

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3406 OF 2009
(Arising out of SLP(C) No. 1019 of 2008)

Ramanuj Pandey

.....Appellant

Versus

The State of M.P. & ors.

.....Respondent

JUDGMENT

H.L. Dattu,J.

Leave granted.

1)This appeal is directed against the judgment and order passed by the High Court of Judicature at Jabalpur in Writ Appeal No. 693 of 2006 dated 22.11.2006. By the impugned judgment, the Division Bench dismissed the writ appeal, stating that the punishment of removal from service of the appellant cannot on the facts and circumstances of the case shocks the conscience of the Court.

2)The facts leading to this Special Leave Petition are: the appellant was appointed as a Constable in the service of M.P. Police on 1.11.1967 and was subsequently promoted to the post of Head Constable. On the

relevant date i.e. 25.9.1991 while discharging his duties as Incharge, Outpost, Kolar Dam, Birpur appellant apprehended one Laxmi Narain, Dozer Operator of Kolar Dam and registered a complaint against him under Section 13 of the Lunacy Act. In the complaint filed, appellant had stated that Laxmi Narain in an insane state of mind assaulted him and caused injuries. On the other hand, son of Laxmi Narain filed a complaint and requested the authorities to conduct inquiry against the appellant. Inquiry was conducted and consequent thereto, a charge sheet was issued to the appellant and he was kept under suspension pending domestic enquiry proceedings. The appellant in his reply had denied all the charges. In the Departmental Inquiry conducted by Superintendent of Police, Sehore on 7.5.1992, he has held the appellant guilty of the said charges and was removed from government services affirming that the appellant had done a very heinous act by detaining a public servant in police post without any reason, violating his fundamental rights. Appellant went before the High Court contending that no departmental inquiry was warranted in such matter and the punishment imposed is shockingly disproportionate. The High Court dismissed the petition confirming the decision of the disciplinary authority. The appellant then went in appeal before the Division Bench. The Division Bench held that appellant being a Head Constable has apprehended Laxmi Narain and

registered him under the Lunacy Act, although he was not a Lunatic, therefore, the punishment of removal from service of the appellant cannot on these facts be held to be one which shocks the conscience of the Court.

3) We have heard the learned counsel for the parties.

4) Learned Counsel for the appellant would contend that the appellant could not be held to have misused his position as Head Constable and not acted in good faith. He would also contend that the punishment awarded to the appellant is shockingly disproportionate and excessive. Learned Counsel would draw our attention to the case of B.C. Chaturvedi v. Union of India, AIR 1996 SC 484, wherein this court held that:

“A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority

shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

5) In the case of *Commr of Police v. Syed Hussain*, (2006) 3 SCC 173, this Court observed that, it is one thing to say that order passed by the statutory authority is wholly arbitrary and thus violative of Article 14 of the Constitution and thus liable to be set aside, but it is another thing to say that the discretionary jurisdiction exercised by such authority should not ordinarily be interfered with by a superior court while exercising its power of judicial review unless one or the other ground upon which and on the basis whereof the power of judicial review can be exercised, exists. It is, therefore, beyond any doubt or dispute that the doctrine of proportionality has to be applied in appropriate case as the depth of judicial review will depend on the facts and circumstances of each case.

6) Admittedly, it is for the disciplinary authority or the administrative authority to decide the quantum of punishment in a case of misconduct and the role of the Court is only secondary. But in view of the gravity of the misconduct, namely, the appellant having apprehended Laxmi Narain

and registering him under section 13 of the Lunacy Act, where the disciplinary authority held appellant guilty for detaining a public servant in police post without any reason and removed him from government services, the interference with the imposition of punishment is necessary.

7) In the present matter the appellant, while discharging his duties apprehended Laxmi Narain and registered him under Lunacy Act without any sufficient reasons. This act of his had indisputably caused harassment to Laxmi Narain and was detrimental to the image of police department, but the same was also not grave enough to punish him with removal from services. The appellant as a head constable was bestowed with official duties and while discharging them he went outside its purview, which definitely warrants that his services must be terminated, but as a warning to others and not as a vengeance.

8) While considering the power to interfere with the order of punishment, this Court in the case of Rangaswami v. State of T.N., AIR 1989 SC 1137, held that this Court, while exercising the jurisdiction under Article 136 of the Constitution, is empowered to alter or interfere with the penalty.

9) Accordingly, the punishment of appellant of dismissal from services as imposed by the disciplinary authority is substituted to one of compulsory retirement from the date of his dismissal from services i.e. 7.5.1992.

10)In view of the above discussion, the appeal is partly allowed. The impugned order passed by the High Court is partly set aside. No order as to costs.

.....J.
[TARUN CHATTERJEE]

.....J.
[H.L. DATTU]

**New Delhi,
May 08, 2009.**

