
(1999) 11 PAT CK 0013

In the Patna High Court

Case No : C.W.J.C. No's. 2580 and 2588 of 1999 (R)

Hareshwar Singh and Shyam Bihari Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-11-1999

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10
General Clauses Act, 1897 — Section 16

Citation : (2000) 2 PLJR 711

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Judgement

M.Y. Eqbal, J.—In these two writ applications Petitioners have challenged the order as contained in memo No. 7284 (S) dated 21.8.99 and memo No. 7286 (S) dated 21.8.99 issued under the signature of Joint Secretary, Department of Road Construction whereby the Petitioners have been put under suspension on the allegations of committing certain irregularities, fraud, misuse of government money and for committing embezzlement of Govt. money and the said order of suspension have been passed in contemplation of departmental proceeding.

2. Petitioner of CWJC No. 2580/99R was posted as Executive Engineer, National High Way Division, Jamshedpur from 16.12.93 to 12.7.95 and on his transfer he handed over the charge of his office to his successor Sri. Hareshwar Singh, Executive Engineer, who is Petitioner in CWJC No. 2588/99R. Petitioners' case is that during the period when Petitioners were posted as Executive Engineers there was one Public Interest Litigation filed before this Court alleging bad condition of the National High Way and for its immediate construction/repair/improvement. In the said case allegation was that in the Jamshedpur National High Way Division the allotted amount for repair of the road was withdrawn but the same was not utilized for that purpose and there had been misappropriation of money. In the counter-affidavit filed by the Respondents in that case it was stated that an Enquiry Committee had already been constituted consisting of Superintending Engineer for making an enquiry with regard to the irregularities and for

submission of report. It appears that the Committee submitted its report. After submission of the report by the enquiry committee the impugned orders of suspension have been issued putting the Petitioners under suspension in contemplation of departmental proceeding.

3. Mr. Ganesh Prasad Singh learned senior counsel appearing for the Petitioners assailed the impugned orders of suspension as being illegal and wholly without jurisdiction. Learned Counsel firstly submitted that the impugned order of suspension is stinking with malafide and is accentuated by malice both on facts and in law is wholly arbitrary and clerical exercise of power. Learned Counsel submitted that the impugned orders of suspension have been issued on the basis of the report submitted by the Enquiry Committee. Learned Counsel has drawn my attention to the said report, a copy of which has been annexed as Annexure-3 to the writ application and submitted that there is not even whisper about such allegation of embezzlement, disobedience, forgery, and submission of wrong vouchers. Learned Counsel lastly submitted that the impugned orders of suspension have been passed on mistaken believes of existence of certain non existent facts and therefore the orders are illegal and wholly arbitrary. Learned Counsel relied upon two decisions of the Apex Court rendered in the case of State of Orissa Vs. Bimal Kumar Mohanty, and In the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, .

4. On the other hand Mr. A. Sahay, learned G.A. has drawn my attention to the counter-affidavit filed and the report of the committee (Annexure-3) and submitted that during the year 1995-96 a sum of Rs. 1,98,82,801/- was allotted to the National High Way Division, Jamshedpur for renewal work of the roads. Petitioners were posted as Executive Engineer National High Way Division, Jamshedpur during the relevant time. Learned Counsel submitted that the Enquiry Committee found various irregularities committed by the Petitioners while allotting the work and purchasing the materials and further serious financial irregularities have been committed. On the basis of materials brought against the Petitioners they have been put under suspension in contemplation of departmental proceeding. Learned Counsel submitted that in such circumstances it is desirable that Petitioners should be subjected to the departmental proceeding after keeping them under suspension. Learned Counsel relied upon the decision of Supreme Court in the case of "U.P. Rajya Krishl Utpadan Mandi Parishad v. Sanjiv Ranjan" 1983 Supp 3 SCC 483.

5. Before appreciating the submission of learned Counsel it would be useful first to look into the decision relied upon by the learned Counsel appearing for the parties. In the case of State of Orissa v. Bimal Kumar Mohanty (supra) the Apex Court while considering the validity of orders of suspension observed-

It is thus settled law that normally when an appointed 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.

6. In the case of Capt. M. Paul Anthony (*supra*) similar question with regard to exercise of right to suspend an employee has been considered by the Apex Court. Their Lordships observed as under:

To place an employee under suspension is an unqualified right of the employer. This right is conceded to the employer in service jurisprudence everywhere. It has even received statutory recognition under service rules framed by various authorities, including the Government of India and the State Government (See, for example Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules.) Even under the General Clauses Act, 1897 this right is conceded to the employer by Section 16 which, *inter alia*, provides that power to appoint includes power to suspend or dismiss.

The order of suspension does not put an employee's service and he continues to be a member of the service though he is not permitted to work and is paid only subsistence allowance which is less than his salary.

7. It was further observed that:

Exercise of right to suspend an employee may be justified on the facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by a "Suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding non-payment of subsistence allowances is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilized and the salary is also paid to him at a reduced rate under the nickname of "Subsistence allowance", so that the employee may sustain himself. This Court in *O.P. Gupta v. Union of India* made the following observations with regard to sub-sentences allowances:

An order of suspension of a government servant does not put an end to his service under the government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in *Khem Chand v. Union of Indian* is that he continues to be a member of the government service but is not permitted to work and further during the

period of suspension he is paid only some allowance-generally called subsistence allowance-which is normally less than the salary instead of the pay and allowance he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental enquiry is considered within a reasonable time affects a government servant injuriously. The very expression "subsistence allowance" has an undeniable penal significance. The dictionary meaning of the word subsist as given in Shorter Oxford "English Dictionary Vol. II at p. 2171 is to remain alive as on food; to continue to exist. "Subsistence means-means of supporting life, especially a minimum livelihood.

8. In the case of U.P. Rajya Krishi Utpadan Mandi Parishad (supra) an employee was put under suspension on the allegation that during his tenure as Cashier allegation of rupees credited in the account of market committee were not deposited in its bank account. The said order of suspension was challenged before the High Court on the ground that some other suspended officers had been allowed to join service. The High Court quashed the suspension order on the said ground. On appeal filed by the employer before the Supreme Court their Lordships allowing the appeal held as under:

Ordinarily, when there is an accusation of defalcation of the monies, the delinquent employees have to be kept away from the establishment till the charges are finally disposed of. Whether the charges are baseless, malicious or vindictive and are framed only to keep the individual concerned out of the employment is a different matter. But even in such a case, no conclusion can be arrived at without examining the entire record in question and hence it is always advisable to allow disciplinary proceedings to continue unhindered. It is possible that in some cases, the authorities do not proceed with the matter as expeditiously as they ought to, which results in prolongation of the sufferings of the delinquent employees. But the remedy in such cases is either to call for an explanation from the authorities in the matter, and if it is found unsatisfactory, to direct them to complete the inquiry within a stipulated period and to increase the suspension allowance adequately.

9. In the light of the principles laid down by the Apex Court the only question therefore falls for consideration in the instant case is whether there is prima facie only material against the Petitioners which warrant the authorities to put them under suspension. Both the counsel relied upon the report submitted by the Committee (Annexure-3). According to the Petitioner's counsel nothing has been found against the Petitioners in the report submitted by the Committee while according to the learned G.A. Committee in its report found various irregularities and embezzlement of Govt. money by the Petitioners. It is therefore necessary to look into the said report submitted by the Committee. Admittedly Public Interest Litigation filed before this Court alleging therein bad conditions of National High Way in the jurisdiction of National High Way Division, Jamshedpur. Joint team of two Superintending Engineers enquired into the irregularities committed by the

Petitioners. From the report it appears that the Petitioners who were the Executive Engineers during the relevant time purchased stone-chips and other materials worth Rs. 75,00,000/- violating prescribed norms and procedure for their personal gain. Committee further reported that according to the prescribed procedure no material have been purchased without inviting tenders. But the Petitioners purchased the materials by splitting the amount to the extent of Rs. 50,000/- without inviting any tender. In the report reference has been given to circular No. 2347 dated. 30.12.83 issued by the Cabinet (Vigilance Department) to the effect that material can be purchased worth Rs. 50,000/- only once in a week on the basis of quotation. But in the instant case material worth Rs. 75,00,000/- were purchased only after obtaining quotation. According to the report therefore Petitioners alleged to have committed serious financial irregularities and have defalcated the Govt. money. Various other irregularities have been reported against the Petitioners. On the basis of said report impugned orders of suspension have been issued putting the Petitioners under suspension in contemplation of departmental proceeding.

10. Having regard to the prima facie finding arrived at by the Inquiry Committee in the report it can not be said that there is no materials against the Petitioners for initiating departmental proceeding against them after putting the Petitioners under suspension. It is not a case where, impugned orders of suspension have been issued by the Respondents without any basis and without application of mind. In my opinion therefore the decisions relied upon by the learned Counsel appearing for the Petitioners do not apply in the facts and circumstances of the present case.

11. It is well settled that orders of suspension against the Govt. employee pending departmental inquiry is neither a dismissal nor removal from service. This Court therefore should interfere with the orders of suspension only in rarest of the rare case where there is absolutely no material against the employee concerned.

12. As noticed above, several public interest litigations have been filed bringing to the notice of this Court about the precarious condition of the roads including the National Highway falling in the State of Bihar. One of such Public Interest Litigation was filed in this Court being CWJC No. 2588/99R and it was alleged that huge amount of money was allotted for repair/construction of the roads but the same amount was not utilized and the conditions of the roads remain the same. State Govt. took a stand that a committee was constituted to enquire into the matter and to submit a report with regard to the condition of the roads whether allotment of fund have been utilised for that purpose. The committee submitted the report in which various irregularities have been shown in the matter of purchase of materials, allotment of tenders and disbursement of amount. Other allegations have been made with regard to misappropriation and embezzlement of Govt. money. In my opinion, it would be expedient in the interest of justice to have independent inquiry without any hindrance from the

side of the Petitioners and it would be desirable that the departmental proceeding/inquiry initiated against the Petitioners should be disposed of expeditiously. It is therefore a fit case where this Court should follow the ratio decided by the Apex Court in the case of U.P. Rajya Krishi Utpadan Mandi Parishad.

13. Having regard to the entire facts and circumstances of the case I do not find any reason to interfere with the orders of suspension passed against the Petitioners. These writ petitions are accordingly dismissed. However, I direct the Respondent-authority to proceed with the departmental proceeding against the Petitioners, if they so desired and conclude the same as expeditiously as possible and within a period of six months from the date of receipt/production of copy of this order. If the departmental proceeding is not concluded within the stipulated time then the order of suspension shall stand revoked.

14. Before parting with the orders, I must make it clear that I have not entered into the merit of the allegations made against the Petitioners and the Respondent-authority shall not be prejudiced by any of the expression and observation made in this order while proceeding against the Petitioners in the departmental proceeding.