
(2002) 02 RAJ CK 0095
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2523 of 2001

Guman Singh Barath

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-02-2002

Acts Referred:

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

Citation : (2002) 3 RLW 1777 : (2002) 2 WLC 544 : (2002) 2 WLN 663

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : N.M. Lodha, for the Appellant; P.C. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Chauhan, J.—The instant writ petition has been filed for quashing the order dated 20.9.1996 (Annx.6), by which petitioner, an Officer of the Rajasthan Administrative Service cadre, has been put under suspension, being involved in a criminal case.

2.. The facts and circumstances giving rise to this case are that petitioner remained posted as the Sub-Divisional Officer cum Land Conversion Officer, Jodhpur from 12.9.91 to 31.3.1992. It transpired that during that period, seventy-eight files of his office were found missing and forty-eight files therefrom were recovered. In all those cases, orders of conversion of land from agriculture to residential had been passed on 23.11.89 by some another officer, i.e. predecessor-in-office of the petitioner. In some cases Pattas had been issued on 20.3.92 & 30.3.92, i.e. during the period when petitioner was posted there. These Pattas purported to have been signed by the petitioner. In this respect, disciplinary proceedings had been initiated against several officers/employees and criminal prosecution was also launched. In both these proceedings, it became evident that petitioner's signatures had been forged and he was examined as a witness of the Department in the disciplinary proceedings held against certain other employees. However, on the criminal side, charges have

been framed against large number of persons including petitioner vide order dated 28.8.98 and the case is pending. It is in view of pendency of the criminal proceedings that the impugned suspension order has been passed against the petitioner by the Disciplinary Authority in exercise of the powers u/s 13 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short, "the C.C.A. Rules"). Hence this petition.

3. Mr. N.M. Lodha, learned counsel for petitioner, has raised large number of issues, i.e. that the petitioner had not signed any of the alleged Pattas, rather his signatures had been forged; no domestic inquiry has ever been held against him even for his negligence in that respect, rather he has been examined as a departmental witness in the inquiry against several other persons; criminal prosecution is in respect of the same incident and it has been mentioned in the order sheet by the Criminal Court that petitioner's signatures had been forged; thus, in such a fact-situation his continuation under suspension for such a long time is not justified and as the Disciplinary Authority did not consider it proper to revoke the suspension order on his representation, this, Court may quash the impugned order.

4. On the contrary, Mr. P.C. Sharma, learned counsel for respondents has submitted that mere pendency of a criminal case is enough to pass an order of suspension and so long the criminal case remains pending, suspension order cannot be revoked.

5. I have considered the rival submissions made by the learned counsel for parties and perused the original record produced by Mr. Sharma during the hearing of the case.

6. It is settled legal proposition that during suspension, relationship of master and servant continues between the employer and the employee. However, the employee is forbidden to perform his official duties. In certain cases, suspension may cause stigma even after exoneration in the departmental proceedings or acquittal by the criminal court, but it cannot be treated as a punishment even by stretch of imagination in strict legal sense.

7. A Constitution Bench of the Supreme Court in *R.P. Kapur v. Union of India and Ors.* (1), observed that the Authority competent to appoint a public servant would be entitled to suspend him during pendency of the departmental enquiry into his conduct or pending a criminal case.

8. While reiterating a similar view in *Balvantray Ratilal Patel v. State of Maharashtra* (2), the Apex Court held as under:-

"It is now well settled that the power to suspend, in the sense of a right to forbid to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either by the Statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or

in the rules framed under some statute, would mean that the master would have no power to suspend a workman.... Where, however, there is a power to suspend either in the contract of employment or in the Statute or the rules framed thereunder, the order of suspension has the effect of temporary suspending the relationship of master and servant with the consequence that servant is not bound to render services and the master is not bound to pay."

9. In *Management of Hotel Imperial, New Delhi v. Hotel Workers Union* (3), *T. Cajee v. Jormik Sienu* (4), and *V.P. Gindroniya v. State of M.P.* (5), the Hon''ble Apex Court held that putting a Government servant under suspension during the pendency of Departmental Proceedings or Criminal trial, means that the Government merely issued a direction that he must not do any thing in discharge of the duties of his office and the employee is bound by the said order.

10. The scope of interference by the Court with the order of suspension in the case where a delinquent employee faces the criminal charge has been examined by this Court in *D.R. Kalla v. State of Rajasthan and Ors.* (6), wherein reliance has been placed on a large number of judgments of the Hon''ble Supreme Court, particularly in *State of M.P. v. Sardul Singh* (7), *E.V. Srinivas Shastri v. Comptroller & Auditor General of India* (8), *Inspector General of Police & Anr. v. Thavasiappan* (9), *Director General, ESI & Anr. v. E. Abdul Razak* (10), *Scientific Adviser to the Ministry of Defence v. S. Denial etc.* (11), *Kusheshwar Dubey v. M/s. Bharat Cooking Coal Ltd. and Ors.* (12), *Delhi Cloth General Mills v. Kushan Bhan* (13), *U.P. Krishi Ulpadan Mandi Parishad v. Sanjeev Rajan* (14), *State of Rajasthan v. B.K. Meena and Ors.* (15) and *Secretary to Govl., Prohibition and Excise Department v. L. Srinivasan*, (16) and came to the conclusion that even if a criminal trial takes a long time, it is ordinarily not open to the Court to interfere in case of suspension as "it is the exclusive domain of the competent authority who can always review its order of suspension as it is an inherent power conferred upon him by the provisions of Article 21 of the General Clauses Act, 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case would be concluded after an unusual delay for no fault of the employee concerned.

11. In *State of Orissa v. Vimal Kumar Mohanty* (17), the Hon''ble Supreme Court observed as under:-

"....when an appointing authority or the disciplinary authority seeks to suspend the employee....the order of suspension would be passed taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of evidence placed before the appointing authority and on application of the mind by the 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 should be laid down in that behalf....In other words, it is to refrain him to avail further opportunity to perpetuate the alleged misconduct or to remove the impression among the members of service that dereliction of duty will pay fruits and the offending employee may get away even pending inquiry without any impediment or to provide an opportunity to the delinquent officer to scuttle the inquiry or investigation to win over the other witnesses or the delinquent having had an opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuation of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by malafide, arbitrarily or for ulterior purpose. The suspension must be a step in add 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 continuation in office while facing departmental inquiry or a trial of a criminal charge."

12. In Allahabad Bank and Anr. v. Deepak Kumar Bhola (18), the Hon"ble Supreme Court held that in case involving serious charges, for which the sanction of the prosecution in a criminal court has been obtained, suspension order should not generally be interferred. However, the decision of the competent authority should be based on material collected during investigation/inquiry.

13. Mere pendency of the criminal case is not a ground for suspension as held by this Court in Ashok Gaur v. Slate of Rajasthan and Ors. (19).

14. In Nand Lal Verma v. State of Rajasthan and Ors. (20), this Court considered a matter wherein the employee was facing criminal charges and remained under suspension for more than three years. The Court held that the power of suspension should not be exercised in an arbitrary manner and without any reasonable ground. Suspension should be made only in a case where there is a strong prima facie case against the employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, where the contents of strong prima facie case against him, if proved, would ordinarily result in his dismissal or removal from service. The State should also consider taking into account of all the available material as to whether in a given case, it is advisable to permit him to continue not to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

15. In Lajpat Rai v. State of Rajasthan and Ors. (21), this Court considered the case where an employee had been put under suspension on account of pendency of criminal case and not only challan had also been filed against him Under Sections 120-B, 420, 467 & 471 read with Section 465, 477-A of the Indian Penal Code but his petition u/s 482 Cr.P.C. had also been dismissed by the Competent

Court observing that undoubtedly the signatures of the said employee had been forged by some one else. This Court came to the conclusion that in a case where petitioner does not seem to be responsible at all for the alleged misconduct, the Competent Authority must apply its mind on all the relevant facts and pass an appropriate order. The Court, after considering the evidence on record, came to the conclusion that it was not such a case which may justify the Authority to keep the employee under suspension for a prolonged period. Suspension may not be revoked where the employee could interfere with the trial or his retention in office is considered to be injurious to public interest. As he had been suffering from the agony of suspension for last several years and the Disciplinary Authority failed to consider his case objectively, the suspension order was revoked.

16. In *B.K. Sharma v. State of Rajasthan and Ors.* (22), this Court considered the scope of power to suspend and its effect observing that the Rules do not provide for maximum period of suspension, however, the State Government has issued various circulars from time to time emphasising the necessity of keeping a Government servant under suspension for a minimum period for the reason that he is being paid the subsistence allowance without taking any work from him and if he is not permitted to work for a long period, it is bound to retard his entire working capacity as constant mental torture both financial and otherwise is bound to fall upon his nerves. The Court further held that suspension may not be revoked in a case where there is an apprehension of tampering with the evidence in a domestic enquiry/criminal prosecution.

17. The case of petitioner requires consideration in the light of the aforesaid settled legal propositions. Admittedly, petitioner was put under suspension vide order dated 20.9.1996 and the same is not being revoked merely on the ground that he is facing criminal prosecution, in respect of the same matter, disciplinary proceedings had been initiated against large number of persons/employees wherein petitioner had not been a delinquent, rather he was examined as a departmental witness. The criminal charge has been framed against him vide order dated 28.8.1998 in Cr. Case No. 472/95. The true translation of the relevant part of the said order reads as under:-

"It has been submitted on behalf of Shri Guman Singh that no case can be made out against him because neither he had issued the Pattas nor he had signed the same; his signatures had been forged on those Pattas and had he signed those Pattas, the same could not have been held to be forged and fabricated documents. Therefore, it is contradictory in itself to make Shri Guman Singh an accused.....

The accused was Sub-Divisional Officer (Land Conversion) in Jodhpur from 13.9.91 to 31.3.92. Ten Pattas had been issued on 23.3.92 and thirty Pattas had been issued on 30.3.92 which are purported to have been signed by Shri Guman Singh and his official seal had also been affixed thereon. On perusal of the record, it is apparent and it is made clear by the report received from the State Forensic Science Laboratory that in forty-eight files Shri Guman Singh had not

signed."

18. In spite of the above observations, the charges have been framed against the petitioner. There is no dispute at the bar that criminal revision against the said order dated 28.8.98 is pending and this Court has stayed further proceedings in the trial in pursuance thereof. From the aforesaid proceedings, one thing becomes crystal clear that the Department had never considered the petitioner as a delinquent or guilty of any misconduct whatsoever otherwise it could have held disciplinary proceedings against him also. It is the case where some Pattas had been issued by petitioner's predecessor-in-office and certain consequential orders have been forged and fabricated during his tenure and in the domestic enquiry against other officers/employees in respect of the same subject matter, petitioner has been examined by the department as its witness.

19. The State Government, while passing the suspension order, did not consider all its aspects, nor at the time of considering his representation applied its mind on these counts. Mr. P.C. Sharma, learned counsel for respondents, has produced the original record before this Court wherein it is clearly stated that the sanction for prosecution, as required u/s 197 Cr.P.C., has been accorded by the Competent Authority and by the same order, it has approved the suspension of the petitioner.

20. The District Collector, Jodhpur, vide his letter dated 1.9.98 (Ann. 7) recommended to the State Government to revoke the suspension of the petitioner on the grounds that as petitioner's signatures were found to be forged even at the time of framing the charges and he could not be connected with the forgery and there was nothing to show that petitioner, by any means, was to be benefited or could have any gain from that mischief or the documents had been forged with his connivance. Mere pendency of the criminal case should not be a ground for keeping him under suspension for such a long time. The District Collector had given various reasons emphasizing that the orders of conversion had been passed by the predecessor-in-office of petitioner and even consequential orders, which have been passed during his time, were forged, petitioner should not be penalised.

21. In the criminal prosecution, a large number of persons are involved therein. Some other officers are also facing disciplinary proceedings as well as criminal prosecution. This Court had requested the Competent Authority to consider the case again and pass appropriate order as to whether in such a fact situation it was necessary to keep the petitioner under suspension. Though the order has not been produced before this Court but Mr. Sharma has stated at the Bar that the Competent Authority, vide order dated 6.2.2002, has rejected the request for revocation of the suspension order by a non-speaking order.

22. Considering the facts and circumstances of the case in its entirety, taking a prima facie view, petitioner, at the most, can be held guilty of negligence to certain extent because what has been submitted by Mr. Sharma is that being the

Head of the Office, he had not taken proper care and forged and fabricated Pattas had been issued purported to have been signed by him. But it is not the case of the Department that petitioner had been a party to it or his signatures had been forged with his connivance and if the case remains that of negligence only, suspension for such a prolonged period is unwarranted and uncalled for. I find no force in the submission made by Shri Sharma that once the Competent Authority has granted the sanction for prosecution of the petitioner u/s Cr.P.C. the suspension cannot be revoked by this Court. Refusal by the Competent Authority to revoke the suspension order seems to be a case of non-application of mind and, thus, suffers from arbitrariness.

23. In *Commissioner of Police, Bombay v. Gordhandas Bhanji* (23), the Hon'ble Apex Court held as under:-

"Public Authority cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order."

24. While deciding the said case, the Apex Court placed reliance upon the judgment of the House of Lords in *Julius v. Lord Bishop of Oxford* (24), wherein it has been observed as under:-

"There may be something in the nature of thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so."

25. The Apex Court further observed that the power coupled with a duty cannot be shirked or shelved nor it be evaded, performance of it can be compelled.

26. In *Andhra Pradesh State Road Transport Corporation v. State Transport Appellate Tribunal and Ors.* (25), the Hon'ble Supreme Court, explaining the exercise of discretionary power, held as under:-

"The power....cannot be arbitrarily or indiscriminatorily exercised....The power is coupled with a duty...The authority must genuinely address itself to the matter before it....It must act in good faith, must have regard to all relevant considerations and must not be shirked by irrelevant consideration, must not shrink to promote alien to the letter and spirit of the legislation that gives it power to act and must not act arbitrarily or capriciously."

27. Similar view has been reiterated by the Hon'ble Supreme Court in *Comptroller and Auditor General of India v. K.S. Jagannathan and Anr.* (26).

28. In *Dai-Ichi Karkaria Ltd. v. Union of India and Ors.* (27), the Apex Court held that the embargo of arbitrariness is embodied in Article 14 of the Constitution.

The Authority which has been given a very wide power must consider all relevant aspects governing the questions and issues before it. It must form the opinion on the basis of material before it by application of mind.

29. In *Consumers Action Group & Anr. v. State of Tamil Nadu and Ors.* (28), the Apex Court held that whenever any Statute confers any power on any authority, "howsoever wide the discretion may be, the same has to be exercised reasonably within the sphere that Statute confers and such exercise of power must stand the test of judicial scrutiny. The judicial scrutiny is one of the basic features of our Constitution. The reason recorded to it discloses the justiciability of exercise of such power."

30. Similarly, in *Praveen Singh v. State of Punjab and Ors.* (29), the Hon'ble Supreme Court held as under:-

"Arbitrariness being opposed to reasonableness is an antithesis of law. There cannot, however, be any exact definition of arbitrariness; neither there can be a State-jacket formula evolved therefor, since the same is dependant on varying facts and circumstances of each case."

31. Application of mind to the facts and circumstances of the case by the Authority concerned is a mandatory requirement of law. State must act "for good reasons and after application of mind to all the relevant factors, such a decision of the State must be specific and cannot be left to be inferred from surrounding circumstances. Nor such a decision be based on irrelevant materials", otherwise "the same has to be held to be bad in law for non-application of mind." (Vide *C. Navaneaswara Reddy v. Government of Andhra Pradesh and Ors.* (30), *Commissioner of Police, Delhi & Anr. v. Dhaval Singh* (31), *State of Maharashtra and Ors. v. Ku. Tanuja* (32), and *Rajat Baran Roy v. State of West Bengal* (33).

32. The instant case reveals that the Disciplinary Authority remained adamant through-out that the suspension order cannot be revoked merely because petitioner is facing criminal trial. It certainly has not applied its mind to any other attending circumstances like, the order of conversion has not been passed during petitioner's tenure, admittedly he had not signed any of the Pattas in dispute, his signatures have been forged, the department has never initiated any inquiry against him rather made him a witness against other employees in the departmental proceedings, it is nobody's case that petitioner had gained something out of the case or his signatures had been forged with his connivance, mere pendency of a criminal case may not warrant his suspension at all. Detailed recommendation of the District Collector has never been considered. Revocation of suspension could not prejudice the case as no allegation can be there that petitioner would perpetuate the misconducts or his suspension would have deterrent effect nor it was likely to scuttle the criminal trial. In view of the above, I am of the considered opinion that it merely remains a case of non-application of mind. If the Disciplinary Authority did not consider it proper to apply its mind as to whether petitioner's suspension required to be revoked, it becomes the

duty of the Court to quash such an arbitrary order being fully alive of the fact that in the case of suspension, ordinarily the Court must keep its hands off. Court, being a custodian of law, cannot remain a mere silent spectator to such a case of gross injustice as * every-one admits that Pattas have been issued under the forged signatures of the petitioner, even he is being harassed unnecessarily. The writ powers conferred upon the Courts warrant "to reach injustice wherever it is found."

33. In view of the above, I am of the candid view that facts of the case present special features warranting interference by this Court as fact-situation herein does not permit suspension ad in finitem. Petition succeeds and is allowed. The impugned suspension order dated 20.9.96 is hereby quashed. There shall be no order as to costs.