

State of Punjab and Others

Vs

Sarwan Singh

Civil Appeal No. 2309 of 1996

(B. P. Jeevan Reddy, S. C. Sen JJ)

25.01.1996

JUDGEMENT

B. P. JEEVAN REDDY, J.:-

1. Leave granted. Heard counsel for both the parties.

2. This appeal arises from the order of a learned Single Judge of the Punjab and Haryana High Court dismissing the Second Appeal preferred by the State of Punjab in limine. The respondent was police constable. A disciplinary inquiry was held against him for unauthorised absence from duty. At the conclusion of the disciplinary inquiry, the Superintendent of Police, Ropar, gave a notice to the respondent calling upon him to show-cause why he should not be dismissed from service. Respondent submitted his reply. At that stage, it appears, he was transferred from Ropar to District Sangrur. From District Sangrur he was transferred to District Patiala. The relevant file relating to disciplinary proceedings was also transferred to Patiala. On April 25, 1984 an order was passed dismissing the respondent from service. The order is signed by "Superintendent of Police, Patiala". At the foot of the said order, the names of persons to whom copies of the said order were sent are mentioned. Thereafter, there is the signature of "Sri J. P. Viridi, I. P. S. Superintendent of Police, Patiala".

3. The respondent filed a suit challenging the order of his dismissal. The trial Court decreed the suit on the only ground that the order of dismissal has not been passed by the Superintendent of Police in-charge of District but by Shri. J. P. Viridi who was only a Superintendent of Police (Headquarters). The trial Court was of the opinion that only the Superintendent of Police, in-charge of the District is competent to dismiss a police constable under the relevant rules. This finding of the trial Court has been affirmed by the learned District Judge on appeal. The learned District judge observed that Sri. J.P. Viridi was not in-charge of the District at the relevant time and, therefore, not competent to pass the order of dismissal. The Second Appeal preferred by the State of Punjab has been dismissed by the High Court in limine, as stated above.

4. In this appeal, it is contended by the learned counsel for the State of Punjab that according to the Punjab Police Rules (Chapter XVII), constable can be dismissed by one of the officers mentioned under Column (6) of the table appended to Rule 16.1. The Officers mentioned under the said Column are "Superintendents of Police, Deputy Superintendent (Administrative) Government Railway Police; Deputy Superintendents-in-charge of Railway police Sub-Divisions; Senior Assistant Superintendent of Police, Lahore; officer-in-charge of Recruits mentions "superintendents

of Police" (plural) and not merely "Superintendent of Police" (singular) and, therefore, a Superintendent of Police under whom the constable (delinquent officer) is working is competent to dismiss him. It is not necessary, it is contended that the Superintendent of Police incharge of the district alone should pass such orders. It is submitted that the respondent has not alleged or established that the officer who signed the dismissal order-whether Sri J.P. Viridi or another- was not having control over him. The burden of establishing that the "Superintendent of Police, Patiala" who signed the dismissal order has no authority to do so lay upon him and that he has failed to discharge that burden. On the other hand, the learned counsel for the respondent relies upon certain decision of the Punjab and Haryana High Court holding that only the Superintendent of Police/Senior Superintendent of Police in-charge of the district is competent to pass the order of dismissal.

5. It may be noticed that the order of dismissal is signed by "Superintendent of Police, Patiala". The officer who passed the order did not describe himself as "Superintendent of Police (Headquarters)". Whether that description is not correct is a question which the High Court ought to have dealt with. It should also have dealt with the question whether the order is incompetent, if has been passed by the "Superintendent of Police (Headquarters)". It may also be necessary to find out whether the respondent was posted in the Headquarters at the time of his dismissal and was he subordinate to "Superintendent of Police (Headquarters)". It may also be necessary to deal with the contention of the State based upon the language employed under Column (6) of Rule 16.1 of the Punjab Police Rules, set out hereinabove.

6. Since the question arising herein is of general application, we think appropriate that the matter is examined in depth by the High Court. The appeal is accordingly allowed, the order under appeal is set aside and the matter remitted to the High Court for fresh disposal of the appeal in accordance with the law and in the light of the observations contained in this judgment. The High Court is requested to admit the Second appeal, give notice to the respondent and dispose of the appeal on merits. If necessary, the High Court shall be free to call for such further evidence as it may think necessary for a just and proper disposal of the appeal. The High Court may also consider expeditious disposal of the matter.

7. The appeal is disposed of accordingly. No costs. Order accordingly.