

(2007) 09 CHH CK 0008
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 1922 of 2007

Ashok Kumar Singh Bhadoriya	Vs	APPELLANT
State of C.G. and Others		RESPONDENT

Date of Decision : 26-09-2007

Acts Referred:

Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 9, 9(1), 9(2)
Penal Code, 1860 (IPC) — Section 367, 384, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3(1)

Citation : (2008) 1 CGLJ 27

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Advocate : Ratan Pushty and Mohd. Tarik Haider, for the Appellant; Yashwant Singh, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—Challenge is made to the suspension order dated 12.3.2007 issued by Respondent No. 1 against the Petitioner on account of his arrest in a criminal case, which is pending for its disposal. The Petitioner has also prayed for a direction to drop the departmental proceedings initiated against him until the criminal case is decided.

2. The brief facts are that the Petitioner holds the substantive post of Lecturer and was officiating as In-charge Principal. He was arrested on 20.2.2007 in connection with Crime No. 3/2007 of P.S. Odgi registered against him Under Sections 506, 367 and 384 of I.P.C. and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (hereinafter referred to as the Special Act). Admittedly, the Petitioner was sent to jail on 21.2.2007 at 6.15 p.m., and was released on 22.2.2007 at 6.05 p.m., thus he was in jail custody for about 24 hours. It is on this count, the Petitioner was suspended by the said order under Rule 9 of the C.G. Civil Services (Classification, control and

Appeal) Rules 1966. It has been mentioned in the impugned order that the suspension has been effected under Rule 9(2)(a) of the said Rules. The order of suspension has been challenged on the ground that since the period of detention was not exceeding 48 hours, therefore, the same was contrary to law, besides being arbitrary and malafide.

3. State has filed its return. Almost all the facts pertaining to registration of criminal case under the said offences and period of detention have been admitted by the State, but it added that the Petitioner, who was working as Lecturer and also holding the Charge of Principal of Government Higher Secondary School, Odgi, Tahsil Surajpur (Sarguja) has been arrested and remained in jail for about 24 hours and if a principal will go to jail for such offences, what impression will go to the children, therefore, in such a back ground his suspension has been effected. It is also mentioned in the return that departmental proceedings have also been initiated against the Petitioner.

4. Learned Counsel for the Petitioner argued that since the Petitioner was not detained for the period exceeding 48 hours, therefore, the order showing it to be passed under Rule 9(2)(a) is bad in law. He secondly argued that the order is not reasoned, therefore, it is arbitrary and malafide.

5. So far as suspension is concerned, the provisions are clear and unambiguous. It has been provided vide Sub-rule (1) of Rule 9 of C.G. Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred to as the Rules) that the concerned authority "may" place a Government Servant under suspension in the following two conditions:

- (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.

Sub-Rule (2) of Rule 9 further provides that a Government Servant "shall" be deemed to have been placed under suspension by an order of appointing authority-

- (a) with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise for a period exceeding forty eight hours;
- (b) with effect from the date of his conviction, if, in the event of conviction for an offence, he is sentenced to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

6. The words like "may" and "shall" have been used by the Legislature in the

opening parts of these two sub-rules of Rule 9 which show their contradistinction. According to the general rule of interpretation, the use of word "shall" raises a presumption that the particular provision is imperative; but this prima-facie inference may be rebutted by other considerations such as object and scope of the enactment and the consequences flowing from such constructions. The use of word "may" at one place and "shall" at another place in the same section may strengthen the inference that these words have been used in their primary sense and that "shall" should be construed as mandatory. Please see "Principles of Statutory Interpretation" by Justice G.P. Singh, 6th Edn., 1996 Pg. 259, 260 and 261.

Therefore, suspension of the Government Servant against whom, a case in respect of any criminal offence is under investigation, inquiry or trial, is not invariably to be effected unless such offence relates to corruption or other moral turpitude and a challan has been filed in that matter and the suspension would be on the discretion of the concerned authority, which shall depend upon the facts and circumstances of each case and for such suspension under Clause (b) of Sub-rule (1) of Rule 9, period of detention would be immaterial.

7. Learned Counsel for the Petitioner has argued that the order contains that the suspension has been effected under Clause (a) of sub rule (2) of Rule 9, therefore, it is bad in law because the Petitioner was not in detention for a period exceeding 48 hours. Merely quoting a wrong provision in an order does not make the order bad in law. It is the contents of the order which is to be seen and then it is to be adjudged whether it can be sustained or not. The order shows that the Petitioner was put under suspension on account of registration of a criminal case and also on account of detention in the said case and not on account of detention for the period exceeding 48 hours, therefore, clearly it is an order passed under Rule 9(1)(b) of the Rules and only on account of quoting Rule 9(2)(a) in the suspension order, the order cannot be held to be bad in law.

8. About the order not being a reasoned order, Learned Counsel for the Petitioner referred to the decision of the Apex Court rendered in the matter of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . In this case, the Apex Court said that when a statutory functionary makes an order based on certain grounds its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning, may by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. The Apex Court relied on the earlier decision reported in the matter of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, in which it was held that "Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do, Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to

whom they are addressed and must be construed objectively with reference to the language used in the order itself."

9. I do not find how this judgment is helpful to the Petitioner. It is not a case where the order has been supplemented by fresh reasons nor is it a case in which no reasons have been mentioned in the order. The order is clear and the reason for suspension has also been mentioned in the order. It has been mentioned that since a criminal case under the aforementioned sections of I.P.C. and the Special Act has been registered against the Petitioner and the Petitioner was arrested in the said criminal case and was in detention, therefore, he is being put under suspension. That is to say that admittedly an investigation of the criminal offence was pending against the Petitioner and in such circumstances, it was under the discretion of the concerned authority to put him under suspension under sub-rule (1)(b) of Rule 9 of the Rules 1966. Therefore, the second argument advanced by Learned Counsel for the Petitioner cannot be sustained.

10. Following the decisions in the matters of R.P. Kapur Vs. Union of India (UOI) and Another, , Balvantray Ratilal Patel Vs. The State of Maharashtra, , V.P. Gidroniya Vs. The State of Madhya Pradesh and Another, . U.P. Rajya Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan, , the Apex Court in the matter of State of Orissa Vs. Bimal Kumar Mohanty, held that "Normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. It would be another thing if the action is actuated by malafides, arbitrary or for investigation or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or; inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."

11. On the above principles, if we scrutinize the order with reference to malafides, arbitrariness or ulterior purpose, it would appear that the Petitioner was holding the substantive post of Lecturer and was also officiating as Incharge

Principal of the concerned educational institution. His primary duty was to teach the students and a high degree of morality is attached to the functioning and conduct of the Petitioner in discharge of his official duty. A teacher owes more responsibility for the students than any other person. Even more than the guardians of the wards and he always remains as an example for the students. The State has taken a plea and the Government Advocate has argued that if a person who is discharging pious duty of a teacher, goes behind the bars then his continuance in the office would create a negative impact on the students and in this back ground the Petitioner has been suspended. I have considered the arguments of both the parties on this line. Contrary to the above contentions raised by the Learned Counsel for the State, Learned Counsel for the Petitioner could not make out a case of malafides or arbitrariness or ulterior purpose in the matter of suspension of the Petitioner. In fact the suspension has simply been effected on account of registration of criminal case against the Petitioner and his arrest and detention in jail in the said case, therefore, there does not appear any malafide, arbitrariness or ulterior purpose in suspending the Petitioner. This argument has also no force and the same is to be turned down.

12. So far as the prayer pertaining to drop the departmental proceedings initiated against the Petitioner is concerned, nothing has been brought on record regarding that. What kind of proceedings have been initiated against the Petitioner? What are the charges against him? What is the defence of the Petitioner? What are the allegations in the criminal case registered against the Petitioner? Why the proceedings of departmental enquiry should be dropped against the Petitioner till the decision of the criminal case? Neither the pleadings have been taken in this regard nor any document has been produced to bring to the notice of this Court, the relevant facts in this regard. Even the arguments have not been advanced in this regard by Learned Counsel for the Petitioner. Only a prayer has been made in the writ petition. In such circumstances, only on the prayer made in the writ petition, I do not deem it proper to pass an order for dropping the departmental proceedings, said to have been initiated against the Petitioner, until the criminal case is decided.

13. The petition has no merits and the same is dismissed. No costs.