

THE COMMISSIONER OF POLICE AND ORS.

A

v

SYED HUSSAIN

JANUARY 25, 2006

[S.B. SINHA AND P.P. NAOLEKAR, JJ.]

B

Constitution of India, 1950:

Articles 226 and 14—Judicial review—Discretion exercised by statutory authority—Interference with—Discussed.

C

Service Law:

Dismissal from service—Misconduct—Police Constable stood surety for hardened criminal—Antecedents of accused known to the Constable—Held, punishment of removal from service cannot be said to be wholly disproportionate and violative of doctrine of proportionality.

D

Administrative Law

Public servant—Duty to act in aid of law and not to aid or abet accused fleeing from justice.

E

Doctrine—Doctrine of proportionality—Applicability of.

Respondent, a Police Constable, was dismissed from service for misconduct on the charges that he knowingly stood surety for a hardened criminal involved in 32 cases of snatching goods from other persons. His application was dismissed by the Andhra Pradesh Administrative Tribunal but his writ petition was allowed by the High Court in part holding that the respondent had an unblemished record of 28 years of service and directing the Tribunal to substitute the order by any other punishment except dismissal, removal or compulsory retirement. Aggrieved, the Department filed the present appeal.

F

G

Allowing the appeal, the Court

HELD: 1. The respondent stood surety for a hardened criminal who had

A been involved in several snatching cases and who jumped bail. Presumably because the respondent, a Constable, had stood as the surety, the accused was enlarged on bail by the court. In a situation of this nature, keeping in view the nature of duties that a protector of law is required to perform, the disciplinary authority cannot be said to have committed an error in imposing the punishment of removal from service upon the respondent, particularly when
B on earlier two occasions also he had been found guilty of commission of misconduct and punished therefor. The High Court thus committed a manifest error in arriving at a finding that the respondent had unblemished record for 28 years. On the basis of materials on record which was before the High Court, such finding could not have been arrived at. The impugned judgment
C cannot be sustained, and is set aside. [809-F, G, H; 810-A-B, D]

2. It is not the case of the respondent that the impugned order of punishment smacks of arbitrariness so as to attract the wrath of Article 14 of the Constitution of India. The jurisdiction of the disciplinary authority to impose such punishment is also not in question. [809-A]
D

3. Furthermore, the punishment of removal from service is not imposed only in the case of fraud or defalcation of Government funds but even where a misconduct is committed by a person who holds a position of trust and on whom the society looks forward as a protector of law and in such cases
E punishment of removal from service cannot be said to be wholly disproportionate, and thus the same was not even violative of doctrine of proportionality. 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. It is not one of such cases where the doctrine of proportionality should be invoked. [809-E, 810-C]
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Huang and Ors. v. Secretary of State for the Home Department, [2005] 3 All ER 435 and *R. v. Secretary of State of the Home Department, ex. P. Dale* [2001] 3 All ER 433, referred to.

Om Kumar & Ors. v. Union of India, [2001] 2 SCC 386, cited.

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6319 of 2004.

From the Judgment and Order dated 7.8.2003 of the Andhra Pradesh High Court in Writ Petition (C) No. 15966/2003.

H Mrs. D. Bharathi Reddy for the Appellants.

Dr. K.P. Kyalashanatha Pillai, G. Ramakrishna Prasad, Mohd. Wasay Khan, Suyodhan B., R. Shanthanand Krishna, D. Mahesh Babu, R. Santhan Krishnan, G. Sateesh and Mrs. K. Radha Rani for the Respondent. A

The following Order of the Court was delivered :

This appeal is directed against the order dated 7.8.2003 passed by the Division Bench of the High Court of judicature of Andhra Pradesh at Hyderabad in Writ Petition No. 15966/2003 whereby and whereunder the Writ Petition filed by the respondent herein against a judgment and order dated 22.4.2003 passed by the Andhra Pradesh Administrative Tribunal at Hyderabad in O.A. No. 6884/2002 was allowed in part. B C

The respondent was a police constable. He stood as surety to one Ahmed Qureshi. The said person was accused in 32 cases involving snatching of goods from other persons.

The alleged misconduct on the part of the respondent was admitted. A departmental proceeding was initiated against him and upon return of verdict of guilt by the inquiry officer, the respondent was directed to be removed from service by the Disciplinary Authority. The respondent filed an Original Application before the Andhra Pradesh Administrative Tribunal questioning the said order. The Tribunal considered the matter in depth and opined that there was no merit in the said application. The Tribunal noticed that the inquiry officer in his report arrived at a finding of fact that the respondent herein knew fully well that the said Ahmed Oureshi was involved in a series of snatching cases. It was also noticed that the respondent had been attending the Court in the said cases. It further noticed that the police officer who was cross-examined as prosecution witness also stated that the respondent aided several other criminals in the city in securing bails from the Courts. D E F

On the basis of the said findings, the Original Application was dismissed.

On a writ petition having been filed by the respondent before the High Court, the Division Bench of the High Court although did not interfere with the findings of the inquiry officer but interfered with the quantum of punishment. The High Court, however, observed that in view of catena of decisions of this Court, the jurisdiction of the High Court, in interfering with the quantum of punishment, must be exercised in most exceptional cases. Having said no, it recorded that the respondent had maintained a clean record and he had also served the Police force for a period of 28 years as on the G H

A date of framing of charges and had another 8 years to serve.

On the aforementioned premise as also upon taking note of the fact that he had not been found guilty of commission of any case of fraud or defalcation of government funds, the High Court came to the opinion that the punishment of removal from service would be too harsh and in that view of the matter

B remitted the case to the appellate authority for substitution the punishment of removal of any other punishment except dismissal, removal or compulsory retirement.

The appellants are, thus, before us.

C Learned counsel appearing on behalf of the appellants submitted that the High Court committed a serious error of record in holding the respondent herein had maintained a clean record for 28 years and in this connection drew our attention to the counter affidavit filed on behalf of the State before the Tribunal, wherein it had been pointed out that the respondent had on an

D earlier occasion been imposed punishments of 'reduction in time scale of pay for one year' and furthermore in another case was awarded the punishment of 'Censure'.

Learned counsel appearing on behalf of the respondent, on the order hand, would contend that as the respondent did not commit any misconduct

E in discharge of his official duty, a case has been made out where doctrine of proportionality should be invoked. The disciplinary authority, learned counsel would submit, while exercising its statutory power of imposing punishment must act reasonably while exercising its jurisdiction. Reliance in this connection has been placed on *Om Kumar and Ors. v. U.O.I.*, [2001] 2 SCC 386. It was

F further more pointed out that in England in stead and place of doctrine of 'Irrationality', the doctrine of Proportionality is being invoked generally and in support of said contention reliance has been placed on *R v. Secretary of State for the Home Department, ex parte Daly*, (2001) 3 All England Law Reports 433.

G 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 of India 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

H power of judicial review can be exercised, exist.

It is not the contention of the learned counsel for the respondent that the impugned order of punishment smacks of arbitrariness so as to attract the wrath of Article 14 of the Constitution of India. The jurisdiction of the disciplinary authority to impose such punishment is also not in question. A

Thus, even assuming that a time has come where this Court can develop 'administrative law' by following the recent decisions of the House of Lords, we are of the opinion it is not one of such cases where the doctrine of proportionality should be invoked. In 'Ex p Daly' (supra) it was held that the depth of judicial review and the deference due to the administration discretion vary with the subject matter. It was further stated "It may well be, however, that the law can never be satisfied in any administrative field merely by a finding that the decision under review is not capricious or absurd." As for example in *Huang and Ors. v. Secretary of State for the Home Department*, [2005] 3 All ER 435, referring to *R. v. Secretary of State of the Home Department, ex. P. Dale*, [2001] 3 All ER 433, it was held that in certain cases, the adjudicator may require to conduct a judicial exercise which is not merely more intrusive than *Wednesbury*, but involves a full-blown merits judgment, which is yet more than *Ex. p. Daly* requires on a judicial review where the Court has to decide a proportionality issue. B C D

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. E

The respondent herein was a Constable. He was to uphold the Rule of Law. It was his duty to aid the prosecution in getting the guilty punished. It was not his duty to aid or abet the accused in fleeing from justice. The accused in question Ahmed Qureshi, in view of the finding of fact arrived at by the disciplinary authority, was a hardened criminal. He had been involved in a series of snatching cases. Not only that, the respondent was also helping the other accused persons in obtaining bails from the Courts. It has been pointed out that in the case in which the respondent stood surety for the said Ahmed Qureshi, he had jumped bail. Presumably because the respondent – a Constable had stood as his surety, he was enlarged on bail by the Court. F G

In a situation of this nature, keeping in view the nature of duties that a protector of law is required to perform, we are firmly of the opinion that the disciplinary authority cannot be said to have committed an error in imposing the punishment of removal from service upon the respondent, particularly H

- A when on earlier two occasions also he had been found guilty of commission of misconduct and punished therefor. The High Court thus committed a manifest error in arriving at a finding that the respondent had unblemished record for 28 years. We are not sure whether the High Court's attention was drawn to the statements made either Counter Affidavit filed on behalf of the appellants herein before the Andhra Pradesh Administrative Tribunal which showed contra but on the basis of the materials on record which was before the High Court such finding could not have been arrived at.

- C Furthermore, the punishment of removal from service is not imposed only in the case of fraud or defalcation of government funds but even where a misconduct is committed by a person who holds a position of trust and on whom the society looks forward as a protector of law and in such cases punishment of removal from service cannot be said to be wholly disproportionate, and thus the same was not even violative of doctrine of proportionality.
- D For the foregoing reasons, the impugned judgment cannot be sustained, the same is set aside accordingly. The appeal is allowed and the judgment and order passed by the Andhra Pradesh Administrative Tribunal is restored. There shall be no order as to costs.

- E R.P. Appeal allowed.