
(1999) 09 BOM CK 0031
In the Bombay High Court
Case No : Writ Petition No. 342 of 1999

L.B. Shaikh

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 30-09-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309
Prevention of Corruption Act, 1988 — Section 12, 13, 7

Citation : (2000) 1 BomCR 576 : (2000) 2 LLJ 484

Hon'ble Judges : D.K. Deshmukh, J; B.P. Saraf, J

Bench : Division Bench

Advocate : O.J. Menezas, I.S. Meekwan and R.F. Lambay, for the Appellant; R.V. Govilkar and Jadhav, for the Respondent

Final Decision : Dismissed

Judgement

Per D.K. Deshmukh, J.—By this petition filed under Article 226 of the Constitution of India, the petitioner seeks an order setting aside the order passed by the State Government dated 27th November, 1998.

2. The facts that are material and relevant for deciding the present petition are as follows:-

The petitioner is in service of the State of Maharashtra and was working as Inspector of Police. On 17-8-1997 a trap was laid by the Anti-Corruption Bureau, in which the petitioner was apprehended accepting cash of Rs. 50,000/-. By an order dated 19-8-1997, passed by the Commissioner of Police, Mumbai, who admittedly is the appointing authority of the petitioner, the petitioner was placed under suspension with effect from 17-8-1997. It appears that thereafter the petitioner made a representation to the Chief Secretary of the Government of Maharashtra dated 18-9-1997 for revoking the order placing him under suspension. On 4-4-1998, the Additional Director General of Police passed an order according sanction for prosecution of the petitioner under the provisions of the Prevention of Corruption Act. On 14-8-1998 charge sheet has been filed in

the Competent Court, wherein, prosecution against the petitioner is pending. It further appears that on 16-6-1998 pursuant to a representation made by the petitioner to the State Government, the Minister of State in the Department of Home made an order directing the Director General of Police to revoke the order of suspension of the petitioner. Pursuant to that order, communication dated 24-6-1998 was addressed by the Section Officer in Department of Home, Government of Maharashtra to the Director General of Police to reinstate the petitioner in service pending criminal prosecution launched against him. It appears that a copy of this letter of the State Government was forwarded to the Commissioner of Police, Gr. Bombay for information and proper action. It is clear from the letter of the State Government dated 24-6-1998 that the order placing the petitioner under suspension was not revoked or cancelled by the State Government, but the Government issued a direction to the Director General of Police to make an order reinstating the petitioner in service. As neither the Director General of Police nor the Commissioner of Police issued any order reinstating the petitioner in service, the petitioner approached the Maharashtra Administrative Tribunal by filing Original Application No. 403 of 1998 seeking a direction from the tribunal for compliance with the order of the State Government dated 24-6-1998. The original application, it appears, was disposed of by the Maharashtra Administrative Tribunal by order dated 6-8-1998 directing the State Government to decide the representation made by the petitioner dated 30-6-1998 within a period of 2 weeks. It appears that thereafter the petitioner filed a writ petition on the Appellate Side of this Court, which was registered as Writ Petition No. 5211 of 1998 seeking a writ of mandamus from this Court directing the Director General of Police, State of Maharashtra and the Commissioner of Police, Mumbai to issue an order reinstating the petitioner in service. According to the averments made in this petition, when that petition came for hearing before the Court a statement was made on behalf of the State Government that the State Government has made an order on 27th November, 1998 for continuing the petitioner under suspension. It is this order of the State Government which is challenged in the present petition. In the affidavit filed on behalf of the respondent, it is stated that the Government addressed a letter dated 24-6-1998 to the Director General of Police for reinstatement in service of the petitioner pursuant to an order made on his representation by the Minister of State in the Department of Home. It is further stated that the Director General of Police after receiving that letter on 26-6-1998 addressed a letter to the State Government to reconsider its order directing the Director General of Police and the Commissioner of Police to make order for reinstatement in service of the petitioner. According to the State Government, on the letter addressed by the Director General of Police to the State Government for reconsideration of its order, on 26-11-1998 the Deputy Chief Minister, who is also Cabinet Minister in the Department of Home passed an order directing that the petitioner should continue under suspension and therefore on 27-11-1998 the State Government issued a letter to the Director General of Police stating therein that the petitioner should continue to be under suspension pending his trial.

3. The learned Counsel for the petitioner, firstly, submitted that the order placing the petitioner under suspension is liable to be revoked in view of the circular of the State Government dated 18th September, 1974. He also relied on two judgments of this Court (i) in the case of Khushal Janbaji Gaidhane v. State of Maharashtra, 1986 Mh.L.J. 235 : 1986 S.L.R. 763 and (II) in the case of Dr. Namdeo G. Kalwale Vs. State of Maharashtra and others, . Now so far as this submission of the learned Counsel for the petitioner is concerned, perusal of the circular dated 18th September, 1974 shows that it deals with the period of suspension from service of a Government servant pending investigation against him by police and it lays down that the Government servant against whom criminal prosecution is contemplated can be continued under suspension for a period of six months during the pendency of the investigation and the period of suspension can be extended by further period of three months with the sanction of the Chief Secretary. The circular does not deal with the period of suspension in cases where the charge sheet has been filed. Perusal of the judgment of this Court in Khushal's case referred to above does not show that the Court has directed the State Government to implement its circular dated 18th September, 1974 after charge sheet is filed. The Court in that case was dealing with suspension where investigation is pending. The Court has observed thus:

"The principle underlying the circular seems to be that the investigation agency should move as expeditiously as possible in the matter of investigation particularly when an employee is under suspension."

In that case, the Court found that the petitioner was under suspension for 17 months and the Government Pleader was not in a position to inform the Court as to how much more time is likely to be taken for completing the investigation. It is thus clear that the Court in Khushal's case was not dealing with the case of suspension where the charge sheet has already been filed after completion of the investigation. So far as the present case is concerned, the investigation against the petitioner started on 17-8-1997 when there was the raid of the Anti Corruption Bureau and the charge sheet has been filed on 18-4-1998. It is thus clear that the charge sheet in the present case has been filed within a period of 9 months from the date on which the investigation started which according to the circular referred to above is the maximum period for which a Government servant can continue under suspension during the pendency of the investigation by the police. Therefore, in our opinion, the case of the petitioner would not be governed by the circular dated 18th September 1974. So far the judgment of this Court in Namdeo Kalwale is concerned, in that case the Court was considering the case of a Government servant placed under suspension pending departmental inquiry against him and not criminal prosecution, and therefore, in our opinion, the judgment is not relevant for deciding the controversy that falls for consideration in the present case. The Rule framed by the State Government in exercise of its power to regulate the conditions of service of its employees empower the appointing authority to place a Government servant, who is facing

a criminal charge, under suspension pending the completion of the criminal prosecution. The petitioner has been placed under suspension by appropriate authority because he is being prosecuted under the Prevention of Corruption Act. Considering the serious nature of the charge against the petitioner and extremely responsible and sensitive post that he holds in our opinion no exception can be taken to the decision of his employer to place him under suspension and to continue him under suspension till his trial is complete.

4. The next submission that is advanced by the learned Counsel for the petitioner is that by order dated 19-8-1997 he has been placed under suspension with effect from 17-8-1997. According to the learned Counsel, thus, he has been placed under suspension with effect from the date which is anterior to the date on which the order placing him under suspension has been made. According to the learned Counsel the Government servant cannot be placed under suspension from the date which is anterior to the date when the order placing him under suspension is made. In support of this proposition, the learned Counsel relies on a judgment of the Division Bench in the case of V.M. Dorlikar v. Chief Executive Officer, Nagpur Corporation and another, AIR 1960 Bom 274.

5. It is to be seen here that it is clear from the order dated 19-8-1997 that the petitioner has been placed under suspension from 17-8-1997. Therefore, even if it is assumed that the submission of the learned Counsel for the petitioner that the suspension cannot be ordered with retrospective effect is accepted, then also maximum that can be said is that the order of suspension would not take effect for 17-8-1997 and 18-8-1997 and would be effective from the date on which the order has been made i.e. 19-8-1997. Therefore even after accepting the submission, the order will become invalid to the extent of its retrospective effect. So far as the prospective effect of the order is concerned, its legality in no way be impaired because of the fact that the suspension has been ordered with retrospective effect. In so far as the judgment of this Court in V.M. Dorlikar's case is concerned, in that case firstly the Court was considering the case of the suspension as a penalty and not suspension during the pendency of the criminal prosecution. In that case also the Court set aside the order of suspension on finding that the suspension as a penalty has been imposed with retrospective effect and permitted authority to make a fresh order of suspension making it effective from a future date. In our opinion, therefore, merely because the order of suspension is made effective from 17-8-1998, though the order was made on 19-8-1998, would not make the entire order of suspension invalid. It is further to be seen here that this Court in its judgment in V.M. Dorlikar's case has said that the order of suspension cannot be made with retrospective effect so as to make that order operative during the period the employee has actually worked. In so far as the present case is concerned, according to the averments made in the petition itself, the petitioner was arrested on 17-8-1997 and was thereafter produced before the Court, where he was released on bail. It is not even the petitioner's case in the petition that he has worked on 17-8-1997 and 18-8-1997. In this view of the matter, therefore, in our opinion, fault cannot be

found with the order dated 19-8-1998.

6. The learned Counsel appearing for the petitioner submitted that his suspension was revoked by order dated 24-6-1998 and therefore the State Government could not have made the order dated 27th November, 1998 placing the petitioner again under suspension without following the principles of natural justice. In our opinion, the submission is completely misconceived. The appointing authority of the petitioner is admittedly the Commissioner of Police, who had made the order placing him under suspension. The State Government issued a direction for reinstatement of the petitioner in service. However, the State Government did not itself reinstate the petitioner in service. It directed the Director General of Police to issue an order reinstating the petitioner in service. It is therefore clear that for revoking the suspension of the petitioner apart from the order dated 24-6-1998, one more order was required to be issued and the letter dated 24-6-1998 could not by itself operate to revoke the suspension of the petitioner. It is clear from the prayer clause of O.A. 403 of 1998 filed by the petitioner before the Maharashtra Administrative Tribunal that the petitioner also accepted this position and therefore he prayed for a direction from the Maharashtra Administrative Tribunal to the Director General of Police and the Commissioner of Police directing them to issue an order in compliance with the letter of the State Government dated 24-6-1998. Thus, as the order placing the petitioner under suspension was never revoked by any authority, there is no question of the State Government by order dated 27-11-1998 again placing the petitioner under suspension. The only effect of the order dated 27-11-1998 is that it rejects the representation of the petitioner made to the State Government for revocation of the suspension order. The petitioner on 27-11-1998 was, in fact and in law, under suspension and therefore there is no question of the State Government making an order placing the petitioner under suspension on 27-11-1998 as urged by the petitioner. In this view of the matter, therefore, there also no question of complying with any principle of natural justice. It appears that on the representation made by the petitioner the Minister of State made an order directing the Director General of Police to issue an order in favour of the petitioner reinstating him in service. The Director General of Police did not comply with the direction, instead he made a request for reconsideration of the decision. The matter, it appears, was thereafter, placed before the higher authority i.e. the Cabinet Minister, who made an order cancelling the direction issued by the Minister of State. As the direction issued by the Government pursuant to the order made by the Minister of State was cancelled before it was implemented, it did not create any right in the petitioner. The final order, on the representation of the petitioner, was passed by the highest authority in the department namely the Cabinet Minister. It is not the case of the petitioner that the Cabinet Minister had no authority, however, to make that order. In this situation therefore, as no right accrued to the petitioner was taken away by the order of the Cabinet Minister, there was no question of giving an opportunity of being heard to the petitioner.

7. This is a petition filed under Article 226 of the Constitution of India. The petitioner is police officer, who has been caught accepting bribe of Rs. 50,000/- for which he is being prosecuted in competent Court. The Supreme Court in its judgment in U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan has observed thus:---

"Ordinarily when there is an accusation of defalcation of 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.

From the charge-sheet it is clear that the allegations against the first respondent are grave inasmuch as they indicate that the amounts mentioned therein are not deposited in the bank and forged entries have been made in the pass-book and the amounts are shown as having been deposited. In the circumstances, the High Court should not have interfered with the order of suspension passed by the authorities. In matters of this kind, it is advisable that the concerned employees are kept out of the mischief's range. If they are exonerated, they would be entitled to all their benefits from the date of the order of suspension."

8. In our opinion, therefore, the petitioner is not entitled to any interference at the hands of this Court in his favour in its extra ordinary jurisdiction under Article 226 of the Constitution of India. The Supreme Court has in its judgment in the case of State of Orissa Vs. Bimal Kumar Mohanty, , has held that:

"Suspension is not a punishment, but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had opportunity in offices to impede the progress of the investigation or inquiry etc."

The allegations against the petitioner are serious. He is in sensitive service like police. Charge sheet has already been filed against him. In our opinion, therefore, the State Government is perfectly justified in deciding to continue the petitioner under suspension. In our opinion, if the order is made reinstating the petitioner in service during the pendency of his trial, it would not be in the interest of justice and therefore, in our opinion, looking from any point of view, the petition is liable to be dismissed.

10. In the result the petition fails and is dismissed. Rule discharged with no order as to costs.

11. Petition dismissed.