

STATE OF UTTAR PRADESH & ORS.

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v.

HARISH CHANDRA SINGH

January 17, 1969

[S. M. SIKRI, R. S. BACHAWAT AND K. S. HEGDE, JJ.]

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Constitution of India Art. 311(1)—Consideration of past record—Omission in show cause—Whether justifies lesser penalty.

Police Act, 1861, ss. 7 and 29—Scope of—Prosecution under s. 29, need not precede charges under s. 7.

The respondent, was selected by the Deputy Inspector General of Police for admission to the Police Training College, and the result declaring him successful was issued by the order of the Inspector General of Police, and his appointment announced in the police gazette. While the respondent was serving as a Sub-Inspector of Police, charges were framed against him, under s. 7 of the Police Act, 1861. The Superintendent of Police gave a report mentioning his past record, and recommended his removal from service. Notice to show cause, enclosing the findings of the Superintendent of Police was served on the respondent. The Deputy Inspector General, held the enquiry, and agreed with the findings of the Superintendent of Police. The respondent filed an appeal to the Inspector-General of Police, which was rejected. In their order, both the Deputy Inspector General and Inspector General, took into consideration the past record of the respondent. The respondent filed a suit for a declaration that his removal was illegal and ineffective. The trial court dismissed the suit, but the High Court decreed the suit holding that no opportunity was given to the respondent to explain his past record which was taken into consideration. In appeal to this Court, the State contended that the respondent had notice that his past record would be taken into consideration, and alternatively, if the past record was taken into consideration for imposing lesser penalty, it was not necessary to mention in the show cause notice that the past record would be considered. The respondent contended that there has been breach of Art. 311(1) of the Constitution as he was appointed by the Inspector General of Police and removed by the Deputy Inspector General of Police and that he should have been tried under s. 29 of the Police Act, before he was charged under s. 7.

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HELD : The suit must be dismissed.

(i) The respondent had notice that his past record would be taken into consideration because the Superintendent of Police had mentioned it in his order, a copy of which was supplied to him. Further, on the charges against the respondent, he had been dealt with leniently and if the record was taken into consideration for the purpose of imposing a lesser punishment and not for the purpose of increasing the quantum or nature of punishment, then it was not necessary that it should be stated in the show cause notice that his past record would be taken into consideration. [397A; G—H]

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State of Mysore v. K. Manche Gowda, [1964] 4 S.C.R. 540, 548, referred to.

(ii) The first appellate court's conclusion that the respondent had been appointed by the Deputy Inspector General of Police, was a finding of fact and was binding on this Court. But apart from that the only document relied on by the respondent was the result sheet declaring him

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- A** successful after training and this had no relevance to his appointment as Sub-Inspector of Police. [398 A—G]

(iii) A Police Officer may also be liable to be prosecuted under s. 29 of the Police Act, but it is not necessary that in every case which falls within s. 7 the Police Officer should first be prosecuted under s. 29 before he can be proceeded under s. 7. Section 7 deals with disciplinary proceedings while s. 29 makes certain breaches criminal offences. Section 29 does not in any way limit the operation of s. 7. [399 C]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 834 of 1966.

Appeal by special leave from the judgment and order dated March 2, 1965 of the Allahabad High Court in Second Appeal No. 1271 of 1962.

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C. P. Agarwala and *O. P. Rana*, for the appellants:

E. C. Agrawala, *S. R. Agrawala* and *P. C. Agrawala*, for the respondent.

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The Judgment of the Court was delivered by

Sikri, J. This appeal by special leave is directed against the judgment of the High Court of Judicature at Allahabad dismissing the appeal filed by the State of Uttar Pradesh and Others, appellants before us, against the judgment and decree passed by the Additional District Judge, Varanasi, setting aside the judgment and decree passed by the Trial Court and decreeing the plaintiff's suit.

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The plaintiff, Harish Chandra Singh, had brought a suit against the State of Uttar Pradesh and some Police Officers for a declaration that the order of removal of the plaintiff from the Police Service was void, illegal, ineffective and inoperative, and that the plaintiff still continued to be in Uttar Pradesh Police Service as Station Officer-in-Charge of a Police Station and that he was entitled to his full pay and emoluments with increments as they fell due. He had also prayed for recovery of Rs. 7,453 as full emoluments and salary from June 27, 1956 up to the date of the suit.

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In order to appreciate the points raised before us it is necessary to set out the relevant facts. On December 13, 1942, the plaintiff was appointed as Platoon Commander in the Civil Guards. In 1945 there was a notification regarding the absorption of civil guards in the Police and on November 6, 1945, the plaintiff was selected by the Deputy Inspector General, Police Headquarters, Allahabad, for admission to the 1946 Session of the Police Training College, Moradabad. On January 8, 1947, the result of the Civil Police Cadets for 1946 Session was announced, and in the extract of the Police Gazette it is stated in the last column

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under the heading 'where posted', against the name of the plaintiff, 'Azamgarh'. This result sheet was issued by order of the Inspector General of Police, United Provinces. A

We have mentioned these facts because the learned counsel for the plaintiff contends that the plaintiff was in fact appointed by the Inspector General of Police and not by the Deputy Inspector General of Police. B

Following three charges were framed against the plaintiff under s. 7 of the Police Act, 1861 on February, 6, 1956:

"1. A case Cr. No. 92 u/s 324 IPC was registered at P. S. Mariahun which on receipt of the injury report on 6-11-55 at the P. S. was found to fall within the purview of section 326 IPC and yet this S.I. did not investigate the case in accordance with law and failed even to comply with the orders of the Dy. S.P. (then acting as S.P.) given by him on 19-11-55. C

2. On 21-11-55 a written report of burglary was made over to him by one Lalji Singh r/o Jamua who came to the P.S. alongwith Ramdeo and Ganesh but he failed to record that report and register a case in contravention of the provision of paragraph 97 of the Police Regulations. A case Cr. No. 101 u/s 457/380 IPC was, however, registered by him on 5-12-55 although he had been to the scene of occurrence on 27-11-55 and had conducted some investigation on that date. He did not prepare any case diary for the investigation carried out on 27-11-55 and even after the registration of the case on 5-12-55 he deferred proper investigation until 22-12-55. D

3. A report of burglary on the night of 17/18-10-55 was handed over to this S.I. personally by complainant Raj Bahadur Singh but no action was taken on that report nor any entry was made in the General Diary to this effect. On receipt of a complaint the C.I. was asked to enquire into the matter who directed him to register a case and accordingly a case was registered on Cr. No. 100 u/s 457/380 I.P.C. on 2-12-55. Even after the registration of this case this S.I. deferred proper investigation until 17-12-55." E

The Superintendent of Police gave a report on February 27, 1956, but the Inspector General ordered a fresh enquiry on March 6, 1956. On April 30, 1956, the Superintendent of Police gave his report. He held the plaintiff guilty of the charges framed against him. Towards the end of the report, the Superintendent of Police observed: F

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A "S.I. Harish Chandra Singh is an enlistment of
29-1-47 when he seems to have started his service satisfactorily. In 1950 he was placed under suspension and was dismissed from service from 21-6-1951 while he was in district Azamgarh. On subsequent consideration he was reinstated and he reported for service in January 1952. He was, however, reduced to the lowest scale of a S.I. for a period of three years. His character roll indicates that he was again placed under suspension from 20-8-54 but reinstated on 30-9-54. Soon after he was again placed under suspension with effect from 4-11-54 and was proceeded against u/s 7 of the Police Act as a result of which he was reduced from Rs. 162 p.m. to Rs. 144 p.m. for a period of one year from 8-2-55 and reinstated in service. Subsequently he was awarded a misconduct entry for a non-registration of dacoity case while posted in district Basti. On the other hand he has also earned some rewards and is at present posted as II Officer P.S. Mirganj. This record of service does not appear encouraging at all. In respect of the various items of charge u/s 7 of the Police Act framed against him he has been held guilty and considering the seriousness of these charges I do not think any leniency is called for in his favour. He has clearly disobeyed the lawful orders of his superior officers and has failed to comply with the mandatory provisions of law and Police Regulations. A S.I. acting in this manner is not in my opinion fit to discharge his responsibilities as a police officer. Since, however, no dishonesty has been attributed to him in the various items of the charge framed against him, I think it will meet the ends of justice if he is only removed from police service. Accordingly finding him guilty u/s 7 of the Police Act I propose that he may be removed from the Police Service and submit this finding to the D.I.G. Eastern Range in accordance with paragraph 490 sub-paragraph 8(a) of the Police Regulations."

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G On May 16, 1956, a show-cause notice was served on the plaintiff and a copy of the findings of the Superintendent of Police was enclosed. In the show-cause notice it was stated that the plaintiff could send his written representation within 10 days of the receipt of the show-cause notice and after checking his explanation he would be called to appear before the Deputy Inspector General of Police, E. Range. He appeared before the Deputy Inspector General of Police and answered various questions put by the D.I.G. Towards the end he stated that he had no complaint with regard to the departmental proceedings against him.

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The Deputy Inspector General agreed with the findings of the Superintendent of Police, and at the end of his order he observed:

"S.I. Sri Harish Chandra Singh was enlisted on 29-1-1947. In 1950 he was placed under suspension and he was dismissed from service from 21-6-51. He was, however, later reinstated and joined his duty in January 1952. He was also reduced to lowest scale of S.I.s for a period of 3 years *vide* orders (torn) 'E' dated 25-4-51. In 1955 he was dealt with u/s 7 of the Police Act for having contracted illicit connection with Shrimati Mina Devi who was ultimately recovered from (torn) the C.I. and he was reduced for 2 years. He (torn) entry in 1955 for having failed to (torn) of dacoity. Against this black record, the (torn) 15 rewards and commendations. The party is indisciplined and unreliable and he does not deserve (torn) in the police service. The charges proved against him (torn) very serious and there is no room for me to show him any (torn) in the award of punishment. Agreeing with the proposal of the S.I., I order that S.I. Harish Chandra Singh be removed from service with effect from the date that this order is communicated to him."

The plaintiff then filed an appeal to the Inspector General of Police, who rejected the appeal, and after taking into consideration his previous record confirmed the order of removal. He observed :

"In fact the D.I.G. has taken a lenient view in (torn) removing him from service especially in view of his past (torn)."

The High Court held that no opportunity was given to the plaintiff to offer any explanation on the question of his past record which was taken into consideration by the Deputy Inspector General of Police in arriving at his decision to remove the plaintiff from service. The High Court relied on the following passage from the judgment of this Court in *State of Mysore v. K. Manche Gowda*⁽¹⁾ :

"We, therefore, hold that it is incumbent upon the authority to give the Government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous punishment or his previous bad record, this should be included in the second notice so that he may be able to give an explanation."

(1) [1964] 4 S.C.R. 540, 548.

- A The learned counsel for the State contends that on the facts of this case it is clear that the plaintiff had notice that his record would be taken into consideration because the Superintendent of Police had mentioned it towards the end of his order, a copy of which was supplied to the plaintiff. In the alternative he contends that if the record is taken into consideration for the purpose
B of imposing a lesser punishment and not for the purpose of increasing the quantum or nature of punishment, then it is not necessary that it should be stated in the show-cause notice that his past record would be taken into consideration.

- It seems to us that the learned counsel is right on both the points. The concluding para of the report of the Superintendent
C of Police, which we have set out above, clearly gave an indication to the plaintiff that his record would be considered by the Deputy Inspector General of Police and we are unable to appreciate what more notice was required. There is also force in the second point urged by the learned counsel. In *State of Mysore v. K. Manche Gowda*⁽¹⁾ the facts were that the Government servant
D was misled by the show-cause notice issued by the Government, and but for the previous record of the Government servant the Government might not have imposed the penalty of dismissal on him. This is borne out by the following observations of Subba Rao, J., as he then was :

- “In the present case the second show cause notice
E does not mention that the Government intended to take his previous punishments into consideration in proposing to dismiss him from service. On the contrary, the said notice put him on the wrong scent, for it told him that it was proposed to dismiss him from service as the charges proved against him were grave. But, a comparison
F of paragraphs 3 and 4 of the order of dismissal shows that but for the previous record of the Government servant, the Government might not have imposed the penalty of dismissal on him and might have accepted the recommendations of the Enquiry Officer and the Public Service Commission. This order, therefore, indicates that the show cause notice did not give the only reason which
G influenced the Government to dismiss the respondent from service.” (p. 549)

We may mention that on the charges against the plaintiff, and as observed by the Inspector General of Police, the plaintiff had been dealt with leniently.

- H The learned counsel for the plaintiff, in reply urges before us that there has been breach of Art. 311(1) of the Constitution because although the plaintiff was appointed by the Inspector Gene-

(1) [1964] 4 S.C.R. 540, 548.

ral of Police he had been removed by the Deputy Inspector General, Range E. The learned Additional District Judge, after examining the evidence and para 406 of the Police Regulations, came to the conclusion that the plaintiff had been appointed by the Deputy Inspector General of Police. This is a finding of fact and binding on us. But apart from that the only document relied on by the learned counsel for the plaintiff is the result sheet dated January 8, 1947. This has no relevance to the question of his appointment as Sub-Inspector. We must, therefore, overrule this contention.

The last point urged by the learned counsel for the plaintiff is that the plaintiff should have been tried under s. 29 of the Police Act before he was charged under s. 7. Sections 7 and 29 of the Police Act read thus:

"7. Subject to the provisions of article 311 of the Constitution, and to such rules as the State Government may from time to time make under this Act, the Inspector General, Deputy Inspector General, Assistant Inspectors General and District Superintendents of Police may at any time dismiss, suspended or reduce any police-officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same, or may award any one or more of the following punishments to any police-officer of the subordinate ranks who shall discharge his duty in a careless or negligent manner, or who by any act of his own shall render himself unfit for the discharge thereof, namely:—

- (a) fine to any amount not exceeding one month's pay;
- (b) confinement to quarters for a term not exceeding fifteen days with or without punishment-drill, extra guard, fatigue or other duty;
- (c) deprivation of good-conduct pay;
- (d) removal from any office of distinction or special emolument.

S. 29. Every police-officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months or who, being absent on leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave, or who shall engage without authority in any employment other than his police-duty, or who shall be guilty of

A cowardice, or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable on conviction before a Magistrate to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to both."

B We are unable to appreciate why it is necessary that a police officer should be prosecuted under s. 29 before departmental proceedings can be taken under s. 7 of the Police Act. It may be that a police-officer is also liable to be prosecuted under s. 29, but it is not necessary that in every case which falls within s. 7, the police-officer should first be prosecuted under s. 29 before he can be proceeded against under s. 7. Section 7 deals with disciplinary proceedings while s. 29 makes certain breaches criminal offences. Section 29 does not in any way limit the operation of s. 7.

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D In the result the appeal is allowed, judgments and decrees of the High Court and the Additional District Judge set aside and the suit dismissed with costs throughout.

Y.P.

Appeal allowed.