

Union of India and Others

Vs

Bakshi Ram

Civil Appeal No. 1312 of 1990

(M.H. Kania, Kuldip Singh JJ)

01.03.1990

JUDGMENT

K. JAGANNATHA SHETTY, J. -

1. Special leave granted.

2. Bakshi Ram respondent was a constable in the Central Reserve Police Force at Devli in Rajasthan. On 17th March 1971 at about 8.45 p.m. he along with another constable forced entry into the room of Garib Das, the constable of the CRP Group Centre band Platoon. Garib Das was then not present in the room. His wife Savitri Devi who was inside tried to prevent their entry, but in vain. Both the constables caught hold of her and misbehaved with her.

3. The respondent was tried for an offence under Section 10(n) of the Central Reserve Police Force Act, 1949. Section 10 of the Act sets out less heinous offences and Section 10(n) refers to any act or omission which, though not specified in the Act, is prejudicable to good order and discipline. On the evidence adduced in the case he was found guilty of the charge and by judgment dated 23th March 1971 he was sentenced to four months' R.I. by the Magistrate I Class and Commandant Group Centre. CRPF, Deoli (Rajasthan). He was lodged in the Civil Jail, Jaipur to undergo the sentence.

4. In view of his conviction and sentence, the department by way of disciplinary action dismissed him from service. This action was taken when his appeal against the conviction and sentence was pending before the Sessions Judge. The learned Judge by judgment dated 22 September 1971 upheld the conviction but released him under the Probation of Offenders Act, 1958 ("the Act"). Apparently he was released under Section 4 of the Act upon furnishing bonds to keep peace and be of good behaviour for the period of six months. The respondent complied with those conditions. After expiry of the period of good conduct, he moved the High Court with writ petition under Article 226 of the Constitution challenging his dismissal from service. The High Court relying upon Section 12 of the Act has set aside the dismissal and directed that he should be reinstated into service with all consequential benefits. The high Court has expressed the view that the sole reason for dismissal of the respondent was his conviction under Section 10(n) of the Central Reserve Police Force Act but in view of Section 12 of the Probation of Offenders Act, 1958, there was no disqualification for him to continue in service, this is how the High Court observed :

"The clear language of Section 12 of the Probation of Offenders Act, 1958 which provides that a person dealt with under the provisions of Section 3 of Section 4 of that Act shall not suffer disqualification, if any, attaching to a conviction under any law, notwithstanding anything contained in any other law. This provision has the

effect of removing disqualification attaching to the petitioners' conviction under Section 10(n) of the CRPF Act. Section 12 of the Probation of Offenders Act dealing specifically with this situation 'notwithstanding any thing contained in any other law' Hence, effect has to be given to the same."

5. The judgment of the High Court has been challenged in this appeal.

6. Since the result of the appeal turns on the scope and meaning of Section 12 of the Probation of Offenders Act, it is necessary to set out the Section. Section 12 is in these terms :

"12. Removal of disqualification attaching to conviction. - Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provision of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law :

Provided that nothing this Section shall apply to a person who, after his release under Section 4, is subsequently sentenced for the original offence".

7. Section 3 of the Probation of Offenders Act, 1958 provides power to the Court to release certain offenders after admonition. Section 4 provides power to the Court to release certain offenders on probation of good conduct. Under the disposition made by the Court under Section 4 the sentence is suspended during the period of probation and the offender is released on his entering into a bond to keep peace and be of good behaviour. Section 9 provides for procedure in case of offender failing to observe conditions of bond. The Court, if satisfied that the offender has failed to observe any of the conditions of bond for keeping good behaviour, may sentence him for the original offence or where the failure is for the first time, then, without prejudice to the continuance in force of the bond, the Court may impose upon him a penalty not exceeding fifty rupees.

8. It will be clear from these provisions that the release of the offender on probation does not obliterate the stigma of conviction. Dealing with the scope of Section 3, 4 and 9 of the Probation of Offenders Act, Fazal Ali, J., in the *The Divisional Personnel Officer, Southern Railway v. T. R. Challappan* ((1976) 3 SCC 190, 198 : 1976 SCC (L&S) 398 : (1975) 2 SLR 587, 596) speaking for the Court observed : (SCC p. 198, para 11)

"These provisions would clearly show that an order of release on probation comes into existence only after the accused is found guilty and is convicted of the offence. Thus the conviction of the accused or the finding of the Court that he is guilty cannot be washed out at all because that is the sine qua non for the order of release on probation of the offender. The order of release on probation is merely in substitution of the sentence to be imposed by the Court. This has been made permissible by the statute with a humanist point of view in order to reform youthful offenders and to prevent them from becoming hardened criminals. The provisions of Section 9(3) of the Act extracted above would clearly show that the control of the offender is retained by the criminal court and where it is satisfied that the conditions of the bond have been broken by the offender who has been released on probation, the Court can sentence the offender for the original offence. This clearly shows that the factum of guilt on the criminal charge is not swept away merely by passing the order releasing the offender on probation. Under Sections 3, 4, or 6 of the Act, the stigma continues and the finding of the misconduct resulting in conviction must be treated to be a

conclusive proof. In these circumstance, therefore, we are unable to accept the argument of the respondents that the order of the Magistrate releasing the offender on probation obliterates the stigma of conviction."

9. As to the scope of Section 12, learned judge went on (at 596) : (SCC p. 198, para 12)

"It was suggested that Section 12 of the Act completely obliterates the effect of any conviction and wipes out the disqualification attached to a conviction of an offence under such law. This argument, in our opinion, is based on a gross misreading of the provisions of Section 12 of the Act; the words "attaching to a conviction of an offence under such law" refer to two contingencies : (i) that there must be a disqualification resulting from a conviction and (ii) that such disqualification must be provided by some law other than the Probation of Offenders Act. The Penal Code does not contain any such disqualification. Therefore, it cannot be said that Section 12 of the Act contemplates and automatic disqualification attaching to a conviction and obliteration of the criminal misconduct of the accused. It is also manifest that disqualification is essentially different in its connotation from the word 'misconduct'."

10. In criminal trial the conviction is one thing and sentence is another. The departmental punishment for misconduct is yet a third one. The Court while invoking the provision of Section 3 or 4 of the Act does not deal with the conviction; it only with the sentence which the offender has to undergo. Instead of sentencing the offender, the Court releases him on probation of good conduct. The conviction however, remains untouched and the stigma of conviction is not obliterated. In the departmental proceedings the delinquent could be dismissed or removed or reduced in ran on the ground of conduct which has led to his conviction on a criminal charge : (See Article 311(2)(b) of the Constitution and Tulsiram Patel case (Union of India v. Tulsiram Patel, (1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp) 2 SCR 131)].

11. Section 12 of the Act does not preclude the department from taking action for misconduct leading to the offence or to his conviction thereon as per law. The Section was not intended to exonerate the person from departmental punishment. The question of reinstatement into service from which he was removed in view of his conviction does not therefore, arise. That seems obvious from the terminology of Section 12. On this aspect, the High Courts speak with one voice. The Madras High Court in R. Kumaraswami Aiyer v. Commissioner. Municipal Council, Tiruvannamalai ((1957) 58 Cri LJ 255 : (1956) Mad LJ 562 (Mad) and Embaru, (P) v. Chairman, Madras Port Trust (1963) 1 LLJ 49 (Mad) the Andhra Pradesh high Court in A. Satyanarayana Murthy v. Zonal Manager, LIC (AIR 1969 AP 371), the Madhya Pradesh High Court in Prem Kumar v. Union of India (1971 Lab IC 823 : (1971) 2 LLJ 346 : 1971 MPLJ 483 (MP), the Punjab and Haryana High Court in Om Prakash v. Director Postal Service (Posts and Telegraphs Deptt.) Punjab Circle, Ambala (1971) (1) SLR 648 (P&H), the Delhi High Court in Director of Postal Services v. Daya Nand (1972 SLR 325 : 1972 Lab IC 736 (Del) have expressed the same view. This view of the High Courts in the aforesaid cases has been approved by this Court in T. R. Challappan's case ((1976) 3 SCC 190, 198 : 1976 SCC (L&S) 398 : (1975) 2 SLR 587, 596).

12. In Trikha Ram v. V. K. Seth (1987 Supp SCC 39 : 1987 SCC (L&S) 282 : (1987) 4 ATC 208) this Court after referring to Section 12 has altered the sentence of dismissal of the petitioner therein into "removal from service", so that it may help him to secure future employment in other establishment.

13. Section 12 is thus clear and it only directs that the offender "shall not suffer disqualification, if any, attaching to a conviction of an offence under such law." Such law in the context is other law providing for disqualification on account of conviction. For instance, if a law provides for disqualification. For instance, if a law provides for in any office or for seeking election to any authority or body in view of his conviction, the disqualification by virtue of Section 12 stands removed. That in effect is the scope and effect of Section 12 of the Act. But that is not the same thing to state that the person who has been dismissed from service in view of his conviction is entitled to reinstatement upon getting the benefit of probation of good conduct. Apparently, such a view has no support by the terms of Section 12 and the order of the High Court cannot, therefore, be sustained.

14. In the result the appeal is allowed. The impugned order of the High Courts is set aside. However, we alter the penalty of dismissal from service into 'removal from service' as it was done in Trikha Ram case (1972 SLR 325 : 1972 Lab IC 736 (Del)).

15. In the circumstances of the case, we make no order as to costs.

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