

State of Punjab and others *v.* Surinder Kumar (S. S. Sodhi, J.)

or which no longer gives off flame. Cinder is thus the residue or ash that is left when coal or coke is burnt and is removed of its combustible matter. It may be that cinder is still capable of preserving heat and emitting glow, but it must be basically different in its properties from coke which is but coal minus the volatile matters. It is correct that under the entry coke is given a very wide meaning but cinder which is the remanent of ashes left after complete burning out of coal or coke cannot be said still to retain its properties as a form of coke. But this is not the position with the briquettes. The dust of coal which is used for preparing the briquettes independently has the properties which coke possesses. In order to make it easily usable, the balls which are called briquettes are prepared by mixing clay and molasses with coal dust and are used in the same manner as coal or coke is used. Hence, as earlier observed, the judgment in *K. Venkataraman's case* (supra) is not at all helpful to the State.

(13) As a result of the aforesaid discussion, we hold that the demand for enhanced payment of tax made on the basis of the imposition of tax at the rate of 8 per cent on coal briquettes is illegal as the coal briquettes fall within the definition of section 14(ia) of the Central Act. Consequently, the writ petition is allowed and the assessment order dated 27th June, 1985, copy Annexures P-2, is quashed. As there is no representation on behalf of the respondents, we make no order as to costs.

H. S. B.

Before S. S. Sodhi, J.

STATE OF PUNJAB AND OTHERS,—Appellants.

versus

SURINDER KUMAR,—Respondent.

Regular Second Appeal No. 3336 of 1985

August 20, 1986.

Police Act (V of 1861)—Section 7—Police rules providing for Superintendent of Police as being appointing authority for a police constable—Constable however, dismissed by the Additional Superintendent of Police from service on account of misconduct—Order of

dismissal—Whether can be said to be passed by the competent authority—Said order—Whether valid.

Held, that a reading of Section 7 of the Police Act, 1861 would show that when an appointment of an Additional Inspector General of Police is made, it is made on account of the fact that the Inspector General had more work than he could cope with and the Additional Inspector General was appointed to take some of the work off his hands. In such circumstances it must be presumed that such an officer, when appointed, would be competent to exercise all or any of the functions of the Inspector General in the Act in the absence of any provision to the contrary in his order of appointment. Similarly, it is open to the State Government to appoint Additional Superintendents of Police and when such an Officer is appointed, he would be competent to exercise all or any of the functions of the Superintendent of Police under the Act, unless there is a provision to the contrary in the order of appointment of the official concerned. In other words, in this context, both the Superintendent of Police and the Additional Superintendent of Police must be taken to have concurrent powers and the Additional Superintendent of Police can by no means be taken to be an officer junior in rank to the Superintendent of Police. This being so there can be no escape from the conclusion that the order of dismissal was passed by the competent authority and was, therefore, valid.

(Paras 4 and 5)

Regular Second Appeal from the decree of the Court of the Additional District Judge, Patiala dated the 29th day of July, 1985, reversing that of the Sub Judge, 1st Class, Patiala (D), dated the 19th day of March, 1983 and decreeing the suit of the plaintiff declaring that the orders dismissing him from service are without jurisdiction and he shall be deemed to be in service as a Constable and ordering that the defendants shall bear the costs through-out and further clarifying that this decree will not stand in the way of the competent authority to proceed against the plaintiff afresh from the state subsequent to the acceptance of the finding of the Enquiry Officer.

S. K. Aggarwal, Advocate, for A.G. (Pb.), for the Appellant.

M. K. Tiwari, Advocate, for the Respondents.

JUDGMENT

S. S. Sodhi, J.—

(1) Is the Additional Superintendent of Police to be taken to be an officer lower in rank than the Superintendent of Police? This

State of Punjab and others v. Surinder Kumar (S. S. Sodhi, J.)

matter arises in the context of the validity of the order of dismissal passed against the plaintiff-constable Surinder Kumar, by the Additional Superintendent of Police, Patiala, on April 1, 1961, challenged in appeal being the setting aside of the impugned order of dismissal by the lower appellate Court holding it to be an order not passed by the competent authority.

(2) The appointing authority of the plaintiff was the Superintendent of Police, while, as mentioned earlier, the order dismissing him from service was passed against him by the Additional Superintendent of Police.

(3) In dealing with the point in issue, it would be pertinent to keep in view the provision of Section 7 of the Police Act, 1861 (hereinafter called 'the Act'), the relevant portion of which reads as under:—

"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, suspend or reduce any police officer of the subordinate rank whom they shall think ~~remiss~~ or negligent in the discharge of his duty or unfit for the same."

(4) The statutory provisions here, namely, Section 7 of the Act came up for consideration before a Division Bench of this Court in *State of Punjab v. Sunder Singh, Ex-Headconstable*. (1) in the context of an order of dismissal passed against a head-constable by the Additional Inspector-General of Police. This order of dismissal was sought to be questioned on the ground that it had not been passed by the competent authority inasmuch as it had been passed by an Additional Inspector-General of Police and not the Inspector-General of Police. After adverting to the provisions of Section 7 of the Act, it was observed by the Division Bench that it is to be presumed that when an appointment of an Additional Inspector-General of Police is made on account of the fact that the Inspector-General had more work than he could cope with and the Additional Inspector-General of Police was appointed to take some of the work off his hands, in

(1) REA 195 of 1964 decided on 20th January, 1966.

such circumstances, it was held; it must be presumed that such an officer, when appointed would be competent to exercise all or any of the functions of the Inspector-General under the Police Act in the absence of any provision to the contrary in the order of his appointment. Further, it was held that the Inspector-General of Police had concurrent powers and one was not senior in rank to the other. It was accordingly held that the order of dismissal passed by the Additional Inspector-General of Police, was indeed an order passed by the competent authority.

(5) Similar reasoning is clearly applicable in the present case. Although the Police Act speaks only of the District Superintendent of Police, it is well-settled that it is open to the State Government to appoint Additional Superintendents of Police and when such an officer is appointed, he would be competent to exercise all or any of the functions of the Superintendent of Police under the Police Act, unless there is a provision to the contrary in the order of his appointment. In other words, in this context, both the Superintendent of Police and the Additional Superintendent of Police must be taken to have concurrent powers and the Additional Superintendent of Police and Additional Inspector General of Police had concurrent powers and was not senior in rank to the other. It was accordingly held that the order of dismissal was passed by the competent authority.

(6) Faced with this situation, counsel for the respondent-police constable, sought to contend that the punishment awarded was unwarranted keeping in view the nature of the misconduct found against him. The emphasis here being upon rule 16.2 of the Punjab Police Rules, Volume 1, which speaks of dismissal being the appropriate punishment for gravest acts of misconduct. This again is a contention which cannot be accepted as it is now well-settled that courts will not interfere with the discretion exercised by police officers in the matter of the imposition of punishment except, where such discretion is found to have been exercised wantonly or arbitrarily which is clearly not the case here. Further as noticed by the lower appellate Court, the previous record of constable Surinder Kumar showed that he had got six punishments in his 10-years of service and was recorded to be an 'incurable type'. Further, his being on leave without permission was found to be wilful absence in order to avoid the Refresher Course. The punishment imposed upon him thus calls for no interference.

Escorts Limited v. Presiding Officer, Labour Court and others
(D. V. Sehgal, J.)

(7) The impugned order of dismissal thus suffers from no infirmity and in this view of the matter, the judgment and decree of the lower appellate court is hereby set aside and the suit of the plaintiff—Surinder Kumar is hereby dismissed. There will, however, be no order as to costs.

R.N.R.

Before D. V. Sehgal, J.

ESCORTS LIMITED.—Petitioner

versus

PRESIDING OFFICER, LABOUR COURT AND OTHERS,—
Respondents

Civil Writ Petition No. 2145 of 1985

August 20, 1986.

Industrial Disputes Act (XIV of 1947)—Section 11A—Senior Assistant in Stores Department charged for theft of Company property—Order of dismissal passed after holding a domestic enquiry—Industrial dispute raised and the domestic enquiry upheld by the Labour Court as being fair and proper—Labour Court while holding order of dismissal as justified directing reinstatement in exercise of its powers under Section 11A—Such finding of the Labour Court—Whether divests the Labour Court of the jurisdiction to water down the quantum of punishment—Award of the Labour Court—Whether liable to be quashed.

Held, that a reading of Section 11 A of the Industrial Disputes Act, 1947 would show that the Labour Court may hold that although the misconduct is proved yet the order of discharge or dismissal for the said misconduct is not justified. In other words the Labour Court may hold that the proved misconduct does not merit punishment by way of discharge or dismissal and it can in such circumstances award to the workman lesser punishment instead. If, however, the Labour Court reaches at the conclusion that the order of dismissal was justified and in order it divests itself of the jurisdiction to exercise its discretion under Section 11A of the Act so as to water-down the quantum of punishment and as such the award of the Labour Court is liable to be quashed.

(Paras 10 and 14)