
(1986) 02 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No. 1766 of 1985

Khushal Janbaji Gaidhane

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 07-02-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468
Prevention of Corruption Act, 1988 — Section 5(2), 5(l)(d)

Citation : (1986) MhLj 235

Hon'ble Judges : N.K. Parekh, J; M.M. Qazi, J

Bench : Division Bench

Advocate : V.V. Vaidya, for the Appellant; M.P. Badar, Asstt. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

M.M. Qazi, J.—The petitioner has challenged the order passed by the Dean, Medical College, Nagpur, suspending him vide order dated 21st August, 1984, in view of the investigation pending in a criminal case u/s 5(l)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947. The petitioner has invited our attention to the Circular No. CDR 1174/9072-11 General Administration Department, Government of Maharashtra dated 18th September, 1978 issued by the State Government. Para 2 of the Circular reads as under :-

Government is also pleased to direct that if the investigations cannot be completed within a period of six months or the extension of time if any granted by the Chief Secretary, the order placing the Government servant under suspension should be revoked and he should be permitted to resume duties by posting him to a different post and/or transferring to a different place wherever possible. All cases in which the Government servants have already been under suspension should be reviewed in the light of these instructions and action taken to complete the investigation as early as possible and to reinstate the Government servants who have been under suspension for over six months.

(Emphasis supplied).

Relying on this Circular, Mr. Vaidya, the learned counsel for the petitioner submitted that the petitioner is entitled to be reinstated forthwith. According to him, the petitioner could not be kept under suspension for more than six months, whereas in fact he has been under suspension for about 17 months, in clear breach of the circular.

2. The petitioner has raised specific challenge to this effect in the petition. Though the return has been filed but the reply to this challenge is given in most evasive language. The petitioner is under suspension for more than six months. The only justification that has been offered for keeping the petitioner under suspension is that the offence alleged to have been committed by him is very serious. According to Mr. Badar, the circular does not have the force of law. It merely lays down the principles for the guidance of the department. We are not able to appreciate this argument. The circular has been issued by the Government to protect the interest of the employees under suspension. It is expected of any welfare State that it should follow its circulars and provide the protection intended to be given under such circulars. The principle underlying the circular seems to be that the Investigating Agency should move as expeditiously as possible in the matter of investigation particularly when an employee is under suspension. Mr. Badar has invited our attention to the provisions of section 468 of the Criminal Procedure Code. It deals with the bar of taking cognisance after a lapse of the period of limitation. Relying on this provision, Mr. Badar submitted that the circular, being contrary to the provisions of section 468 of the Criminal Procedure Code, should be ignored. The submissions are wholly misconceived. There cannot be any question of any comparison of the provision of section 468 and the circular referred supra. Section 468 deals with the bar of taking cognisance by the courts after a lapse of the period of limitation whereas the circular simply requires that the Government Servant cannot be kept under suspension for more than six months, unless the Chief Secretary has extended the time further by three months. In the present case, it is not the case of the respondent that the Chief Secretary has extended the time. It is clear from the circular that in no case a Government servant can be kept under suspension for more than 9 months. In the present case, the petitioner has been under suspension for about 17 months and even today Mr. Badar was not in a position to (sic) us as to how much time the investigating agency would require to complete the investigation. Thus we have no other alternative but to quash the impugned order of suspension and direct that petitioner be reinstated forthwith. We may, however, make it clear that the petitioner may be posted as and where it may be feasible. Petition is allowed and the rule is made absolute in terms of prayer Clauses (I) and (2), with no order as to costs.