

Sengara Singh and Others

Vs

State of Punjab and Others

Civil Appeals Nos. 3183-3184 of 1983

(D. A. Desai, O. Chinnappa JJ)

02.08.1983

ORDER

1. The appellants in these two appeals were members of the Police Force in the state of Punjab belonging to various ranks such as Constables, Head Constables, Assistant Sub-Inspectors and Sub-Inspectors of Police. There are 65 appellants in Civil Appeal No. 3183 of 1983 and there are 52 appellants in the cognate appeal. Thus we have before us the case of 117 persons.

2. To begin with, the factual matrix. Dissatisfaction about the conditions of service of members of the Police Force in the State of Punjab led to an agitation which at its height was in the form of a procession and some demonstration. The State of Punjab initiated disciplinary action and dismissed about 1100 members of the police Force on the ground that they had participated in an agitation which was impermissible under the rules governing the discipline in the Police Force of the State of Punjab. A number of criminal prosecutions were filed against participants in the agitation. Some of the members of the Police Force who were dismissed from service filed writ petitions in the High Court of Punjab and Haryana, but they were dismissed. It appears that after the dismissal of the writ petitions about 1000 former members of the Police Force were reinstated and criminal cases pending against some of them withdrawn. In this behalf the submission of the State of Punjab is that a Committee consisting of members of the superior rank of the Police Force was constituted by the State Government to review the cases of the dismissed agitator and reinstatement followed on the recommendations of the Committee. We will have occasion to revert to this aspect of the matter later on. The Committee consisted of Director General of Police, Deputy Inspector General of Police CIB, Assistant Inspector General of Police (Admn.) and Superintendent of Police of the District to which the dismissed members of the Police Force belonged. It is conceded that of the 1100 dismissed agitators 1000 were reinstated and the rest were left to fend for themselves. Those who were thus weeded out by the Committee filed writ petitions in the High Court of Punjab and Haryana. A Division Bench of the High Court dismissed the petitions making the following order :

The petitioners were dismissed from service on account of their participation in the police agitation. Some of them had been taken back by the Government. The petitioners have filed this writ petition proving that the Government should also consider their cases. It is not disputed that some of the Constables filed writ petitions which were dismissed vide judgment reported as ILR 1980(2) P & H 122. After hearing the learned counsel for the parties, we do not find any merit in the petition and consequently dismiss the same in limine.

3. With the best of our efforts and with the assistance of Mr. D. D. Sharma, learned counsel for the state of Punjab we unsuccessfully tried to understand the decision of the High Court. The decision in ILR 1980 (2) P & H 122 was given much prior to the constitution of the committee in whose

recommendations 1000 former members of Police Force were reinstated. The situation had undergone a sea change since the decision and contention was entirely different and therefore, we consider the reference to the earlier decision inopposite. If the petitions were dismissed following the decision, which was entirely irrelevant, we are of the opinion that the High Court had completely misdirected itself in examining the contentions raised before it. The dismissal of the writ petitions by a laconic order by the High Court necessitated the examination of the case of the appellants by us in depth.

4. Mr. D. D. Sharma, learned counsel was at pains to point out that the State Government cannot be charged with picking and choosing or distributing its largesse in reinstating some of the dismissed members of the Police Force because a high powered Committee consisting of top brass of the Police Force examined the case of each dismissed person and on its recommendations the State Government took the decision to reinstate some and not to revoke the order of dismissal of the rest including the present appellants. The High Court in its short order does not refer to constitution, deliberations or recommendations of this Committee. We have our grave doubts whether the reports of the Committee was ever disclosed to the High Court. At any rate in the counter-affidavit filed by Mr. K. K. Attri, IPS, Assistant Inspector General of Police, Chandigarh in this Court, he has referred to the constitution of the Committee to review the cases of dismissed members of the Police Force. But there is no whisper in this counter-affidavit as to what yardstick was applied by Committee and on what material the cases of the present appellants were distinguished from those who became the beneficiaries of the Committee's largesse. The only reference to the work of the Committee is in para 5 of the counter-affidavit wherein it is stated that after the dismissal of the writ petitions (earlier writ petition) filed by the dismissed employee, the Government constituted a Committee of senior officers to review the cases of dismissed police employees and on the recommendations of this Committee some dismissed police employees have so far been reinstated. In fairness to the appellants, and to the Court not only the report of the Committee should have been disclosed to this Court but the deponent should have stated in his affidavit the criteria adopted by the Committee for distinguishing the one dismissed police employees from one another and how present appellants fell on the other side of the line. The affidavit is conspicuous by its silence on this most relevant aspect.

5. Mr. D. D. Sharma, learned counsel however, stated that he has got the report of the committee with him and is prepared to produce the same with an affidavit when the hearing of the appeals was in progress. What prevented the State Government to produce this report before the High Court and on an earlier occasion before this Court ? In this connection, it may be pointed out that by the order of this Court made on March 11, 1983 special leave to appeal was granted to the appellants. The Court further dispensed with preparation of record and filing of statements of case and also security deposit was dispensed with. The Court specifically directed that the appeals be listed for hearing in August, 1983. The State Government had five months for producing the report as well as other documents. And, let it be recalled that before granting the special leave to appeal the State was already with a notice issued by this Court to show cause special leave should not be granted. This order was made as far back as on November 5, 1982. Add to this the fact that Mr. Attri filed his counter-affidavit on January 27, 1983. Yet for a period of seven months the report of the Committee did not see the light of the day. We are of the view that the inflow of the documents should at least be stopped when hearing is in progress. Overlooking the laxity in this behalf puts the other side to irremediable disadvantage and the hearing may have to be adjourned which would totally upset the working of the Court. We, therefore, declined to take the report on record in the course of the hearing.

6. We, however, requested Mr. Sharma to tell us what criteria or guidelines or yardstick were adopted with reference to which the case of each dismissed agitator was examined and the reasons why the cases of the present appellants fell on the other side of the line. We asked one more question as to why this distinguishing feature in respect of the present appellants treating them differently from others similarly situated was not set out in the counter-affidavit. There was little or no convincing reply.

7. What then is the situation? As a sequel to police agitation, the State Government dismissed about 1100 members of the Police Force on the allegation that they participated in the agitation. The State Government also filed criminal prosecutions against a large number of the agitators. Subsequently, the State Government reinstated 1000 dismissed members of the Police Force in their original posts and withdrew the criminal cases against them. If the filing of the criminal cases was the distinguishing feature, which would distinguish the case of the present appellants from other, that feature has become irrelevant because the criminal cases against those who were subsequently reinstated have been withdrawn. It is not suggested that the present were leaders or indulged into more violent activities. We repeatedly questioned the learned counsel to specify the distinguishing features of the present appellants from those in whose cases the Committee recommended the reinstatement and the State Government accepted the recommendations. There is not an iota of evidence which would distinguish the case of the present appellants from those who were the beneficiaries of the indulgence of the Committee and the largesse of the State. The net result has been that the present appellants have been arbitrarily weeded out for discriminatory and more severe treatment than those who were similarly situated. This discrimination is writ large on the record and the Court cannot overlook the same.

8. As usual the bogey was raised that this Court should not encourage indiscipline in ranks of paramilitary forces like the Police because that will tinkle with national security. We asked Mr. Sharma, learned counsel whether the charge should be addressed to the Court or to the State Government. The High Court dismissed the petitions on an earlier occasion probably guided by this consideration. The State Government thereafter constituted a Committee to review the cases of all dismissed agitators and the Committee picked and chose some for its indulgence the rest to fend for themselves. May we repeat the question as to who would be responsible for creating such situation and encourage indiscipline in the police Force? The State or the Court. The State decided the agitators into two classes i.e. favourites and non-favourites. The Court is restoring the balance by this order. Therefore, the charge misdirected at the Court must be ignored.

9. What when should be done? The appellants have been accused of participating in a procession taken out by the members of Police Force for ventilating their grievances about their service conditions. May be that still having not reached the stage of tolerance for formation of associations amongst police personnel, the demonstrators may be looked upon with disfavour. But approaching the matter from this angle, all the 1100 dismissed members of the Police Force were guilty of same misconduct namely indiscipline to the same extent and degree as the present appellants. Now if the indiscipline of a large number of personnel amongst dismissed personnel could be condoned or overlooked and after withdrawing the criminal cases against them, they could be reinstated, we see no justification in treating the present appellants differently without pointing out how they were guilty of more serious misconduct or the degree of indiscipline in their case was higher than compared to those who were reinstated. Respondents failed to explain to the Court the distinguishing features and therefore, we are satisfied in putting all of them in same bracket. On that conclusion the treatment meted to the present appellants suffers from the vice of arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equally as guaranteed

by Article 14 of the Constitution. The Court must accordingly interpose and quash the discriminatory action.

10. Before we conclude we must notice a submission of Mr. D. D. Sharma, learned counsel for the State of Punjab to the effect that the only prayer of the appellants in High Court was the their cases having not considered by the Committee, the Committee may be directed to considered their cases and thus the Court cannot grant any other relief. We remain unimpressed. The prayer with which the petitioners approached the High Court reads as under :

Issue a writ of mandamus commanding respondents to consider the cases of the appellants also objectively and dispassionately and thereafter take back them into service of the Police Department as they had taken back persons who were similarly situated and who also took part in the police agitation in 1979.

11. Is there any doubt the relief sought by the appellants ? They sought reinstatement on the ground of equality of treatment with persons similarly situated. The prayer for reconsideration of the case was a step to be taken for reinstatement. We therefore, reject the contention of Mr. Sharma, learned counsel that we should remit the case to the High Court.

12. Logically the appellants must receive the same benefit which those reinstated received in the absence of any distinguishing feature in their cases. Accordingly, the appellants would be entitled to reinstatement in service. Therefore, both the appeals succeed and are allowed and the order of the High Court dismissing the writ petitions is quashed and set aside. The State of Punjab is directed to reinstate the appellants subject to the conditions set out at Annexure P-II subject to which the other dismissed personnel of the Police Force were reinstated. They should be reinstated as directed herein forthwith from today. Their services should be treated as continuous and the period between the date of the dismissal and the reinstatement shall be treated as leave if available and admissible or leave without pay if leave of any kind is not available. To the extent they are treated as on leave they should be paid leave salary. Respondents shall pay cost of the appeals in both appeals quantified at Rs. 2500 in each case.

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