NAGPUR HIGH COURT

Jageram Malik

Vs

State of M.P

Misc. Petn. No. 312 of 1952

(Mudholkar and Sen, JJ.)

12.08.1953

JUDGMENT

Sen, JJ.

1. This is a petition under Article 226 of the Constitution.

2. The petitioner was a member of the Madhya Pradesh Police Force having joined as a Sub-Inspector of Police on 1-1-1924. He was confirmed in that post on 1-1-1927. After the Police Action against the Hyderabad State, the petitioner was first sent, on deputation, to Nanded in that State and subsequently to Bhainsa as Station Officer. On 25-2-1950 a complaint was made against him for extortion by one Gangoo to the Director-General of Police, Hyderabad. Thereupon, an enquiry was made by Shri Jham Singh, the then Deputy Superintendent of Police, Nanded. He recorded the statements of the witnesses and reported that the allegations made against the petitioner were found to be false. It would appear that another report in connection with the same affair was made to the D.I.G., Aurangabad. The D.I.G. himself went to Bhainsa, made an enquiry, during the course of which he recorded the statements of the witnesses. On the basis of this enquiry the D.I.G. passed an order on 21-5-1950 suspending the petitioner from service and directing him to hand over charge of his office and to proceed to Nanded at once. He was also ordered verbally not to leave Nanded without the previous permission of the proper authorities. In the order of suspension it was directed that during the period of suspension the petitioner would be entitled to draw 1/4th of his pay, presumably as provided for in the Police Regulations in force in the Hyderabad State.

3. Eventually, a Departmental Enquiry was held against the petitioner by Shri D.G. Deshpande, Deputy Superintendent of Police and the findings of the Enquiring Officer together with all the relevant papers and documents in connection with the enquiry were sent to the Inspector-General of Police, Madhya Pradesh. On 5-3-1951, the petitioner was served with a notice to show cause

against his dismissal from the Police Force by the Inspector-General of Police, Madhya Pradesh, through the D.S.P., Nanded (Hyderabad), and on 12-5-1951 he was served with an order of dismissal passed by the Inspector-General of Police, Madhya Pradesh. It is said that at that time the petitioner was undergoing medical treatment for tuberculosis at Simla. The petitioner then preferred an appeal before the State Government which was rejected. He has, therefore, made this petition to this Court under Article 226 of the Constitution.

4. In the petition as originally filed one of the grounds taken was that as at the relevant time the petitioner was "exercising the powers of a Sub-Inspector of Police" under the Hyderabad Government and not under the Madhya Pradesh Government the order of dismissal passed on 5-5-1951 by the Inspector-General of Police, Madhya Pradesh was without jurisdiction. This ground has since been amended by the petitioner as follows:

> "57. Secondly, the petitioner submits that the order of dismissal dated 5-5-1951 passed by the I.G. of Police, Madhya Pradesh was without jurisdiction inasmuch as the I.G.'s order was based upon an enquiry conducted and reports made by the Hyderabad authorities not subordinate to the I.G. of Madhya Pradesh and in accordance with the Hyderabad Police Regulations."

He has also added the following additional ground:

> "62-A. The petitioner also submits that constitutionally Hyderabad is a Part B State since the commencement of the Constitution and the petitioner should have been governed by the Police Regulations and General Book Circulars of Madhya Pradesh but the subsistence allowance paid to the petitioner and the Departmental Enquiry conducted purported to be wholly under the Hyderabad Police Regulations and not according to the Police Regulations and the General Book Circulars of Madhya Pradesh. And even the provisions of the Hyderabad Police Regulations were violated while conducting the Departmental Enquiry against the petitioner."

We have permitted the amendment.

5. In answer to the original ground the State Government asserts that the petitioner having been appointed by the Inspector-General of Police Madhya Pradesh he could, after giving a notice to show cause against his dismissal, dismiss him. It also states that at the time of his dismissal the petitioner had already been transferred to the Madhya Pradesh State and posted to the Bilaspur District.

6. A further contention raised by the petitioner was that the charge was not accompanied by a statement of allegations and other particulars as required by paras. 8 and 58 of Circular No.13 in Part I of the General Book Circulars. In answer to this the State Government replied thus:

> "37. The contentions raised in this para are denied. As the Departmental Enquiry was conducted under the rules in force in the State of Hyderabad, the procedure of the General Book Circular was not applicable to the case. At any rate, there was no such illegality or irregularity as to vitiate the order of dismissal passed after giving him a notice to show cause."

On 17-7-1953, Shri T.P. Naik, Additional Government Pleader, stated before us that the petitioner was governed by the rules in force in Madhya Pradesh, that is, by the Police Act, 1861, the Police Regulations and the General Book Circulars and that he would like to withdraw the statement to the contrary contained in the paragraph quoted above.

7. When the petition came up for hearing before us on 21-7-1953, Shri W.K. Sheorey, Second Additional Government Pleader, appeared for the State as Shri Naik was out of station, and stated that his instructions were not to withdraw the statement. The inference which can be legitimately drawn from this is that the State Government accepts the assertion that the procedure followed was not that laid down in the Police Regulation in force in Madhya Pradesh and the General Book Circulars but it is not quite certain whether it could be properly disregarded.

8. An argument was advanced on behalf of the petitioner before us regarding the constitutional position of Hyderabad after the "Police Action" to the effect that Hyderabad had not yet acceded to India, that therefore the Police Act, the Police Regulations and the General Book Circulars were not applicable to it and therefore it must be held that the enquiry made by the officials in that State was not such as is provided by the aforesaid laws. In the course of arguments the petitioner's learned counsel Shri R.V.S. Mani however admitted that upon a proper construction of the Farman issued by the Nizam on the 23-11-1949 the State of Hyderabad must be deemed to have acceded to India, subject, of course, to the rights of the Hyderabad Constituent Assembly to revise the decision. The decision has not yet been revised.

9. Apart from this, it is the duty of every Court in India to uphold the Constitution. The Constitution regards the State of Hyderabad as a part of Indian Union and has placed it in Part B. It is not, therefore, open to a Court to question this position. Hyderabad State must, accordingly, be regarded as a part of the Indian Union.

10. In support of the contention that the Police Act and Police Regulations do not apply to the Hyderabad State and that therefore the officers of the Hyderabad State could not make an enquiry into the allegations made against the petitioner reliance is then placed on Section 3, Police Act of 1888. That provision reads thus:

> "Notwithstanding anything in any of the Acts mentioned or referred to in the last foregoing section, but subject to any orders which the Governor-General in Council may make in this behalf, a member of the police establishment of any presidency, province or

> place may discharge the functions of a police officer in any part of British India beyond the limits of the presidency, province or place, and shall, while so discharging such functions, be deemed to be a member of the Police establishment of that part and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that establishment."

As provided for by the Adaptation Order, 1950, the word 'State' in the Police Act of 1888 means a Part A State or a Part C State. This provision, thus, does not contemplate the deputation of the Madhya Pradesh Police Officers to a Part B State. From this it would follow that where a police officer is in fact lent or deputed to a Part B State he continues to belong to the establishment of the parent State.

11. The next question is whether, in respect of an act committed in the Hyderabad State by a Madhya Pradesh Police Officer whose services have been lent to it, an enquiry could be made by officers exercising jurisdiction in that State. No provision was brought to our notice whereunder the services of a Madhya Pradesh Police Officer could be lent to a Part B State; nor any which permitted an enquiry to be made against such officer by an authority exercising jurisdiction in a Part B State. The petitioner, despite the temporary transfer of his services to the Hyderabad State, must, therefore, be deemed to be still on the Madhya Pradesh Police establishment.

12. At the hearing Shri Sheorey made a reference to a memo sent by the Government of Madhya Pradesh to the Government of Hyderabad indicating the procedure to be followed in regard to officers of the police force whose services had been lent to the Hyderabad State. That document is not on record. When asked, the learned Additional Government Pleader was unable to specify the provision of law under which it was issued. Moreover, as he admitted it, this memo was issued after the enquiry into the conduct of the petitioner was held. We must, therefore, rule it out entirely and hold that the petitioner continued to be governed by the Police Act, the Police Regulations and the General Book Circulars. Under Regulation 228 an enquiry has to be made by the District Superintendent of Police or as provided by Regulation 232 by an Assistant Superintendent of Police or Deputy Superintendent of Police. But, in any case, he must be an officer exercising jurisdiction under the Police Act and the Police Regulations. The Officer who held the enquiry was no doubt also lent to the Hyderabad State by the Madhya Pradesh Government but at that time he was not exercising jurisdiction under the Police Act or the Police Regulations but under the corresponding laws in force in the Hyderabad State. It is implicit in the return that the procedure followed at the enquiry was that in force in Hyderabad State and therefore the enquiry cannot be regarded as one which falls under the Police Act or the Police Regulations. The proper thing to do, in the case of the petitioner, was to re-transfer him to Madhya Pradesh and then have an enquiry made against him by the District Superintendent of Police of the district to which he was posted.

13. The question then is whether the Inspector-General of Police, Madhya Pradesh could act on

the basis of an enquiry made by an officer exercising jurisdiction in Hyderabad and remove the petitioner from service. It cannot be disputed that the services of a Police Officer cannot be terminated without making an enquiry against him. As we have pointed out, the enquiry must be in accordance with the Police Regulations and the General Book Circulars in respect of an officer belonging to the Madhya Pradesh Police Force. Further, it must be by a person competent to hold it, that is, the person making it must necessarily be, at the time of the enquiry, on the police establishment of Madhya Pradesh and subordinate to the Inspector-General of Police, Madhya Pradesh. If an enquiry is held by anyone else, it cannot be regarded as an enquiry within the meaning of the Police Regulations. This defect is not cured by the transfer of the person to Madhya Pradesh just before a notice to show cause is issued to him. It follows, therefore, that the enquiry made by an officer exercising jurisdiction in Hyderabad State cannot form the basis of any action on the part of the Inspector-General of Police, Madhya Pradesh.

14. The order passed by the Inspector-General of Police, Madhya Pradesh, was sought to be supported by Shri Sheorey on the ground that the Inspector-General had in fact given an opportunity to the petitioner to show cause against the action proposed to be taken against him under Article 311(2) of the Constitution and that therefore this Court cannot question the dismissal of the petitioner.

15. Apart from the fact that we have held in some cases in the past that our jurisdiction is not restricted only to cases where there has been any infraction of the Constitution, but extends also to cases where the Police Act or Regulations have been infringed we would like to point out that before an officer or an authority can act under Article 311(2) he must have before him material on which he can act. Here, the material consists of a report made entirely by an unauthorized agency. This can hardly be regarded as material on the basis of which the Inspector-General of Police could act. Again, the kind of enquiry which was made in this case cannot be said to be in consonance with the principles of natural justice because the petitioner was not given sufficient time to answer the charges leveled against him. He was not even supplied with the copies of statements of witnesses before these witnesses were examined by the Enquiring Officer. Finally, we notice that reasonable opportunity was not given to the petitioner to adduce his evidence in defense. Such an enquiry is wholly inadequate and cannot form the basis of a disciplinary action.

16. We must express our surprise at the fact that so inadequate an enquiry should have formed the basis of such serious action as dismissal from service. If the safeguards provided by Article 311 of the Constitution are not to be rendered illusory, it is expected that every authority which exercises the power of dismissal over a Government servant will satisfy itself that the principles of natural justice have not been infringed and that the officer concerned was given the completes opportunity of defending himself. If an authority empowered to act upon the report of an enquiry from a subordinate authority acts, as here, in a mechanical way, we are afraid the constitutional guarantee will hardly be any protection to government servants.

17. In the view we take, the petition must succeed. Accordingly we allow it, set aside the dismissal of the petitioner and direct that he be reinstated. The costs of this petition, including the costs of the paper book will be paid by the State. Counsel's fee Rs. 200/-. The security deposit be refunded to the petitioner.

Order accordingly.