

(2001) 07 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Special Appeal No. 1000 of 2000

Beni Ram Kushwaha

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-07-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 13(5), 16

Citation : (2001) 3 RLW 1881 : (2001) 3 WLC 334 : (2001) 3 WLN 717

Hon'ble Judges : A.R. Lakshmanan, C.J.; K.S. Rathore, J

Bench : Division Bench

Advocate : Prem Asopa and Aashish Joshi, for the Appellant; Ajay Purohit, Government Advocate, for the Respondent

Judgement

Lakshmanan, C.J.

(1). Heard Shri Prem Asopa, Senior Advocate for the appellant and Shri Ajay Purohit, Government Advocate, for the respondents,

(2). This appeal has been filed by the appellant against the judgment of the learned Single Judge dated 28.8.2000, passed in S.B. Civil Writ Petition No. 3882/2000, dismissing the writ petition.

(3). By filing the writ petition, the appellant sought an appropriate writ, order or direction for taking the decision on the representation of the appellant filed under Rule 13(5) of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958, for revocation of the suspension order dated 13.1.2000, as observed by this Court vide its order dated 19.5.2000 inter-alia on the ground that the said representation is still pending despite reminder of 15 days dated 29.5.2000 and the appellant is still continuing under suspension without there being any charge-sheet and, therefore, the suspension order is unreasonable, arbitrary and the same is liable to be quashed and set aside being violative of Article 14 and 16 of the Constitution of India. It was also averred by the

appellant that he is holding the post of Principal in Senior Secondary School and the said post is one of the higher posts of the State Service known as Rajasthan Education Service governed by the Rajasthan Education Service Rules, 1970. It was also contended that the suspension of the appellant has been made after more than one year of the detection of the case against Lokesh Kumar Jain by the appellant and presently, the appellant is also not post at the place where the alleged misconduct is said to have been committed by Shri Jain. The appellant made following prayers in the writ petition:-

"(i) By an appropriate writ, order or direction, the respondents No. 1 and 2 may kindly be directed to decide the representation dated 29.5.2000;

(ii) by further appropriate writ, order or direction, the suspension order dated 13.1.2000 may kindly be quashed and set aside and the petitioner be reinstated back in service with all the consequential benefits;

(iii) by further appropriate writ, order or direction, in case the order of suspension is not revoked or any other prejudicial order against the interest of the petitioner is passed, then the same may kindly be taken on record and also be quashed and set aside;

(iv) or any other appropriate relief may kindly be granted to the petitioner which this Hon"ble Court may deem fit and proper in the facts and circumstances of the present case to protect rights and interest of the petitioner;

(v) the costs of the litigation may kindly be granted to the petitioner."

(4). According to Mr. Asopa, the main prayers made in the writ petition clearly reveal that the writ petition was to direct the respondents to decide the representation dated 29.5.2000, filed by the appellant (Annex. 9 to the writ petition) under Rule 13(5) of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 and for revocation of the suspension order dated 13.1.2000 as per the observations of this Court made while dismissing the earlier writ petition on 19.5.2000 (Annexure-8 to the writ petition). It is now represented by Shri Ajay Purohil, learned Govt. Advocate, for the respondents that the said representation made by the appellant had already been decided by the respondents, rejecting the same (Annex. R/2 filed alongwith reply to the writ petition).

(5). On 28.8.2000, the respondents have issued a charge sheet under Rule 16 of the Rajasthan Civil Services (C.C.A.) Rules, 1958 for supervisory negligence of the appellant, which has resulted in misappropriation of amount of Rs. 1,09,225/- by Shri Lokesh Kumar Jain, a suspended UDC. Accordingly to the learned counsel for the appellant, the appellant, who is the Principal of the institution ought to have not been suspended on the ground because it was only on account of promptness of the appellant that the amount of misappropriation was detected and F.I.R. was lodged by him against Shri Lokesh Kumar Jain as detailed out in sub para (B), (C), (D), (E) and (F) of the writ petition. The

learned Single Judge dismissed the writ petition filed by the appellant in view of the order dated 19.5-2000, without considering the above mentioned facts that the appellant has already filed representation on 29.5.2000 and a reminder was also given on 20.6.2000 and thereafter, the petition was filed on 17.8.2000 when no decision was taken by the respondents. Feeling aggrieved by the order dated 28.8.2000 passed by the learned Single Judge as well as the impugned suspension order dated 13.1.2000, the appellant has preferred the present special appeal.

(6). It is submitted that the learned Single Judge has dismissed the writ petition filed by the appellant, in view of order dated 19.5.2000, without considering the above mentioned facts that the appellant had filed a representation on 29.5.2000 and a reminder was also given on 20.6.2000 and thereafter, the writ petition was filed on 17.8.2000 when no decision was taken by the respondents.

(7). According to the learned counsel for the appellant, the suspension of the appellant has been made after more than one year of the detection of the case against Shri Jain by the appellant and presently the appellant is also not posted at the place where the alleged misconduct is said to have been committed by Shri Jain. The appellant Initiated action against Shri Lokesh Kumar Jain, by making enquiries from the Office of Treasury Officer and then lodged an FIR before the Police Station Lalshot, but it is submitted that for the said prompt action, the appellant has been punished by suspending him without there being any initiation of the disciplinary proceedings against the appellant and, therefor, the suspension order is bad in the eyes of law and the same deserves to be declared illegal and unreasonable.

(8). We have perused the charge sheet, The charge Is only of supervisory negligence on the part of the appellant and there is no other charge against the appellant by way of misappropriation or otherwise. It has also been stated that Shri Lokesh Kumar Jain, U.D.C. had worked in the school only for two moths and the criminal case has already been filed against him and the said case is also going on. It has also been stated that the appellant alone had lodged F.I.R. against Shri Lokesh Kumar Jain.

(9). A reply has also been filed by the respondents denying the averments made in the writ petition. It is also not in dispute that the charge against the appellant is only with regard to supervisory negligence and not otherwise and that the said supervisory negligence has resulted in misappropriation of Rs. 1,09,225/- by his subordinate U.D.C. Shri Lokesh Kumar Jain. The appellant filed a rejoinder to the reply and we have perused the reply as well as the rejoinder to reply.

(10). In the instant case, the appellant was placed under suspension on 13.1.2000 and continued to be under suspension even today. It is also not disputed that no enquiry officer has been appointed so far to enquire into the charges and that the appellant is under suspension for no reason whatsoever. It is well settled law that an employee can be kept under suspension pending

investigation, or pending criminal case or pending departmental enquiry, but such an order of suspension can only be for a reasonable period and not for an indefinite period.

(11). A Division Bench of this Court in the case of Upendra Mishra vs. The Principal Chief Conservator of Forest & Anr. (1), held that a suspension order can be passed against a Government servant against whom a disciplinary proceeding is contemplated - Word "contemplation" as used in Rule 13 implies that the Authority has given thought and consideration to the allegations brought against the Government employee and material bearing on the same and comes to the conclusion that the prima-facie case of misconduct exists against him which calls for a regular enquiry and that suspension can be ordered before framing of the charges and the speaking order of suspension is not expected in those cases.

(12). This Court in the case of Bhanwar Lal Paliwal vs. State & Ors. (2), has held that the authorities while passing the order of suspension has to apply its mind to facts of each and every case and only after satisfying about gravity of misconduct or alleged offences, a person may be placed under suspension, otherwise not.

(13). In our opinion, the authorities, passing an order of suspension, should take into consideration, the gravity of misconduct, sought to be enquired into or investigated on the nature of evidence, placed before the authority. It should not be an administrative routine or an automatic order, to suspend an employee. The appropriate authority has to apply his mind as to whether a public servant should be placed under suspension or not, taking into consideration the prevailing circumstances and also public interest. It is not as if in every case, the employee concerned should automatically be suspended. The stigma and ignominy, attached to the temporary cessation of work, by placing the employee under suspension also should be a prime consideration. The documents and evidence relating to the allegation against the appellant, are already in the custody of the officers concerned and also available. The appellant is now working in another place and there cannot also be an apprehension that the appellant may tamper the evidence. It is also not the case of the management that the continuation of the appellant in office, would be detrimental to public interest and if the appellant is allowed to continue in office, he will tamper the investigation.

(14). In the instant case, the suspension order was passed on 13.1.2000 and till date, except framing the charges on 28.8.2000, the respondent-department has not moved an inch further. Therefore, in our opinion, the appellant, in the instant case, cannot at all be suspended for an indefinite period for the proposed action. There is no need to keep the appellant under suspension. As already noticed, the appellant is also not working at the same place, where the alleged incident took place. So, there can not be any apprehension on behalf of the department that the appellant will meddle with the witnesses or use his influence. In fact, the appellant is responsible for lodging F.I.R. against Shri Lokesh Kumar Jain and he

himself is a witness in the criminal case, which is going on. On our opinion, the appellant has been suspended unnecessarily and, therefore, the suspension order is liable to be revoked forthwith. The department is directed to immediately appoint an enquiry officer to enquire into the matter in accordance with law. The appellant is also directed to cooperate with the enquiry officer in completing the enquiry as expeditiously as possible.

(15). The appeal stands disposed of accordingly.