

Satnam Singh and others v. State of Punjab and others
(D. S. Tewatia, J.)

about the profits earned by the Board during the years in question. Therefore, the claim of the Union as put forth in this petition for the grant of bonus at the rate of 20 per cent instead of 8.33 per cent as has been done by the Tribunal, cannot straightway be acceded to. The matter, to my mind, deserves to be sent back to the Tribunal for decision afresh so far as this aspect of the matter is concerned. I, therefore, allow this petition to the extent that the conclusion recorded in paragraph 5 of the impugned award is set aside and the Tribunal is directed to redetermine the quantum of the actual profits earned by the Board during the years in question and then to decide the further question as to at what rate the bonus has to be paid to the employees represented by the Union. I order accordingly. For clarity's sake, it may be mentioned here that till such a decision by the Tribunal, the bonus would be continued to be paid to the employees at the rate as ordered by the Tribunal.

(6) No order as to costs is passed in either of the petitions.

H.S.B.

Before D. S. Tewatia, J.

SATNAM SINGH AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 3047 of 1979

April 10, 1986.

Punjab Reorganisation Act (XXXI of 1966)—Section 82—Punjab Police Rules, 1934 (as amended in 1979)—Rule 16.2—Police Constable convicted and sentenced to four years imprisonment on a criminal charge—Said constable dismissed by the punishing authority during the pendency of the appeal in the Criminal Court—Rule 16.2 providing for dismissal only after final decision of Criminal Court in appeal or revision—Appellate authority setting aside order of dismissal as being violative of Rule 16.2—Rule 16.2 subsequently amended providing for dismissal of the police official on conviction—Punishing authority once again issuing order of dismissal under the amended Rule—Amended Rule 16.2—Whether changes the conditions of service of the police official—Prior permission of the Central Government not taken before effecting amendment—Said rule—Whether

liable to be struck down as being violative of Section 82 of the Reorganisation Act—Aforesaid rule—Whether can be said to operate retrospectively—Second order of dismissal passed by the punishing authority—Whether amounts to review of the order of the appellate authority—Said order—Whether liable to be struck down.

Held, that a perusal of the unamended Rule 16.2 of the Punjab Police Rules, 1934, would show that so far as the police employee who had been judicially convicted and sentenced to imprisonment for a term, *inter alia*, exceeding one month or to a punishment not less severe had to be dismissed if his conviction had not been set aside in appeal or revision, by the superior court, as the case may be. The change that has been effected by the amended Rule 16.2 is that once an employee governed by the Police Rules, is convicted by a Criminal Court, whatever be the sentence, he has to be dismissed from service. It is, however, provided that in the event of his conviction being set aside by the appellate or the revisional Court, the authority which is empowered to appoint would review the order of dismissal keeping in view the instructions issued by the Government. That means that under the amended provisions the competent authority is not required to wait for the aforesaid eventualities but has to pass the order of dismissal in the wake of conviction. The amended Rule 16.2 by virtue of the change effected does not in any way effect the conditions of service of a police official. So, the question of prior permission of the Central Government before effecting the amendment, as envisaged by Section 82 of the Punjab Reorganisation Act, 1966, does not violate the provisions of Section 82 of the Reorganisation Act and is not liable to be struck down.

(Paras 1, 2, 3 and 4)

Held, that Rule 16.2 of the Punjab Police Rules is a procedural one which are always retrospective in nature unless expressly made prospective. As such, amended Rule 16.2 is retrospective in nature.

(Para 5)

Held, that the first order of dismissal passed by the punishing authority was clearly illegal as it has been passed in violation of the provisions of the unamended Rule 16.2 of the Police Rules, because under the unamended Rule the order of dismissal had to await the decision of the appeal or the revision, but the punishing authority passed the order of dismissal during the pendency of the appeal. The appellate authority rightly set aside the order of the punishing authority. The second order of dismissal was passed by the punishing authority under Rule 16.2 as amended, which provision makes it mandatory to pass an order of dismissal in the event of conviction of the official concerned. The second order of dismissal passed by the punishing authority, therefore, cannot be said to be an order of review of the orders passed by the appellate authority.

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As such, the second order of dismissal being valid is not liable to be struck down.

(Para 6)

Petition under Article 226 of the Constitution of India praying that:—

- (i) That a writ of mandamus may be issued thereby declaring that the amendment of rule 16.2 of the Punjab Police Rules,—vide Annexure P-2 is illegal, ultra vires null and void and unconstitutional, and respondents may be restrained, from enforcing the same.
- (ii) A writ of certiorari may be issued thereby quashing the order of dismissal from service passed against the petitioner,—vide Annexure P-3.
- (iii) Or such appropriate writ, order or direction as may be deemed fit by this Hon'ble Court may be issued in favour of the petitioner and against respondents.
- (v) that the implementation of the order Annexure P-3 may be stayed till final disposal of the writ petition and the respondent may be directed to pay the subsistence allowance to the petitioners during the pendency of the writ petition.

It is further prayed that condition regarding service of notice of motion may be dispensed with at this stage.

Production of certified copies of the annexures may be dispensed with at this stage.

Cost of the petition may be allowed against the respondents.

K. P. Bhandari, Sr. Advocate Ravi Kapur, Advocate with him.

G. S. Bali, Advocate, for the Respondents.

JUDGMENT

D. S. Tewatia, J. (Oral).

(1) The petitioners who are Constables were convicted under section 376, Indian Penal Code, for committing rape on a minor girl, by the Additional Sessions Judge, Ludhiana,—vide his judgment dated 3rd August, 1977, and sentenced thereunder to undergo rigorous imprisonment for four years and a fine of Rs. 100 each. They preferred an appeal in the High Court against the conviction and

sentence and when the appeal was still pending, the Senior Superintendent of Police, who was the appointing authority, dismissed them from service,—*vide* order dated 3rd October, 1977. This order was, however, set aside by the Deputy Inspector-General of Police,—*vide* his order dated 22nd November, 1978, but instead he placed them under suspension. On 11th June, 1979, rule 16.2 of the Punjab Police Rules, 1934, was amended by virtue of which the Superintendent of Police of the concerned district dismissed the petitioners by his order dated 10th July, 1979. These dismissal orders are impugned in the present writ petition, *inter alia*, on the grounds (i) that the amended rule 16.2 was bad as it violated the provisions of section 82 of the Punjab Reorganisation Act, 1966, (hereinafter referred to as the Act) in that it sought to change the conditions of service of the petitioners without permission of the Central Government as envisaged under section 82 of the Act; (ii) that, in any case, the amended rule was prospective in character and not retrospective; (iii) that, in case it is held to be retrospective in character, then to that extent it would be bad as the Governor would not be competent to make a rule operative retrospectively in exercise of powers under section 7 of the Punjab Police Act, 1861; and (iv) that the order dated 10th July, 1979, passed by the Superintendent of Police concerned amounted to reviewing of the order passed by his superior, *viz.*, the Deputy Inspector-General, dated 22nd November, 1978.

In order to appreciate the contentions advanced on behalf of the petitioners, it is necessary to take notice of the relevant provisions of rule 16.2, in its unamended form as well as in the amended form.

Rule as unamended

16.2(2) An enrolled police officer sentenced judicially to rigorous imprisonment exceeding one month or to any other punishment not less severe, shall, if such sentence is not quashed on appeal or revision, be dismissed. An enrolled police officer sentenced by a criminal court to a punishment of fine or sim-

Rule after amendment

An enrolled police officer convicted and sentenced to imprisonment on a criminal charge shall be dismissed;

Provided that in case the conviction of a police officer is set aside in appeal or revision. The officer empowered to appoint him shall review his case keeping in view the instructions

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Rule as unamended

ple imprisonment, or both, or to rigorous imprisonment not exceeding one month, or who, having been proclaimed under Section 87 of the Code of Criminal Procedure fails to appear within the statutory period of thirty days may be dismissed or otherwise dealt with at the discretion of the officer empowered to appoint him. *Final departmental orders in such cases shall be postponed until the appeal or revision proceedings have been decided, or until the period allowed for filing on appeal has lapsed without appellate or revisionary proceedings having been instituted.* Departmental punishments under this rule shall be awarded in accordance with the powers conferred by rule 16.1.

Rule after amendment

issued by the Government in this behalf.

(2) A perusal of the unamended rule 16.2 would show that so far as the police employee who had been judicially convicted and sentenced to imprisonment for a term, *inter alia*, exceeding one month or to a punishment not less severe had to be dismissed if his appeal against the conviction had not been set aside in appeal or revision by the superior court, as the case may be.

(3) The change that has now been effected by the amended rule 16.2 is that once an employee governed by the Police Rules is convicted by a Criminal Court, whatever be the sentence, he has to be dismissed from service. It is, however, provided that in the event of his conviction being set aside by the appellate or the revisional court, the authority which is empowered to appoint would review the order of dismissal keeping in view the instructions issued by the Government. That means that under unamended rule, the order of dismissal had to be passed after the appeal or revision against the order of conviction had been decided, and the appellate or the revisional court had not set aside the order of

conviction or the limitation for filing appeal or revision had expired, while under the amended provisions, the competent authority is not required to wait for the aforesaid eventualities but has to pass the order of dismissal in the wake of the conviction, and is authorised to review the said order in the event of the conviction order being set aside by the appellate or the revisional authority.

(4) The aforesaid amendment in rule 16.2 by virtue of the change effected, does not in any way affect the conditions of service of a police employee. So, the question of prior permission of the Central Government before effecting the amendment, as envisaged by section 82 of the Act, does not arise.

(5) Rule 16.2 of the Punjab Police Rules is a procedural one which are always retrospective in nature unless expressly made prospective.

(6) As to the effect of the order of the Deputy Inspector-General dated 22nd November, 1978, setting aside the earlier dismissal order dated 3rd October, 1977, passed by the Senior Superintendent of Police, it may be observed that the same, viz., the earlier order dated 3rd October, 1977, passed by the Senior Superintendent of Police was clearly illegal as it had been passed in violation of the provisions of unamended rule 16.2 of the Police Rules because under the unamended Police Rules 16.2, as already observed, the orders of dismissal have to await the decision of the appeal or the revision, but the Senior Superintendent of Police passed the order of dismissal during the pendency of the appeal. It was, therefore, rightly set aside by the Deputy Inspector-General of Police by his order dated 22nd November, 1978. The impugned order dated 11th June, 1979 has been passed by the competent authority under rule 16.2 as amended, which provision makes it mandatory to pass an order of dismissal in the event of conviction of the employee concerned. This order cannot be said to be an order of review of the orders of the D.I.G., dated 22nd November, 1978.

(7) For the reasons afore-mentioned I find no merit in this petition and dismiss the same. No costs.

R. N. R.