

THE INDIAN LAW REPORTS

PUNJAB SERIES

CIVIL WRIT

Before Khosla, J.

JOTI PARSHAD,—*Petitioner.*

v.

THE SUPERINTENDENT OF POLICE, GURGAON AND
OTHERS,—*Respondents.*

Civil Writ No. 375 of 1954

Constitution of India—Articles 226 and 311—Order of suspension during enquiry—Whether offends Article 311—Police Act (V of 1861)—Section 35—Whether applies to departmental inquiries—Principles for interference by the High Court with the internal working of a department indicated.

1955
Nov., 24th

Held, that (1) the order of suspension was to remain effective merely until the enquiry was completed. The petitioner would have been restored to his original rank if he was found not guilty but if found guilty and dismissed, the order of suspension would have become infructuous. A temporary order of suspension passed in this manner cannot, therefore, be said to offend against the provisions of Article 311 of the Constitution of India;

(2) Section 35 of the Police Act contemplates a criminal charge against a Police Officer and has no relevance to a departmental enquiry of the kind to which the petitioner

was subjected. Rule 16.38 of the Police Rules is also not relevant as the petitioner is not alleged to have committed any criminal offence in relation to the public;

(3) the High Court should not interfere with the internal working of a department except in very extreme cases. Although cases of unjust victimisation will not be tolerated, the High Court will be very slow to interfere where a responsible executive officer gives short shrift to a recalcitrant and refractory subordinate but it will be justified in interfering with the capricious dismissal of a subordinate who has been guilty of nothing more than a single instance of rudeness;

(4) the solidarity and efficiency of the Police Force depend to a very large extent on the maintenance of discipline and any laxity in this respect is apt to react unfavourably not only upon the individuals but upon the whole Police Force and consequently upon the public. The petitioner's case has been carefully examined by the Deputy Inspector-General of Police and also by the Inspector-General of Police. If he is restored to his post in the Police Force, he will most certainly not be able to make an efficient and disciplined Police Officer. His natural impulse will be one of defiance because he will feel that his insubordination and his refusal to abide by the Police Rules has not harmed him in any way. It must be remembered that when a citizen enters public service he surrenders a large measure of his personal freedom in return for benefits which he receives as a public officer and it is incumbent upon him to respect the rules to which he is subject and to maintain at all times an attitude of complete discipline and obedience to rules. It is, therefore, not a fit case for interference by the High Court in favour of the petitioner.

Petition under Article 226 of the Constitution of India praying for issue of an appropriate writ against the respondents directing them to set aside the dismissal of the petitioner from the Punjab Police Force.

H. S. GUJRAL, for Petitioner.

S. M. SIKRI, for Respondents.

ORDER

KHOSLA, J. This is a petition under Article 226 of the Constitution by Joti Parshad who was dismissed from the Police Force by an order passed by the Superintendent of Police, Gurgaon. The petitioner was at that time Officiating as Assistant Sub-Inspector of Police but he was suspended by the order of the Superintendent of Police, Gurgaon, who held an enquiry into his conduct before passing the order of dismissal. The petitioner appealed to the Deputy Inspector-General of Police but his appeal was dismissed. A revision petition presented to the Inspector-General of Police met a similar fate. He then moved the extraordinary powers of this Court by means of the present petition under Article 226.

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Before setting out the points urged on behalf of the petitioner it is necessary to give a few facts and dates. The petitioner was recruited to the Police Force as a constable on the 2nd October, 1939. Three years later he was confirmed and two years later on the 1st October, 1944, he was promoted to the post of the Head Constable. He was again promoted about five years later to the post of the Assistant Sub-Inspector. In 1951 he was transferred to Gurgaon and on the 3rd December, 1952, he was transferred to Karnal. From there he went to the District Training School at Hoshiarpur, and while he was there an enquiry into the conduct of a Head Constable Ram Saran Das was started at Gurgaon. The allegation against Ram Saran Das was that he had received a bribe from the present petitioner. The petitioner was to be examined as a witness in the case and a wireless message was sent to him at Hoshiarpur asking him to proceed to Gurgaon. This wireless message was sent on the 4th April, 1953, and two days later he was examined

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as a witness in the course of the enquiry against Ram Saran Das. The Superintendent of Police found that Ram Saran Das was guilty of receiving a bribe and dismissed him. Proceedings were then taken against the petitioner for having given the bribe and in the course of this enquiry the petitioner refused to answer questions or to co-operate. He maintained an attitude of persistent and obstinate non-co-operation. His contention was that he would not receive a fair deal at the hands of the Superintendent of Police, Gurgaon, who had already found Ram Saran Das guilty. The petitioner wanted another Enquiry Officer to be appointed and made written application in this behalf. The Superintendent of Police took the view that the recalcitrant and refractory conduct of the petitioner was highly objectionable and that he was liable to be punished for disobedience and refusal to answer questions. He, therefore, framed fresh charges of misconduct against him and after a somewhat summary enquiry pronounced him guilty. He then called upon him to show cause why he should not be dismissed, and after observing this formality passed orders of dismissal. In the course of the proceedings the Superintendent of Police had passed the order suspending the petitioner and by this order of suspension the petitioner was reduced to the rank of the Head Constable which was his substantive rank.

There were two orders of dismissal against the petitioner, one on the offence of giving a bribe to Ram Saran Das and one on the charge of misconduct in refusing to obey orders and refusing to answer questions. The first order was quashed on revision by the Inspector-General of Police. Ram Saran Das had already been found innocent of the charge of receiving a bribe and the Inspector-General of Police, therefore, acquitted the petitioner of the charge of offering a

bribe to Ram Saran Das. He, however, upheld the order of dismissal on the second charge of misconduct and in passing orders commented on the attitude taken up by the petitioner. He observed—

“He should have continued to take part in the enquiry and in his defence or appeal made the points which he is now making. There is no provision in the Police Rules to withhold an enquiry pending applications of this sort made by a defaulter. Nor is such a situation contemplated, as in a disciplined Force, essence and stress is on maintenance of discipline. Obstructive or delaying tactics are not permitted which is obvious from P. R. 16.25(1).”

In the course of the arguments Mr. Gujral who appeared on behalf of the petitioner raised the following points before me:—

- (1) The appellant was appointed to the post of the Assistant Sub-Inspector of Police by the Deputy Inspector-General of Police and, therefore, it was only that Officer who could have dismissed him. The dismissal in this case being by the Superintendent of Police was contrary to the provisions of Article 311(1).
- (2) The petitioner was a member of the District Police, Hoshiarpur. He went to Gurgaon merely to give evidence as a witness. The Superintendent of Police, Gurgaon, had no jurisdiction over him

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and his order dismissing him, therefore, was bad in law.

- (3) The order of the Superintendent of Police reverting the petitioner from the post of the Assistant Sub-Inspector of Police to the post of the Head Constable was made without giving the petitioner opportunity to show cause against his reduction in rank and was, therefore, contrary to the provisions of Article 311(2).
- (4) The Superintendent of Police, Gurgaon, passed an order confirming the petitioner to the Police Lines and the petitioner was hampered in producing his defence. This order was, therefore, clearly illegal.
- (5) The petitioner should not have been dismissed without a reference to the Public Service Commission as required by Article 320 of the Constitution. This point was not mentioned in the petition and upon objection being taken by the learned Advocate-General was given up.
- (6) The procedure adopted by the Superintendent of Police, Gurgaon, was against the principles of natural justice inasmuch as he who was the prosecutor constituted himself as a Judge over the petitioner.
- (7) The petitioner was an Assistant Sub-Inspector of Police and a charge of misconduct made against him could only have been enquired into by a Magistrate of the 1st Class as required by section 35 of the Police Act V of 1861.
- (8) In dismissing the petitioner the Superintendent of Police had violated the provisions of Police Rule 16.38.

I may say at once that there is very little force in any of these points with the exception of point No. 6 regarding which I shall have something to say at greater length in due course. I shall, however, deal with all the points *seriatim*.

The appointing authority for the post of the Assistant Sub-Inspector is the Superintendent of Police and not the Deputy Inspector-General of Police. This is clear from the amendment in rule 12.1 of the Police Rules. The learned Advocate-General has placed on the record a copy of order No. 571, dated the 18th May, 1945, marked R.I., and from this it is quite clear that the Superintendent of Police is the appointing authority. In the present case, the appointment was, in fact, made by the Superintendent of Police although it was approved by the Deputy Inspector-General. The Gazette Notification of the 18th October, 1949, shows that by the orders of the Superintendent of Police Joti Parshad petitioner was promoted from the rank of the Head Constable to the rank of the Assistant Sub-Inspector of Police on the 13th October, 1949. The Superintendent of Police, therefore, was competent to dismiss the petitioner. Mr. Gural has drawn my attention to annexure 'O' which shows that the order which deals with the promotion of the petitioner to the post of the Assistant Sub-Inspector was issued from the office of the Deputy Inspector-General of Police. This, however, is not the order making the appointment. The order was passed by the Superintendent of Police and was merely approved by the higher authorities. The petitioner was no doubt posted at Hoshiarpur and was ordered to go to Gurgaon to appear as a witness against Ram Saran Das Head Constable but an order transferring him to Gurgaon was passed on the 11th April, 1953. A copy of the order has been placed on

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the record as R. K. Therefore, at the time this enquiry was made by the Superintendent of Police, Gurgaon, the petitioner was clearly subject to his jurisdiction. In any case the petitioner had gone to Gurgaon on official business and in the course of his official duties he committed the misconduct for which the Superintendent of Police, Gurgaon, held the enquiry. In my view he was quite competent to do so. In any event the order of the 11th April, 1953, transferring the petitioner formally to Gurgaon removed any irregularity which might have existed.

With regard to the order of reversion passed by the Superintendent of Police, Gurgaon, this order was to remain effective merely until the enquiry was completed. Had the enquiry resulted in the petitioner being found not guilty of the charge framed against him the order of suspension would have been revoked and the petitioner would have been restored to his original rank. A temporary order of suspension passed in this manner cannot be said to offend against the provisions of Article 311. In any event the matter before me now is not the slight interim irregularity of suspension but the matter of the petitioner's dismissal and if the order of dismissal is upheld, anything relating to the order of suspension would become infructuous. An order of suspension is automatically followed by reversion to the substantive rank. A perusal of Police Rule 16.10, a copy of which is marked R. N., and a memorandum, dated the 7th March, 1951, marked R.O., shows that the order of suspension in this case was not in any way irregular or against rules. Rule 16.10 provides that the rule does not prevent an officer being reverted to his substantive rank on being placed under suspension. The memorandum requires enquiring officers to revert an officer before suspending him.

The next point relates to the order confining the petitioner to the Police Lines. The Punjab Police Rule 16.21(2) requires that a Police Officer under suspension must be transferred to the Lines. Therefore, the order of the Superintendent of Police sending the petitioner to the Lines was entirely in accordance with the Police Rules. The petitioner represented that he was hampered in his defence by the restriction upon his freedom. This matter was considered and the petitioner was allowed to absent himself from the Police Lines for the purposes of his defence, and I do not think that any prejudice was occasioned to the petitioner on this account.

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The 5th point regarding the omission to refer the matter to the Public Service Commission was not mentioned in the petition and was given up at the time of arguments. Before dealing with the 6th point I may dispose of the 7th and 8th points in a few words. It was contended that as the petitioner was an Assistant Sub-Inspector of Police the enquiry should have been conducted by an officer exercising the powers of a Magistrate but section 35 of the Police Act contemplates a criminal charge against a Police Officer and the object of this section is to prevent a Magistrate of the 2nd or 3rd Class enquiring into offences against Police officers above the rank of a constable. This section has no relevance to a departmental enquiry of the kind to which the petitioner was subjected. Rule 16.38 of the Police Rules relates to a criminal offence committed by a Police Officer in connection with the official business of the public. The present case is, therefore, not covered by this rule because the petitioner is not alleged to have committed any criminal offence in relation to the public.

I now come to the 6th point which was pressed most vehemently before me and I may say at once that I do not feel very happy regarding the manner in

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which the enquiry against the petitioner was conducted. The petitioner was charged with the offence of giving a bribe to a Head Constable of Police in order to secure personal preferment. The enquiry against Ram Saran Das was made by the Superintendent of Police, Gurgaon, who found him guilty. He then proceeded to hold an enquiry against the petitioner on the charge of offering a bribe. The petitioner naturally felt that a finding of guilty was a foregone conclusion because the Superintendent of Police would not be inconsistent in convicting Ram Saran Das of accepting a bribe from the petitioner and acquitting him (the petitioner) of offering that bribe. So, he was anxious that some other officer should hold the enquiry. He, however, adopted a somewhat obstreperous attitude which exceeded the bounds of decorum and politeness. The Superintendent of Police questioned him and he refused to answer these questions. Thereupon, the Superintendent of Police directed that a charge of misconduct, indiscipline and impertinence for refusing to answer his questions should be drawn up. A charge on these lines was drawn up by the prosecuting Inspector of Police and "grave breach of discipline as laid down in Police Rule 16.25" was the offence for which the petitioner was tried. The petitioner continued to adopt an attitude of non-co-operation. The Superintendent of Police examined his stenographer in whose presence the petitioner had refused to answer the previous questions and found him guilty. The enquiry made by him was somewhat summary but perhaps in the very nature of things, it could not have been otherwise. The petitioner would scarcely deny that he had refused to answer questions. In fact, his whole stand throughout has been that he was right in refusing to co-operate with the Superintendent of Police, Gurgaon, because he expected no justice from him. A show-cause notice was given to the petitioner and he was dismissed.

It is significant that the petitioner was acquitted of the charge of giving a bribe to Ram Saran Das and it is somewhat regrettable that he should have been dismissed for the minor offence of refusing to answer questions, and had the petitioner not been a member of the Police Force I might have been inclined to allow this petition and quash the order of his dismissal but after giving the matter my very careful consideration I feel that this Court should not interfere with the internal working of a department except in very extreme cases. The solidarity and efficiency of the Police Force depend to a very large extent on the maintenance of discipline and any laxity in this respect is apt to react unfavourably not only upon the individuals but upon the whole Police Force and consequently upon the public. If a feeling goes abroad that a Police Officer may with impunity offer resistance to the orders of his superiors and take up an attitude of insubordination, it will become impossible to entrust the duty of maintaining law and order to the Police Force and a loss of confidence in the mind of the Public will be the worst possible thing that can happen in this respect. Administrative officers of all departments are in charge of the duty of maintaining the efficiency and the discipline of their subordinates. Their task is not always an easy one. They have frequently to steer a clear path between the Scylla of autocratic dictatorship which might result in occasional victimisation and the Charybdis of indiscipline and insubordination. Both extremes are equally undesirable. The least that this Court can do while dealing with these matters is to indicate that although cases of unjust victimisation will not be tolerated there will at least be no interference where a responsible executive officer gives short shrift to a recalcitrant and refractory subordinate. It may be

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that sometimes it is necessary to take an unduly serious view of peccadilloes in order to remove an impression of general laxity and chaos. On the other hand, this Court would be perfectly justified in interfering with the capricious dismissal of a subordinate who has been guilty of nothing more than a single instance of rudeness.

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I confess that in the present case I find it extremely difficult to stay my hand and I should have been willing to quash the orders of the Superintendent of Police, whose conduct I do not find wholly commendable, were it not for the fact that the petitioner's case was carefully examined by the Deputy Inspector-General of Police and also by the Inspector-General of Police. There is one important circumstance which has influenced my ultimate judgment and that is the licence which the petitioner will obtain if he is restored to his post in the Police Force. He will most certainly not be able to make an efficient and disciplined Police Officer. His natural impulse will be one of defiance because he will feel that his insubordination and his refusal to abide by the Police Rules has not harmed him in any way. It must be remembered that when a citizen enters public service he surrenders a large measure of his personal freedom in return for benefits which he receives as a public officer and it is incumbent upon him to respect the rules to which he is subject and to maintain at all times an attitude of complete discipline and obedience to rules. It will not perhaps be irrelevant to mention that were a petition of this kind to be presented in a Court in England many brows will be raised in legal circles. It is an unheard of thing for a servant of the Crown to make a petition of this kind in England. In this country a civil servant of the Union is entitled to make a petition by the provisions of the Constitution but this does not mean that Courts of law should lightly

entertain petitions of this type. The Supreme Court has laid down on more than one occasion that it is only where gross and manifest injustice has resulted that the extraordinary powers of the High Court and of the Supreme Court should be exercised. There are many instances of petitions having been accepted because the provisions of Article 311 were violated, and with great respect to the Judges who decided those cases I feel that there have been occasions when the Judges have been somewhat too ready to give relief to civil servants who have been aggrieved by some irregularity in the enquiry held against them and instances are not wanting when a civil servant who has been proved to have committed misconduct of the grossest type has been reinstated because of a technical flaw in the enquiry held against him. I do not think that this was the purpose for which Article 311 was enacted. A Government servant should not be dismissed without being furnished a reasonable opportunity of defending himself, nor should he be victimised and deprived of the rights of a fair trial. But there are many border-line cases in which the Court should hesitate to interfere if only because cases of misconduct of Government servants are extremely difficult to prove and it is very seldom that a false charge is made the subject-matter of a departmental enquiry. The above statement is perhaps a little too sweeping and I should not be taken to have said anything which has no relevance to the case before me. These observations are intended more to indicate the lines upon which I have based my decision of the petitioner's case and I feel that although the enquiry against the petitioner might well have been entrusted to someone else I am also convinced that the result would not have been different and that the petitioner would most certainly have been found guilty of indiscipline and of refusing to answer questions which he was obliged to answer

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according to the Police Rules. The Inspector-General of Police has rightly stressed the importance of discipline in the Police Force and this Court will not do anything which will undermine that discipline. I do not think that in the present case there has been any manifest injustice to the petitioner. He behaved in a most indisciplined and objectionable manner. He made aspersions and wild accusations against the superior officers as has been pointed out by the Inspector-General of Police. If he is sent back to the Police Force he will not make a useful and an efficient and certainly not a disciplined officer. I feel, therefore, that this petition should be dismissed and I accordingly dismiss it but in the circumstances I make no order as to costs.