learned Single Judge of the Mysore High Court, dated February 25, 1966, by which the appeal of the State Government in a civil matter was allowed and the order of dismissal of the appellant who is a former police constable was confirmed. His cross-objection was dismissed.

2. The appellant was a police constable serving in the Dharwar District. He joined the police force on August 1, 1945, in the former State of Bombay. On the State Reorganisation, he came under the jurisdiction of the State of Mysore and it was on November 26, 1953, that he was dismissed after a departmental enquiry against him on the following facts. The petitioner had proceeded on leave for a month from January 1, 1953. On January 26, 1953, he applied for extension of leave for a month. A reply was received by him refusing leave, but only on February 21, 1953. He made a second application for extension of leave on the same date, but this extension of leave was not granted. On February 26, 1953, he undertook a 7 days' fast at a temple situated three miles from Dharwar and wrote letters to his superior officers to which we shall refer presently. A charge was framed against him under three heads which were that he was guilty of serious misconduct and indisciplinary action in that he remained absent from duty without leave or permission from January 1, 1953, that he had sent letters to his superior officers intimating his intention to go on fast with effect from February 26, 1953, "for the upliftment of the country, etc." and that he had sent copies of these letters to several newspapers also. The third charge was that he did go on fast on February 26, 1953 and continued it till March 5, 1953, at the temple contrary to the discipline of the police force. He was duly served with these charges and was also asked to obtain such copies from the record as he needed for his defence and to bring a friend to defend him if he liked. When the enquiry commenced, he was put a few questions by the enquiring officer which may be referred to in detail.

Q. (1) Have you received a copy of the charge-sheet ?

A. Yes.

Q. (2) Have you understood the charges ?

A. Yes.

Q. (3) Do you accept the charges framed against you ?

A. Yes.

Q. (4) Have you anything to say for breaking the discipline of the Police Force ?

A. I had been on leave for one month. I applied to the Sub-Inspector for the extension of my leave by another month. I thought that my leave may be extended. Hence I did not join duty on 31-1-53. I was greatly worried by the injustice done by the police to the poor public and with a view to improve the Police Force and after informing the concerned authorities, I went on fast. I do not want any help from anybody for defending myself. I do not propose to cross-examine any witness that may be examined. Nor do I propose to examine any witness on my side. I do not know the Police Manual Rules. I submitted the petition in the interests of the general public. I did not go on fact in my self-interest. I have done so in public interest. We are living in a democratic country. So whatever is in the interests of the general public cannot run counter to the discipline of the Police Force. I pray for proper justice on the basis of my reply and the documents which are against me. I do not desire to say anything more.

3. It will appear from this that he did not want to take any more part in the enquiry than to have the matter adjudged on the basis of his reply and the documents which were against him. This is what he had stated in the penultimate sentence of his own statement and in the earlier part, he had unequivocally admitted the facts which had been placed in charge against him. His explanation was two-fold, namely that, he continued to absent himself because he thought that leave might have been extended and secondly that his proceeding to go on fast was in the interest of democracy and the country as a whole and also to improve the Police Force.

4. The pleas of the petitioner are quite clear; in fact he admitted all the relevant facts on which the decision could be given against him and therefore it cannot be stated that the enquiry was in breach of any principle of natural justice. At an enquiry facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which he is charged and to lead his defence. In this case, the facts were two-fold, that he had stayed beyond the sanctioned leave and that he had proceeded on a fast as a demonstration against the action of the authorities and also for what he called the upliftment of the country etc. These facts were undoubtedly admitted by him. His explanation was also there and it had to be taken into account. That explanation is obviously futile, because persons in the police force must be clear about extension of leave before they absent themselves from duty. Indeed this is true of every one of the services, unless of course there are circumstances in which a person is unable to rejoin service, as for example when he is desperately ill or is otherwise reasonably prevented from attending to his duties. This is not the case here. The petitioner took upon himself the decision as to whether leave could be extended or not and acted upon it. He did go on a fast. His later explanation was that he went on a fast for quite a different reason. The enquiry officer had to go by the reasons given before him. On the whole therefore the admission was one of guilty in so far as the facts on which the enquiry was held and the learned Single Judge in the High Court was, in our opinion, right in so holding.

5. It was contended on the basis of the ruling reported in Regina v. Durham Quarter Sessions Ex-parte Virgo [1952(2) QBD 1] that on the facts admitted in the present case, a plea of guilty ought not to be entered upon the record and a plea of not guilty entered instead. Under the English law, a plea of guilty has to be unequivocal and the Court must ask the person and if the plea of guilty is qualified the Court must not enter a plea of guilty, but one of not guilty. The police constable here was not on his trial for a criminal offence. It was a departmental enquiry, on facts of which due

notice was given to him. He admitted the facts. In fact his counsel argued before us that he admitted the facts but not his guilt. We do not see any distinction between admission of facts and admission of guilt. When he admitted the facts, he was guilty. The facts speak for themselves. It was a clear case of indiscipline and nothing less. If a police officer remains absent without leave and also resorts to fast as a demonstration against the action of the superior officer the indiscipline in fully established. The learned Single Judge in the High Court was right when he laid down that the plea amounted to a plea of guilty on the facts on which the petitioner was charged and we are in full agreement with the observations of the learned Single Judge.

6. The case really is not one of any merit; the plea raised before us was in ad misericordiem. We were asked to take the view that this man was actuated by his own feeling that leave would be extended and further that his going on fast was not for the purpose of the administration but for some other purpose. Even if we were to take the admission as a whole with all its qualifications, we are quite clear that he admitted the facts necessary to establish the charge against him.

7. The learned counsel for the appellant further relied upon a ruling of this court in Jagdish Prasad Saxena v. The State of Madhya Bharat (new Madhya Pradesh) (AIR 1961 SC 1070). That case is absolutely distinguishable. There are of course certain general observations about the importance of a departmental enquiry and how it should be conducted. We have here a clear case of a person who admitted the facts and did not wish to cross-examine any witness or lead evidence on his own behalf. He only stated that his acts should be adjudged on the basis of the documents which were in the case. This was done and there cannot be a complaint that the departmental enquiry was either one-sided or not fair. On the whole therefore we are satisfied that the appellant was properly adjudged guilty of indiscipline in the departmental enquiry and the order of dismissal which was passed against him was merited. In view of the fact that we are satisfied that the appellant is one of those persons who thinks that other people in the world have to be corrected and that perhaps he is one who is impelled by his own thoughts, we think that the ends of justice would be served by not awarding costs against him. With these observations, we dismiss the appeal.

</html