
(2010) 02 CHH CK 0018
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 3131 of 2009

Agastina Xalxo (ku.)	Vs	APPELLANT
State of CG and Others		RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Constitution of India, 1950 — Article 311
Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 10, 12, 12(2), 2, 9

Citation : (2010) 4 MPJR 50

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Judgement

S.K. Agnihotri, J.

Challenge in this petition is to the order dated 23.06.2009 (Annexure P/ 1) whereby the petitioner was placed under suspension in contemplation of the enquiry against the petitioner on the allegation of serious financial irregularities by the Collector, Surguja.

The indisputable facts, in nutshell, are that at the relevant time, the petitioner was working as Assistant Director (Education) in the office of the District Education Officer, Ambikapur, District Surguja. On the allegation of serious financial irregularities, the petitioner was placed under suspension on 23.6.2009 (Annexure P/1) under the provisions of Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 (for short "the Rules, 1966").

It is informed at the bar that a charge-sheet has been issued and departmental enquiry is pending consideration.

The sole contention of learned counsel appearing for the petitioner is that the impugned suspension order is not just and proper as the same has been passed by an incompetent officer as the Collector is neither the appointing authority nor the disciplinary authority. Further, the Collector has not been authorized by any

special or other order not empowered on that behalf by the Government. The appointing as well as the disciplinary authority is the Director, Public Instructions (Annexure P/6).

Shri Tripathi. Learned counsel for the petitioner would rely on a circular dated 04.08.2008 issued by the Government of Chhattishgarh. General administration department whereby in exercise of power under sub rule 2(a) (b) rule 12 of the rules, 1966. the Governor has authorized all the divisional commissioners to perform the duty disciplinary authority for the purpose of imposition of penalties i.e. minor penalties referred to in clause (i) to (iv) of rule 10 of the rules, 1966. on the class-II officers of all the departments (excluding judicial and police services).

On the other hand. Shri Roy. Learned panel lawyer appearing for the state/respondents would submit that there were serious allegations of financial irregularities as mentioned in the show-cause notice dated 1.6.2009 (Annexure P/2). The suspension order passed by the Collector, Surguja was immediately sent to the State Government i.e. secretary. School Education for approval and the same was approved on 20.7.2009 (Annexure R/2). Second proviso to section 9(1) of the Rules, 1966 clearly provides that where the order of suspension is made by the authority lower than the appointing authority the circumstances in which the order was made. The State Government, being the appointing authority, has approved the suspension order accordingly. There is no merit in this case as the charge sheet has been issued immediately after reply to the show cause notice and the disciplinary enquiry is pending consideration.

Having heard learned counsel appearing for the parties. Perused the pleading and documents appended thereto it is evident that the suspension order dated 23.06.2009 (Annexure P/1) was passed by the Collector. Surguja there is no dispute with regard to the fact that the State Government is the appointing authority, though the appointment order date 15.09.1998 (Annexure P/6) was passed by the joint Director. Public Instruction.

Reliance of learned counsel for the petitioner on the order dated 06.05.2005 passed by the learned Division Bench of this court in W. P. No. 1518/2004 (Dr. O.P. Tiwari v. state of Chhattisgarh & Others) appears to be not relevant to the instant case. In O.P. Tiwari (supra) it is not clear as to whether the order passed by the Director. Veterinary Health services who was neither appointing nor disciplinary authority, was sent to the appointing authority i.e. the state government for approval. It appears that this was not the issue in O.P. Tiwari (supra) which is under consideration in the instant case and as such. The ratio laid down by the learned Division Bench is not applicable to the facts of the present case.

Rule 9(1) of the Rules, 1966 reads as under:

SUSPENSIONS (1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in

that behalf by the Governor by general or special order, may place a Government servant under suspension-

- (a) where a disciplinary proceeding against him is contemplated or is pending, or
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that a Government servant shall invariably be placed under suspension when a challan for a criminal offence involving corruption or other moral turpitude is filed against him:

Provided further that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

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The Supreme Court, in State of Orissa and Others Vs. Shiva Parashad Das, observed as under:

3. An order of suspension passed against a government servant pending disciplinary enquiry is neither one of dismissal nor of removal from service within Article 311 of the Constitution. This position was clearly laid down by a Constitution Bench of this Court in Mohammad Ghouse v. State of Andhra. It is unfortunate that this decision was not brought to the notice of the learned Judges of the High Court. Clause (1) of Article 311 will get attracted only when a person who is a member of Civil Service of the Union or an all-India service or a Civil Service of a State or one who holds a civil post under the Union or a State is "dismissed" or "removed" from service. The provisions of the said clause have no application whatever to a situation where a government servant has been merely placed under suspension pending departmental enquiry since such action does not constitute either dismissal or removal from service. The High Court was, therefore, manifestly in error in quashing the order of suspension passed against the respondent on the ground that it was violative of clause (1) of Article 311 of the Constitution. Further, in P.L. Shah Vs. Union of India (UOI) and Another, , the Supreme Court observed as under:

6. An order of suspension is not an order imposing punishment on a person found to be guilty. It is an order made against him before he is found guilty to ensure smooth disposal of the proceedings initiated against him. The Collector is indisputably neither the appointing authority nor disciplinary authority. The State Government is the appointing authority as well as the disciplinary authority. In accordance with the second proviso to sub Rule (1) of Rule 9 of the Rules, 1966 which is an exception, the impugned suspension order was sent to the Secretary to the Government as is evident from the order impugned itself and the Secretary, immediately by order dated 20.07.2009 (Annexure R/2) approved the

suspension order passed by the Collector. Thus, there is no irregularity or violation of any of the provisions of Rule 9 of the Rules, 1966.

Further, the circular dated 04.08.2008 relied on by the petitioner is not relevant in the case as the circular was issued under sub Rule (2) of Rule 12 of the Rules, 1966 for imposition of penalty as prescribed in clause (i) to (iv) of Rule 10 for the Rules, 1966. It is not a case of imposition of minor penalty. Thus, the said circular is of no relevance.

In view of the foregoing and applying the well settled principles of law to the facts of the case on hand, there is no merit in this case. The order of suspension dated 23.06.2009 (Annexure P/1), impugned herein, is just, proper and warrants no interference. Accordingly, the writ petition is dismissed.

There shall be no order as to costs.