

(2002) 11 RAJ CK 0016
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1883 of 2002

Bohra Ram Borana

APPELLANT

Vs

The Rajasthan Khadi and Gramoudhyog Board and Another

RESPONDENT

Date of Decision : 14-11-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2003) 4 WLC 329 : (2003) 2 WLN 153

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner against the respondents on 11.6.2002 with a prayer that by an appropriate, writ, order or direction, the impugned order dated 1.6.2002 (Annex. 1) passed by the Secretary, Rajasthan Khadi and Gramoudhyog Board, Jaipur (respondent No. 1) by which the petitioner was put under suspension be quashed and set aside.

2. The facts of the case as put forward by the petitioner are as under:

(i) That the petitioner was initially appointed on 18.12.1978 in the office of respondent No. 1 (Secretary, Rajasthan Khadi and Gramoudhyog Board) and at present, he is holding the post of Organizer under the District Industries Centre, Pali.

(ii) That a FIR Bearing No. 43/2001 was registered at the Police Station, Sojat Road, Dist. Pali on 12.4.2001 against the petitioner and some other persons for offence under Sections 147, 148, 149, 307, 323 and 341 IPC. This FIR was lodged by one neighbour of the petitioner. As per the allegations made in the FIR, a quarrel pertaining to construction of Nali took place and the petitioner was arrested on 5.2.2002 at 7 a.m. (as per Annex. R/1) and he was released on bail

on 7.2.2002 at 3.30 p.m. (as per certificate dated 5.4.2002 (Annex. R/3) and thus, since the petitioner remained in custody for more than 48 hours, therefore, through impugned order dated 1.6.2002 (Annex. 1) passed by respondent No. 1 (Secretary, Rajasthan Khadi and Gramoudhyog Board), the petitioner was placed under suspension.

3. In this writ petition, the order dated 1.6.2002 (Annex. 1) passed by respondent No. 1 (Rajasthan Khadi and Gramoudhyog Board) has been challenged on various grounds and the main ground raised by the learned counsel for the petitioner is that the offences alleged in the FIR do not involve moral turpitude nor do they relate to discharge of his official duties. Therefore, suspension of the petitioner is wholly uncalled for and is liable to be set aside. In this respect, reliance has been placed on a decision of this Court in the case of Ashok Gaur Vs. State of Rajasthan and Another, Hence, the order dated 1.6.2002 (Annex. 1) passed by the respondent No. 1 (Rajasthan Khadi and Gramoudhyog Board) be set aside and this writ petition be allowed.

4. Reply to the writ petition was filed by the respondents and their case is that since the petitioner had remained in custody for more than 48 hrs, therefore, the impugned order dated 1.6.2002 (Annex. 1) was rightly passed under the provisions of Rule 13(2) of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as the Rules of 1958). Hence, the writ petition be dismissed.

5. I have heard the learned Counsel for the parties and perused the record.

6. From perusing application for remand (Annex. R/1) and the certificate of release dated 5.4.2002 (Annex. R/3), it is very much clear that the petitioner had remained in police custody for more than 48 hours and on this point the submission of the learned Counsel for the petitioner that he did not remain in custody for more than 48 hours cannot be accepted. For convenience, Rule 13 of the Rules of 1958 is quoted hereunder:

13. Suspension.--(1) The Appointing Authority or any authority to which it is subordinate or any other authority empowered by the Government in that behalf may place a Government servant under suspension:

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

Provided 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.

Government of Rajasthan's Decision - In exercise of the powers conferred by Sub-Rule (1) of Rule 13 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958, the State Government hereby empowers the authority

competent to impose any one of the minor penalties specified in Rule 14 of the said Rules to place a Government servant under suspension.

(2) A Government servant who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of detention, by an order of the Appointing Authority and shall remain under suspension until further orders.

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7. A perusal of the Rule 13(2) of the Rules of 1958 reveals that a Government servant who is detained in custody whether on a criminal charge or otherwise, for a period exceeding forty eight hours shall be deemed to have been suspended with effect from the date of detention by an order of appointing authority and shall remain suspended until further orders.

8. Since in the present case, the petitioner had remained in custody for more than 48 hours, therefore, the suspension order dated 1.6.2002 passed by respondent No. 1 (Secretary, Rajasthan Khadi and Gramoudhyog Board) cannot be said to be illegal and without jurisdiction and from that point of view also, no interference is called for in the suspension dated 1.6.2002.

9. There is no dispute on the point that a criminal case was registered against the petitioner and some other persons for various offences including offence u/s 307 IPC. Offence u/s 307 IPC is not a minor offence under the Indian Penal Code and the offence u/s 307 IPC is exclusively triable by a Court of Sessions. Thus, this offence cannot be regarded as trivial offence, but is a major offence.

10. Apart from Rule 13(2) of the Rules of 1958, a Government servant can be placed under suspension under Rule 13(1), of the Rules of 1958 and under Rule 13(1), there are two categories and one of the categories is that when a case in respect of any" criminal offence is under investigation or trial, a Government should be suspended. In the present case, the petitioner was not suspended under Rule 13(1) of the Rules of 1958, but was suspended because he remained in custody for more than 48 hours as is evident from the suspension order dated 1.6.2002 (Annex. 1) passed by respondent No. 1 (Secretary, Rajasthan Khadi and Gramoudhyog Board) and in such a case, suspension is termed as deemed suspension.

11. The offence u/s 307, IPC is a major offence and in these circumstances, if offence u/s 307 IPC does not come within the category of moral turpitude, it would not affect the case of the petitioner as the order of suspension was passed against him under Rule 13(2) of the Rules of 1958 and not under Rule 13(1) of the Rules of 1958. Hence, the authority in the case of Ashok Gaur, (supra) on which reliance has been placed by the learned Counsel for the petitioner would

not be helpful to him.

12. For the reasons mention above, the order dated 1.6.2002 (Annex. 1) passed by the respondent No. 1 (Secretary, Rajasthan Khadi and Gramoudhyog Board) cannot be said to be without jurisdiction, illegal or arbitrary and hence the writ petition is liable to be dismissed.

13. Accordingly, this writ petition is dismissed. However, it is made clear that it is for the respondents to revoke the suspension order dated 1.6.2002 (Annex. 1) at their discretion at any time if they feel that no useful purpose would be served by putting the petitioner under suspension. In other words, the respondents are at liberty to revoke the suspension order of the petitioner at any time at their discretion.

Cost made easy.