
(1982) 03 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1942 of 1980

Jagdish Kishore

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 01-03-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 161

Citation : (1982) WLN 14

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Agarwal, J.—Shri Jagdish Kishore, the petitioner in this writ petition was employed as Upper Division Clerk-cum-Reader in the court of Additional District and Sessions Judge, Sri Ganganagar, in the year 1975. He was prosecuted before the Special Judge for Anti-Corruption Cases, Rajasthan, Jaipur and was challaned u/s 161 IPC and Section 5(1) (d) & (2) of the Prevention of Corruption Act. By the judgment of the Special Judge dated December 5, 1977, the petitioner was convicted of the aforesaid offences. The petitioner has filed an appeal S.B. Criminal Appeal No. 2/78 against the aforesaid conviction and the said appeal is still pending before this Court.

2. After the aforesaid judgment of the Special Judge, the District and Sessions Judge, Sri Ganganagar passed an order dated March 14, 1978, whereby the petitioner was removed from service for the reason that he had been convicted of the offence u/s 161 IPC and Section 5(1)(d)(2) of the Prevention of Corruption Act.

3. The petitioner submitted a representation before the District and Sessions Judge, Sri Ganganagar, wherein he submitted that in view of the pendency of his appeal against his conviction, the order for his removal could not be passed. The said representation of the petitioner was, however, rejected by the District and

Sessions Judge, by his order dated September 18, 1979.

4. The petitioner also submitted a representation before this Court but the same was also rejected by this Court and the communication about the aforesaid rejection was sent to the petitioner by the Registrar by the order dated 16th September, 1980.

5. There upon the petitioner filed this writ petition wherein the petitioner has prayed that a writ of certiorari or any other appropriate writ order or direction may be issued to quash the order dated March 14, 1978, passed by the District and Sessions Judge, Sri Ganganagar, whereby the petitioner was removed from service, the order dated September 18, 1979, passed by the District and Sessions Judge, Sri Ganganagar, rejecting the representation of the petitioner and the order of this Court dated September 16, 1980, rejecting the representation of the petitioner.

6. Shri M.C. Bhandari, learned Counsel for the petitioner has submitted that this case is cohered by a number of decisions of this court wherein it has been laid down that an order for dismissal from service on the ground of conviction for an offence can only be passed after the conviction has become final and an order for dismissal on the ground of conviction by criminal court can not be passed during the pendency of an appeal against the order of conviction. In this connection Shri Bhandari has placed reliance on the decision of a Division Bench of this Court in State of Rajasthan v. Gopal Singh, D.B. Civil Special Appeal No. 10/1979 decided on April 2, 1979, and a number of decisions of learned Single Judges of this Court wherein it has been held that during the pendency of an appeal against an order of conviction an order removing a government servant from service cannot be passed on the ground that he has been convicted by a criminal court.

7. The learned Dy. Government Advocate does not dispute that in accordance with the decisions of this Court referred to above an order for removal of a government servant on the basis of his conviction by a criminal court can only be passed after the conviction has become final and the said order cannot be passed during the pendency of an appeal against the order of conviction. The learned Dy. Government Advocate has, however, submitted that the present writ petition is not maintainable for the reason that the appeal that was filed by the petitioner against the order of removal dated March 14, 1978, before this Court has been dismissed by this Court on the ground that it was barred by limitation and since the said appeal has been dismissed by this Court on the ground that it was barred by limitation the petitioner cannot be permitted to challenge the order dated March 14, 1978, in these proceedings under article 226 of the Constitution.

8. In my opinion the aforesaid objection cannot be sustained. In the present writ petition the petitioner has challenged the very competence of the disciplinary authority to pass the order of removal during the pendency of his appeal against the order of conviction. In view of the decisions of this Court referred to above, it must be held that the disciplinary authority was not competent to pass the order

for the removal of the petitioner on the ground that he had been convicted of the offences u/s 161 IPC and Section 5(1)(d) & (2) of the Prevention of Corruption Act, during the pendency of the appeal of the petitioner against the order of conviction. The aforesaid infirmity goes to the very jurisdiction of the disciplinary authority to pass the order of removal.

9. I would, therefore, allow the writ petition and set aside the order (annexure-2) dated March 14, 1978, passed by the District & Sessions Judge, Sri Ganganagar, for the removal of the petitioner from service and the order (Exbt.4) dated September 18, 1979, passed by the District and Sessions Judge, Sri Ganganagar, rejecting the representation of the petitioner as well as the order of this Court as communicated to the petitioner by the Registrar of this Court by the order (Ex, 7) dated September 16, 1980, on the appeal/representation of the petitioner.

10. In the facts and circumstances of the case the parties are left to bear their own costs in this writ petition.