
(2013) 09 MP CK 0116
In the Madhya Pradesh High Court
Case No : Writ Petition No. 7515 of 2011

Dr. Anil Kushwah

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 09 MP CK 0116

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Deepak Khot, for the Appellant; Praveen Newaskar, Dy. Govt. Advocate for Respondents No. 1 to 4 and Shri S.S. Raghuvanshi, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—This petition filed under Article 226 of the Constitution challenges the order Annexure P/1 dated 04th November, 2011, whereby the petitioner is placed under suspension by invoking rule 9(1) of Madhya Pradesh Civil Services (Classification Control and Appeal) Rules, 1966. The bone of contention of learned counsel for the petitioner is that the petitioner is placed under suspension on the recommendation of office of Lokayukt, Madhya Pradesh. It is contended that no criminal case is registered against the petitioner by the Lokayukt organization nor any challan has been filed. Some exparte preliminary enquiry was conducted by Lokayukt organization and on the strength of mere recommendation, petitioner is placed under suspension by the department in a mechanical manner without application of mind.

2. Shri Deepak Khot, learned counsel for the petitioner contends that the whole case is founded upon the complaint preferred by Shri Satish Nigam, respondent No. 5 herein. However, in a petition filed by Shri Satish Nigam (WP. 414/2011) State Government has filed a reply and denied all such allegations made by Shri Satish Nigam against the petitioner. Official respondents are bound by the stand

taken by them in WP No. 414/2011. In nutshell, the contention of the petitioner is that the petitioner should not have been placed under suspension in a routine manner and the competent authority was required to apply its mind while passing of impugned order of suspension.

3. The contention is opposed by Shri Newaskar, Govt. Advocate and Shri S.S. Raghuvanshi, Counsel for respondent No. 5.

4. It is not in dispute that petitioner is placed under suspension by a competent authority and charge sheet is subsequently issued on 20.12.2011 (Annexure R/1) which shows that the petitioner is subjected to disciplinary proceedings. Shri Newaskar by placing reliance on Rule 9(1) of CCA Rules, contended that an employee can be placed under suspension during pendency of investigation, inquiry or trial. Thus, no fault can be found in the suspension order. Shri Raghuvanshi also relied on the same grounds which are advanced by the Government counsel. Shri Newaskar relied on A.P. Singh Gaharwar Vs. State of M.P. and Others, whereas Shri Khot relied on Suresh Kumar Purohit Vs. State of M.P. and another,

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

6. The Division Bench in A.P. Singh Gaharwar (supra) opined that the Purohit's case was decided on the basis of facts of that matter. However, it is clearly held in para 23 that the judgment in Suresh Kumar Purohit (supra) cannot and shall not be treated as laying down the law or as a precedent for the purposes of interpreting the provisions of Rule 9 of the Rules of 1966, in any other case specifically in view of the analysis and interpretation of Rule 9(1) and Rule 9(5) (d) of Rules 1966. In view of this finding, ratio of Suresh Kumar Purohit (supra) cannot be pressed into service by the petitioner. Para 23 reads as under:-

23. We are, therefore, constrained to clarify that the decision rendered in the case of Suresh Kumar Purohit (supra), was and is confined to the facts of that particular case and cannot and shall not be treated as laying down the law or as a precedent for the purposes of interpreting the provisions of Rule 9 of the Rules of 1996, in any other case specifically in view of the analysis and interpretation of rule 9(1) and 9(5)(d) of the Rules of 1966, as made by us in the present case.

7. So far the contention that the petitioner is not guilty of the charges and allegations of respondent No. 5 in his writ petition were refuted by Government, in the opinion of this Court, petitioner can take assistance of this stand in the departmental enquiry instituted vide charge sheet dated 20.12.2011. Correctness of allegations cannot be gone into at this stage. The petitioner is placed under suspension by the respondents which cannot be said to be an exercise without jurisdiction. Allegations mentioned in Annexure P/1 are serious in nature. Thus, it cannot be said that the order is passed without application of mind in routine manner. Suspension is not treated as a punishment.

8. Thus no fault can be found in the suspension order. No malafides are pleaded

or established by the petitioner. The Apex Court in U.P. Rajya Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan, held that scope of judicial review of suspension order which is not treated as punishment is limited. It is held as under:- the Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question.

No such ingredient is available in the present case.

I find no reason for interference. Petition is meritless and is hereby dismissed.