

(2023) 09 GUJ CK 0091

In the Gujarat High Court

Case No : R/Special Civil Application No. 15497 Of 2023

Jagdishkumar Dhirubhai Padariya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16
Gujarat Civil Services (Discipline And Appeal) Rules, 1971 — Rule 5, 5(1), 5(1)(a),
5(2), 5(2)(a), 5(2)(b)

Citation : (2023) 09 GUJ CK 0091

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : YN Ravani, Sahil Trivedi

Final Decision : Dismissed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr. Y.N. Ravani on behalf of the petitioner and learned Assistant Government Pleader Mr. Sahil Trivedi on behalf of respondent- State.

2. By way of the present petition the petitioner- a Deputy Mamlatdar, challenges an order dated 18.06.2023 passed by the respondent No. 3-District Collector, Panchmahal suspending and transferring the present petitioner more particularly in contemplation of a departmental inquiry.

3. Learned Advocate Mr. Yogesh Ravani on behalf of the petitioner has made the following submission:

[1] That the petitioner is discriminated on the aspect of suspension since other employees, who were also involved in the same work, for doing which the petitioner is suspended, have not been acted against.

[2] That the petitioner before suspension was not given an appropriate opportunity.

[3] That suspension was without sanction from the State Government.

[4] That the suspension is without evidence more particularly since the orders granting NA permission as well as all the entries, relating thereto, have not been interfered with till now.

[5] That the order of suspension proceeds on an erroneous footing more particularly since the order of suspension is passed under Rule 5(2)(a) (b) of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 more particularly since the said sub-rules speak about suspension on account of there being a criminal case pending against the employee or the employee having been detained or convicted as the case may be.

[6] That the impugned order, is a conjoint order of transfer and suspension and whereas according to learned Advocate as per the law laid down by this Court in case of Kapindrarai Gunvantrai Bhatt vs. Director General of Police and Another -1988 (2) GLH (U.J.) 4, a learned Co-ordinate Bench of this Court has inter alia frowned upon such an action. Learned Advocate would also rely upon the decision of Division Bench of this Court in case of J.S. Solanki vs. Principal Chief Conservator of Forests reported in 1986(1) GLR 41 and would submit that in the said decision, the Division Bench has taken a view that the power of transferring an employee while suspending an employee, shall be exercised sparingly and whereas the authority should record reasons as to why in addition to suspension, change of Headquarter is required and whereas according to learned Advocate, such reasons are not found in the impugned order.

4. This petition is vehemently objected to by learned AGP Mr. Sahil Trivedi for respondent- State.

5. Learned AGP would submit that the service rules, neither require that an employee before he is suspended is to be given an opportunity of hearing nor does the service rule contemplate that the District Collector before suspending an employee of the cadre of Deputy Mamlatdar is required to take a sanction or approval from the State Government. Learned AGP would rely upon Rule 5 of the Discipline and Appeal Rules and would submit that the Rule 5(1) inter alia envisages that the appointing authority or any authority subordinate to the appointing authority or the disciplinary authority as the case may be is empowered to place a Government employee under suspension and whereas in the instant case, the District Collector, being the disciplinary authority of the present petitioner, was well within his rights to suspend the petitioner.

6. Learned AGP would further submit that as far as the issue of no evidence etc. is concerned, the issue is too pre-mature at this stage and whereas even insofar as the suspension having been passed under Rule 5(2)

(a) (b) of the Discipline and Appeal Rules, it is submitted that from a bare perusal of the order itself it would appear that the authority concerned, had relied upon the powers available to him under Rule 5(1) (a) as could be read

from the order itself and whereas learned AGP would submit that wrong mentioning of the section, would not render at the order itself either vulnerable or without any basis by itself. Thus submitting learned AGP would request this Court not to interfere in the present petition.

7. Heard learned Advocates for the parties. At the out set it requires to be noted that insofar as the suspension is concerned, the law has been well settled by the Hon'ble Supreme Court as well as this Court over and over again that suspension not being a punishment, a Government employee would not be having any legal right to challenge the same before a Court of law except in cases where the suspension is challenged on the ground of malafides.

8. Keeping the above portion in mind this Court would not consider the submissions made by learned Advocate Mr. Ravani, challenging the order of suspension.

9. Insofar as the first aspect of the discrimination is concerned, in the considered opinion of this Court, it is for the disciplinary authority at the stage of preliminary inquiry to decide that whether an employee or employees are required to be suspended or not and whereas in the considered opinion of this Court, this Court would not substitute its judgement over the judgement of the disciplinary authority and try and find out whether the preliminary allegations against employees are all similar and whereas whether suspension in case of the present petitioner should also have been imposed upon other co-employees, who are stated to have done the same job during the same period. In the considered opinion of this Court suspension, is to facilitate a departmental inquiry and whereas it is for the disciplinary authority to, at the stage of preliminary inquiry more particularly when the disciplinary authority takes a decision to hold a regular disciplinary proceedings against an employee or a group of employees to decide whether the employee or the group of employees are required to be suspended or not more particularly having regard to the allegations against the employee. In the instant case, since the petitioner is not coming out with a case of malafides against any particular officer, the submission that since the petitioner is suspended whereas other employees who had done the same work as the petitioner are not suspended are not suspended therefore, the order of suspension is bad in law and cannot be countenanced more particularly in the considered opinion of this Court there is no requirement of any equality under Article 14 or 16 of the Constitution of India envisaged in the matter of suspension.

10. Insofar as the issue of non grant of opportunity, neither the service rules require the disciplinary authority to hear the Government employee before he has suspended nor it is a position developed by the Hon'ble Supreme Court or this Court as to granting an opportunity before an employee is suspended. As noted hereinabove, suspension not being a punishment, and suspension being issued only to facilitate facilitate a departmental proceedings, there would not be any requirement of hearing an employee before passing of such order.

11. Insofar the submission that suspension was without sanction of the State Government, this Court having perused Rule 5(1) of the Discipline and Appeals Rules, agrees with the submission made by learned AGP that the appointing authority or any authority to which the appointing authority subordinate or the disciplinary authority is empowered to suspend a Government Servant and whereas in the instant case since it appears that the Collector, would be the disciplinary authority, for persons of the cadre of Deputy Mamlatdar, the Collector was well within his rights to suspend the present petitioner more particularly as per the power under Rule 5(1) of the Rules. In any case since the extant provisions envisage any authority subordinate to the appointing authority, the same in the instant case would include the Collector.

12. Insofar as the issue of the disciplinary authority/ Collector, having relied upon wrong provisions of law, it is by now a well settled position that mere mentioning of wrong provisions in an order would not render the order itself nugatory. As it is, having perused the order as a whole, it would appear that the reference to Rule 5(2) is a clear typographical error since the Collector, has mentioned in the paragraph prior to the operative portion as regards the power available to the Collector under Rule 5 (1) of the Discipline and Appeal Rules. Furthermore it would also appear, that the reliance upon Rule 5 (1) (b), may have been misplaced, since the said provision speaks about the power available to the appointing authority/authority subordinate to the appointing authority / disciplinary authority to suspend an employee if where a case in respect of a criminal offence involving moral turpitude is under investigation, which does not appear to be the case here. At the same time it requires to be noted that the order also refers to the power available to the disciplinary authority under Rule 5 (1)(a) of the Rules, which in the considered opinion of this Court, is the Rule which empowers the disciplinary authority in cases like the present, that is in contemplation of a disciplinary proceedings to suspend an employee, and whereas under such circumstances the order is neither vulnerable, nor liable to be interfered with.

13. In the considered opinion of this Court, while the disciplinary authority / Collector has referred to Rule 5 (1) (a), mere reference to a provision, which was not relevant, would not also empower the employee concerned to question the legality and validity of the order.

14. Insofar the the aspect with regard to no evidence, in the considered opinion of this Court, the said submission is thoroughly misconceived. In the opinion of this Court, whether the case suffers from no evidence or not, would be an aspect, which would have to be culled out after the entire disciplinary proceeding would be over, and in rarest of rare cases after the authority issues a charge-sheet to the employee concerned and whereas at the stage of issuance of suspension order, seeking to challenge the same on the ground of no evidence, is a position which is unheard of and which cannot be countenanced by any means whatsoever. As noted hereinabove, since the order of suspension is purely for

facilitating a departmental proceedings, the order concerned, recites the prima facie allegations against the present petitioner and whereas it would not be for this Court to go into the aspect of whether there was any enough material for the disciplinary authority to have suspended the petitioner or not more particularly this Court would not at this stage of suspension order going to the merits of the proceedings more particularly the allegations against an employee and find out whether there was enough material to suspend the concerned Government employee or not . In the considered opinion of this Court, the same being within the discretionary ambit of disciplinary authority, this Court would not sit as an appellate authority and find out whether the suspension was justified on merits or not.

15. Insofar the issue of transfer along with suspension is concerned, it would appear that insofar as the decision relied upon by learned Advocate for the petitioner is concerned, the decision in case of Kapindrarai

Gunvantrai Bhatt vs. Director General of Police and Another -1988 (2) GLH (U.J.) 4, is that an order more particularly not laying down any proposition of law which is required to be followed. The perusal of the said order reveals that the learned Co-ordinate Bench has inter alia observed that if the petitioner is not in a position to tamper with the evidence and the departmental inquiry and /or the investigation in criminal case can be carried on even when the employees allow to perform his duties there is such cases instated of restoring to the extreme measures of suspension, transfer would be justified. In the considered opinion of this Court, such an observation, would neither be a proposition law or a ratio laid down, which would be required to be followed by this Court.

16. Insofar as decision in case of J.S. Solanki (supra), is concerned, it would appear that learned Advocate for the petitioner is relying upon observations of Division Bench of this Court namely "we feel it would be advisable to record reasons on the file bringing out, clearly why addition to suspension, change of head quarters is necessary." Insofar as the said issue is concerned, this Court has perused the order of suspension and whereas after discussing the issues, the disciplinary authority, states as to why the disciplinary proceedings are required to be held against the petitioner and whereas the disciplinary authority, records that the petitioner is required to be suspended more particularly to ensure that the petitioner is not permitted to repeat the alleged misconduct /irregularities and whereas the disciplinary authority further goes on to observe that in order to ensure a fair disciplinary proceedings more particularly where documentary evidence is not in any way tampered with and where witnesses are not in any way influenced, the following order is passed i.e. the order of suspending the petitioner as well as the order of transferring the petitioner. In the considered opinion of this Court, the mandate as regards there being availability of reasons as to why the employee is transferred along the suspending the employee, is fulfilled more particularly since it appears that reasons are recorded for transferring the petitioner along with suspending him. Thus on this court also it

would appear that no interference of this Court is called for.

17. At this stage, it would also be required to be observed that the Division Bench itself while observing as above, has also gone on to hold that the Court would not sit in appeal over an order of suspension and weigh the reasons in golden scale and substitute its own decision more particularly since the duty and function of the Court in such cases is only finding out whether the action is arbitrary or malafide. In the considered opinion of this Court, while the petitioner has not raised any ground of malafides, the reading the order itself clearly reveals that on basis of prima facie material, more particularly after a preliminary inquiry, the disciplinary authority deems it appropriate to direct holding of a disciplinary proceedings against the petitioner and whereas to facilitate such a disciplinary proceedings more particularly in view of the prima facie allegations against the petitioner if the disciplinary authority deems it appropriate to suspend and transfer the petitioner, this Court, would not sit in appeal over such orders and decide whether the transfer and/ or the suspension was justified.

18. For the reasons above, in the considered opinion of this Court, the present petition being bereft of any merits is rejected.