

State of Mysore and Others

Vs

H. D. Kolkar

Civil Appeal No. 2117 of 1968

(K.K.Mathew, M.H. Beg JJ)

10.10.1973

JUDGMENT

MATHEW, J. -

1. The respondent in this appeal started service as a police constable in the state of Bombay in 1935. He became a head constable after he was allotted to the State of Mysore consequent on the re-organisation of the states. In the year 1962 disciplinary proceedings were commenced against him. The charge was that he was found missing from his post between 11.30 p.m. on March 21, 1962 and 3.30 p.m. on the next day. The Superintendent of Police found him guilty of the charge and demoted him as a police constable.
2. The respondent preferred an appeal to the Deputy Inspector General of Police but that was dismissed. The respondent then filed a revision before the State Government under Rule 17 of the Bombay Police (Punishment and Appeal) Rules 1956 hereinafter called the "Rules". The Government thereafter issued a show cause notice to the respondent stating why the punishment imposed upon him by the Superintendent of Police should not be enhanced. After hearing the respondent, the punishment was enhanced to one of dismissal by the Government.
3. The respondent filed a writ petition before the High Court of Mysore to quash the order. He raised two grounds in the writ petition : (1) that the disciplinary proceedings were not conducted in accordance with law; and (2) that the enhancement of punishment was beyond the competence of the Government as Rule 17(2) of the Rules was ultra vires of Section 25(2)(c) of the Bombay Police Act, 1951, hereinafter called the 'Acts.
4. The High Court held that the disciplinary proceedings were conducted in accordance with law but that the Government had no jurisdiction to enhance the punishment. The Court therefore quashed the order of the Government enhancing the punishment. It is against this order that the appeal has been preferred on certificate by the State of Mysore.
5. The appellant contended that Rule 17(2) of the Rule which authorised the State Government to call for the records of any case in which an order has been passed by an authority subordinate to it and enhance the punishment inflicted by the order was not ultra vires Section 25(2)(c) of the Act.
6. It is therefore, necessary to read Section 25 of the Act and Rule 17(2) of the Rules. The material part of Section 25 reads.

"25 (1) The State Government or any officer authorised by Sub-section (2) in that

behalf may suspend, reduce, dismiss or remove an Inspector or any member of the subordinate ranks of the Police Force whom he shall think cruel, perverse, remiss or negligent in the discharge of his duty or unfit for the same and may fine to an amount not exceeding one month's pay any member of the sub-ordinate ranks of the Police Force, who is guilty of any breach of discipline or misconduct or any act rendering him unfit for the discharge of his duty, which does not require his suspension or dismissal.

(2)(a) The Inspector-General the Commissioner and the Deputy Inspector General shall have authority to punish an Inspector or any member of the subordinate ranks under sub-section (1). A Superintendent shall have the like authority in respect of any Police Officer subordinate to him below the grade of Inspector and may suspend an Inspector who is subordinate to him pending inquiry into a complaint against such Inspector and until an order of the Inspector General or Deputy Inspector-General can be obtained.

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(c) The exercise of any power conferred by this sub-section shall be subject always to such rules and orders as may be made by the State Government in that behalf."

Rule 17 of the Rules read :

"(1) The State Government shall alone have the power of revision and revision shall lie only in respect of punishments which are appellate.

(2) The State Government of its own motion or otherwise may call for the record of any case in which an order has been made by an authority subordinate to it in the exercise of any power conferred on such authority by the Rules and may :

a) confirm, modify or reverse the order or b) direct that further enquiry be held in the case c) reduce or enhance the punishment inflicted by the order d) make such other order in the case as it may deem fit.

Provided that where it is proposed to enhance the punishment inflicted by any such order, the Police Officer concerned shall be given an opportunity of showing cause against the proposed enhancement."

7. It is clear from sub-section (1) of Section 25 that the State Government or any other authorised by the State Government under sub-section (2) of that Section is competent to impose the punishment of suspension, reduction, dismissal or removal on an inspector or other member of the subordinate rank of the Police Force on the grounds enumerated in that Section. Sub-section 2(a) consists of two parts. The first part authorises the Inspector General of Police to impose punishment which the State Government could impose under Sub-section (1). The other part of that sub-section says that Superintendent of Police shall have the like authority in respect of any Police Officer subordinate to him below the grade of Inspector. It was in the exercise of this power that the Superintendent of Police here reduced the respondent to the rank of a police constable.

8. Now the source of the power under which Rule 17 was framed as stated in the preamble to the Rules is sub-section 2(c) of Section 25 of the Act and the question is whether this clause really

authorised the Government to acquire power by framing a rule to enhance the punishment imposed under sub-section 2(a) of Section 25.

9. As already stated the High Court was of the opinion that the sub-section could confer no authority to frame a rule to invest the Government with power to revise an order of punishment made under Section 25(2)(a).

10. It is clear from the language of clause (c) of Section 25(2) that only rules and orders which could be made under that clause are rules and order for the exercise of the power conferred by Section 25(2)(a). The words "the exercise of any power conferred by this sub-section shall be subject always to such rules and orders as may be made by the State Government" in Section 25(2)(c) would indicate that the Government have no power to make any rule or order arrogating to themselves a power of revision over an order of punishment passed under Section 25(2)(a). What is made subject to the rules or orders to be passed or made by Government is "the exercise of any power" conferred under Clause 2(a) of Section 25. Sub-section 2(c) of Section 25 can only mean that the Government will have power to pass rules or orders for regulating the procedure or such other matters for the exercise of the power conferred by sub-section 2(a) of Section 25 by the officers mentioned therein. The power to enhance the punishment is a power which can be exercised only after the concerned officer has exercised his power under Section 25(2)(a). In other words, rules or orders can be made by Government under Section 25(2)(c) only for guiding him either in the matter of procedure, or the manner of arriving at a decision. It is obvious from the language of Section (2)(c) that while the power exercisable under Section 25(2)(a) is subject to that rules and orders made by Government, the decision which comes into being after the exercise of that power is not subject to the supervision of the Government by framing a rule or making an order in that behalf. Once the exercise of such power results in the imposition of a punishment, the punishment becomes final subject only to an appeal which is authorised by Section 27. The consequence is that Rule 17(2) of the Rules, by which the Government sought to acquire power to call for the records and to revise orders passed under Section 25(2)(a) and to enhance the punishment imposed, was clearly beyond its competence.

11. We dismiss the appeal with costs.

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