
(1989) 05 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3275 of 1988

Jagjiwan Chand Bhandari

APPELLANT

Vs

Rajasthan High Court and Others

RESPONDENT

Date of Decision : 03-05-1989

Acts Referred:

Rajasthan Service Rules, 1951 — Rule 55

Citation : (1989) 1 RLW 473 : (1989) 2 WLN 74

Hon'ble Judges : R.S. Verma, J;K.S. Lodha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.S. Verma, J.—The brief facts giving rise to this writ petition lie in a narrow compass. Petitioner Jagjiwan Chand Bhandari was employed as Senior Bench Reader in this High Court at Jaipur Bench on 25-5-85. Since a disciplinary proceeding was a subsequent order Annex 2 dated 17-7-85, the head-quarters of Shri Bhandari was shifted from Jaipur to Jodhpur. On 29-1-86 the petitioner memo Annex, 3 where by he was asked to explain why he had not marked his attendance daily in the office in disregard of the direction given to him. Annex. 7 dated 11-4-86, the petitioner submitted that when his head-quarters him, By was shifted from Jaipur to Jodhpur, there was no direction to attend office and as such, there was no non-compliance of the order from his side. explanation was not found to be satisfactory by the Registrar, This charge sheet upon the petitioner along with "memo Anne 4 where by following charges were framed against him:

[1] That Shri Jagjiwan Chand Bhandari Senior Bench Reader of Rajasthan High Court, Jaipur Bench Senior Bench Reader of this office order No. Estt/HC/85/255 dated 25-5-85 and was directed that he shall regularly attend the office to prove his presence on Head Quarter and mark his attendance daily in the office of the Additional Registrar, Jaipur Bench Jaipur Thereafter in continuation to this office order No. Estt/HC/85/305 dated 17-7-85 the head-quarter of the above said Shri

Jagjiwanchand Bhandari was shifted from Jaipur to Jodhpur during the suspension. That Shri Jagjiwan Chand Bhandari neither attended the office regularly nor marked attendance daily in the office and thus failed to comply with the office order dated 25-5-85 and disobeyed the directions contained therein. This act of Shri Jagjiwanchand Bhandari comes within the mischief of disobedience of the directions issued by this office;

[2] That on 29-1-86 a memo No. 712 was issued to him to explain as to why disciplinary action should not be taken against him for non compliance of the order dated 25-5-85. In spite of all this Shri Jagjiwanchand Bhandari did not comply the office order with regard to making his attendance daily in this Registry to prove his presence at head quarters. That Shri Jagjiwanchand Bhandari has exhibited gross negligence in not complying with the above said direction. This act of Shri Jagjiwanchand Bhandari amounts to gross negligence.

This charge sheet was accompanied with a statement of allegations on the basis of which, charges had been framed against the petitioner.

2. Upon the aforesaid charges, an enquiry was made against the petitioner and both the charges were held to be proved with the result that the Disciplinary Authority imposed a penalty of reduction to a lower post i.e. reduction from the post of Senior Bench Reader to the post of Bench Reader vide Annex. 8 dated 17-12-87. The petitioner went in appeal against this order to Hon''ble the Chief Justice. This appeal was dismissed vide order Annex. 9 Aggrieved, the petitioner has come by way of this writ petition to this Court.

3. Two submissions have been raised on his behalf: (1) The Registrar, Rajasthan High Court, was not competent to hold a departmental enquiry against him and it was only Hon''ble the Chief Justice, who could have held an enquiry against the petitioner, the petitioner being governed by the Rajasthan High Court (Conditions of Service of Staff) Rules, 1975, (here in after called "the Rules"). Hence, the order imposing penalty of reduction of rank is beyond the competence of the Registrar. Likewise, the order of Hon''ble the Chief Justice upholding the order of the Registrar whereby he was reduced in rank, is invalid; (ii) Under the relevant Rules, the petitioner could not have been asked to attend office and mark his attendance regularly.

4. The writ petition is opposed on behalf of the respondents. It is averred that the petitioner was bound to mark his attendance in the office of the Addl. Registrar, Rajasthan High Court, Jaipur Bench, Jaipur and when his head-quarters was shifted from Jaipur to Jodhpur. He was likewise, required to mark his attendance in the office of the Addl. Registrar, Jodhpur. Since, he failed to comply with the direction contained in Annex. 1 and Annex. 2 he was rightly held guilty of misconduct. It was denied that the Registrar, Rajasthan High Court, was not competent to reduce the petitioner in rank and lacked jurisdiction to impose the penalty imposed on the petitioner.

5. We have heard the petitioner in person and Shri D.S. Shishodia on behalf of

the respondents.

6. The first question to be determined is whether the Registrar was competent to take disciplinary proceedings against the petitioner. The contention of the petitioner that the Registrar was not competent to impose any penalty on him, is based on clause 12 of the Rajasthan High Court (Conditions of Service of Staff) Rules, 1953. The relevant clause upon which the petitioner has relied, reads as follows:

12. Penalties--The following penalties may, for good and sufficient reasons, be imposed by the Chief Justice or subject to any special order of the Chief Justice, by the Registrar upon the persons serving on the staff attached to the High Court, namely:

...

The precise contention of the petitioner is that the competence of the Registrar depends upon a special order of the Chief Justice to be passed in this behalf and since, no special order had been passed by the Chief Justice empowering the Registrar to impose penalty, the Registrar was not competent to impose any penalty on the petitioner. Shri D.S. Shishodia on behalf of the respondents submits that this would not be the correct interpretation of the aforesaid rule, According to him, the powers of the Registrar in the matter of imposing penalty are concurrent with the powers of the Chief Justice and such powers would be subject to any special order of the Hon''ble Chief Justice, and not that the powers of the Registrar would be derived from any further special order of the Hon''ble Chief Justice. It is submitted that no special order of the Hon''ble Chief Justice is required to confer a power upon the Registrar, such power he already derives by virtue of clause 12. The special order of Hon''ble the Chief Justice, referred to in this clause envisages an order when the powers conferred upon the Registrar by this clause are to be controlled in any way. Admittedly, no special order has been passed by the Hon''ble Chief Justice in exercise of powers of this clause of Rule 12 and as such, the Registrar was competent to impose punishment upon the petitioner there being no fetters whether, on his power, by way of such a special order.

7. We have given our careful and earnest considerations to the rival contentions and we find that the contention of the petitioner is not well founded. A bare reading of the aforesaid clause of Rule 12 goes to show that the rule confers powers both on the Hon''ble Chief Justice as also on the Registrar and the two powers are concurrent. The power of the Registrar is, however, subject to any special order of the Hon''ble Chief Justice, which he may be pleased to pass in that behalf. Hence, we are of the firm opinion that the Registrar had, in the absence of any special order of the contrary passed by the Hon''ble Chief Justice, full powers to impose the various penalties in this rule, such powers being concurrent with that of the Hon''ble Chief Justice. Hence, we find that this contention of the petitioner deserves to be rejected outright.

8. Now we may consider the next contention, namely, whether the petitioner could have been compelled to attend the Registry during the period of suspension and was duty bound to mark his attendance regularly. Shri Shishodia in this behalf has brought to our attention a clarification issued by the Government of Rajasthan in the matter of Rule 55 of the R.S.R. This rule reads as follows:

55. Grant of leave during suspension.--Leave may not be granted to a Government servant under suspension.

A clarification to this rule was inserted by F.D. Memo. No. F. 1(80) F.D. (Rules-1) /71, dated 12-11-1971. This clarification reads as follows:

According to Rule 55 of Rajasthan Service Rules leave cannot be granted to a suspended Government servant, how ever, in the event of illness of a family member etc. permission to leave head quarters can be given by the competent Authority;

A question has been raised whether a suspended Government Servant should attend office regularly to prove his presence at the headquarters;

That matter has been examined and it is clarified that a suspended Government Servant should regularly attend office unless it is not so desired by the competent authority. Marking of attendance by him is, how ever, not necessary.

This clarification was, how ever, amended vide F.D. Memo No. F. 1 (35) FD (Gr. 2) 75 dated 13-8-1975, whereby the underlined portion was deleted. He submits that by the aforesaid deletion, it should be understood that prior to-13 8-75 marking of attendance by a Government servant was not necessary but by virute of this deletion, marking of attendance has been made compulsory and hence, the Registrar was right in imposing a condition in Annex. 1 that the petitioner should mark his presence in the office of Additional. Registrar, Rajasthan High Court. Jodhpur, he submits that when the headquarters of the petitioner were shifted from Jaipur to Jodhpur, it became incumbent upon him to mark his presence in the office of Additional Registrar, Rajasthan High Court, Jodhpur.

9. As against this, the petitioner his urged that he could not have been compelled to attend the office of Additional Registrar nor could have been directed to mark his attendance in the office and such a direction is illegal. Reliance is placed upon Zonal Manager, Food Corporation of India and Ors. v. Khaleel Ahmed Siddiqui 1982 (2) SLR 779; West Bengal Kahdi & Village Industries Board v. Dibyendu Prakash Bhattacharya 1980 (3) SLR 136 . We have considered the rival contentions carefully. This is not in dispute that the R.S R governs the present petitioner by virtue of Rule 7 of the Rules. Now under the clarification issued by the Government as it stood prior to 13-8-1975 it was not necessary for a delinquent official to mark attendance in the office, though daily presence in the office was obligatory, unless it was not so desired by the competent authority. The said clarification, as it existed prior to 13 8-1975 placed an embargo on the

right of the disciplinary authority to direct a delinquent official to mark attendance daily as it clearly stipulated marking of attendance by him is however, not necessary. As pointed out earlier, this expression was deleted by the amendment dated 3-8-1975 and with this deletion, the said embargo on the power of the disciplinary authority was also lifted with the result that under the amended clarification, the competent officer was free to direct the delinquent official to mark his attendance daily. We do not find any prohibition in any of the rules governing the petitioner forbidding the disciplinary authority from issuing a direction to him to mark attendance daily in the office. We may, here, state the effect of suspension. To us, suspension of a delinquent official, is ordered with a view to facilitate a smooth enquiry. It does not sever the relationship of the employer and the employee. Suspension forbids the employer from taking work from the employee. During suspension, an employee may not be compelled to perform duties attached to the office of the employee. The employer is bound to pay him subsistence allowance so that the employee does not starve during suspension. During suspension, an employee may not take any other job. However, subject to the aforesaid disabilities and right, the employee continues to be under employment even during suspension. He continues to remain under disciplinary control of the competent authority. The Apex Court stated this position succinctly in *Khem Chand Vs. Union of India (UOI)*, as follows:

The real effect of the order of suspension is that though he continued to be a member of the Government service he was not permitted to work, and further, during the period of his suspension, he was paid only some allowance generally called subsistence allowance which is normally less than his salary instead of the pay and allowance he would have been entitled to if he had not been suspended.

This very position has been summed up admirably by Durga Das Basu in his *Shorter Constitution of India (Tenth Edition)* at page 89 as follows:

Position of a Government servant under suspension pending Inquiry--A Government servant who has been suspended pending departmental enquiry or judicial proceeding does not cease to hold his office, he only ceases to exercise the powers and discharge the duties of his office for the time being. His powers, functions, salaries and other privileges remain in abeyance but he does not cease to be bound by his obligations as a Government servant. He continues to be subject to the same discipline and subject to the same authorities. It is something less than termination of service. Hence, during the period of suspension the Government servant cannot seek employments elsewhere nor can the Government employ another person in his place.

When an employee continues to be subject to the same discipline and subject to the same authorities it can hardly be said that the Registrar was not competent to direct the petitioner to mark his attendance regularly. We may clarify here that by giving such a direction, the Registrar was not compelling the petitioner to perform work attached to his office, he was not compelling the petitioner to perform any duty attachable to his office. He was only ensuring that the

petitioner staying at the headquarter and did not leave it without proper permission. We may now consider the rulings cited by the petitioner. The first ruling is a Division Bench decision of the Andhra Pradesh High Court. This decision proceeded on the interpretation of particular regulation 66 by which the respondent Khaleel Ahmed Siddiqui was governed. The instruction whereby Siddiqui was directed to attend the office and mark his presence was considered to be inconsistent with the relevant rules and regulation. In the present case, there is no such inconsistency. We may like to add with utmost respect that this ruling does not take into consideration that even after suspension, an employee continues to be an employee and does cease to be amenable to the discipline of the competent authorities. It does not provide taking of any work from the employee and by no stretch of imagination taking into consideration the fact that direction to attend office and mark attendance regularly, it could be said that by marking his attendance, the employee is being compelled to perform any duty attached to his office. Marking of attendance is only to evidence and ensure that he does not leave the head-quarter and does not accept employment elsewhere.

10. Slightly different appears to be the position in the case of West Bengal Khadi & Village Industries Board's case (supra) In that case, there was an interim suspension without there being any provision for suspension and, hence, it was held that the respondent petitioner could not be restrained from leaving headquarters without obtaining previous permission. More over, this Calcutta ruling does not assign any reasons for the view, it has taken and hence, it does not afford any guidance to us. In our opinion, the clarification issued under Rule 55 of the RSR clearly governs the case of the petitioner and in our opinion, the Registrar was perfectly within his competence to direct the petitioner to mark his presence before the Additional Registrar, Jaipur Bench, Jaipur. It stands to reason that when the head-quarters was shifted from Jaipur to Jodhpur, he should have regularly attended the office of the Additional Registrar at Jodhpur and should have marked his attendance in that office. In not doing so, he clearly misconducted himself.

11. The petitioner submitted that since Annex. 2 did not clearly specify, where he was to mark his presence, therefore, he was not under an obligation to mark his presence in the office of the Additional Registrar, Jodhpur. We may here state that the petitioner has been employed in the High Court since very inception of his career. He entered the service as L.D.C. as back as 1958. We can safely presume that he is conversant with the office procedure and if he entertained any doubt, with regard to the question of marking attendance with reference to Annex. 2, he could have met the Registrar and obtain a suitable clarification. The learned Chief Justice has adverted to this aspect of the matter while dealing with a similar contention raised by the petitioner. Learned Chief Justice observed in his order as follows:

Shri J.C. Bhandari had been working in the Registry for several years till then and it is obvious that he did not need to be told the place in the Registrar where he

had to mark his daily attendance. Assuming he had any doubt in the matter he could have appeared for this purpose before any senior officer of the Registry, but he admittedly did not do so. This attempt to explain his misconduct is, therefore, without any merit and is rejected

We, therefore, find that Shri Jagjiwanchand Bhandari was not right in not attending the office of the Additional Registrar, Rajasthan High Court, Jodhpur; he was similarly not right in not marking his daily attendance in the Registry at Jodhpur. To say the least, his behaviour has been contumacious. Learned Chief Justice has held that the petitioner failed to attend the office for the period 1-12-1985 to 25-5-1986 and this disobedience continued without abatement from 1-12-1985. In our opinion, in view of the provisions of the R.S.R. referred to above, he was bound to attend the office of the Additional Registrar to mark his presence in token of his presence at the head-quarters and in not doing so, the disobedience of the petitioner amounts to misconduct and he was rightly punished for the same.

12. No other point was urged before us.

13. We find no merit in this writ petition and dismiss the same. In the facts and circumstances of the case, we leave the parties to bear their own costs.