

(1999) 12 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : SWP Nos. 713, 614 of 1999 and Service Writ Petition (SWP) No. 2023, 1709 of 1998

Lekh Raj

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 31-12-1999

Acts Referred:

Constitution of India, 1950 — Article 14
Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 — Rule 31(1)

Citation : (2001) 4 SCT 808

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : J.P. Singh, P.N. Goja, K.S. Johal , R.P. Bakshi, Anil Sethi, Sunil Sethi, Advocates appearing for the Parties

Judgement

Arun Kumar Goel, J.—By this common judgment all these writ petitions are proposed to be taken up together and are being disposed of

accordingly because they raise identical legal pleas. Facts of each writ petition are being separately given hereinbelow :

SWP No: 713 of 99

2. Petitioner questions Government Order No. 03GAD(Vig) of 1998 dated 9th January 98. He figures at Serial No. 2 and his suspension has

been ordered under Rule 31(1) of the J&K Civil Services (Classification, Control and Appeal) Rules, 1956 (hereinafter referred to as Rules).

According to petitioner his suspension ordered vide impugned Annexure ""C"" to the writ petition is liable to be quashed and set aside, because prior

to the registration of the FIR investigation had been undertaken by the Vigilance Organisation and Verification Report was submitted by the

Inspector, Vigilance Organisation which is dated 27.12.1996. A recommendation was made in this report that since allegations could not be substantiated, therefore enquiry be closed as not proved. It seems that this report was not accepted and thereafter matter seems to have been further examined and then challan has been filed against the petitioner before the Special Judge (Anti Corruption), Jammu. A copy of the Challan is attached with the objections as Annexure ""RI"". Other ground urged is that the filing of Challan after institution of the present writ petition was with a view to circumvent the judicial process in this writ petition. Another argument urged is that as per Rule 31 a person could be kept under suspension for three months. Thereafter no steps have been taken as per government instructions attached to the said rule. In this background relief is claimed by the petitioner.

SWP No. 614 of 99

3. In this case petitioner is aggrieved by Government Order No. 705GAD of 1997 dated 30.5.1997 on the subject ""suspension of officers"" and his name figures at Serial No. 7. Main thrust of the petitioner's case is that Final Report PartI was submitted by Shri R.K. Chalotra, Inspector Vigilance Organisation, wherein it was recommended that no case of disproportionate assets was made out against the petitioner and he further recommended the investigation to be dropped and closed as not proved. This report was submitted by the Investigating Officer for perusal by the higher authorities. In this case record was summoned from the respondents which has been produced by Shri J.P. Singh, learned counsel appearing for them.

SWP No: 2023 of 98

4. In this case petitioner questions Government Order No. 03GAD (Vig) of 1998 dated 9.1.1998. Suspension of the petitioner has been ordered under Rule 31(2) of the Rules and he figures at Serial No. 1 of the said order. This order is questioned on the ground that it has been passed by nonapplication of mind and Rule 31(2) of the Rules is ultra vires of Article 14 of the Constitution of India and it is not necessary in every case where either enquiry is contemplated or a person has remained in custody for more than 48 hours to suspend him. Each case according to learned counsel for petitioner is required to be examined in its own facts and

circumstances, whereas in the case of petitioner an omnibus order has been passed.

SWP No. 1709 of 98

5. When this writ petition was filed an ex parte interim order was prayed for when notice was ordered to be issued. On 14.10.1998 when

objections were not filed interim order was passed whereby the impugned order No. 03GAD(Vig) of 1998 dated 9th January. 98 was ordered to

the stayed till further order subject to objections from the other side. This resulted in the petitioner being reinstated. In this order petitioner figures

at Serial No. 4 and his suspension has been ordered under Rule 31(1) of the Rules.

6. When a reference is made to the objections filed in all the abovenoted writ petitions, common grounds have been raised while controverting the

claim of petitioners. It is pointed out that since suspension is shown to be punitive, it is neither in the nature of punishment nor can be said to be

defeating any provision of law. Simply because delay is there in launching prosecution by itself cannot be a ground to ask for revocation of the

suspension orders because no legal/fundamental right is violated. Rule 31 was stated to be intra vires having been enacted on sound considerations.

Action of suspension of all the petitioners was justified in law, was put up as another plea for dismissal of the writ petition.

7. So far plea urged regarding Rule 31 being ultra vires reliance was placed on a decision reported in 1997 SCT 560 ""Jagjeet Singh v. State of

U.P.

Before taking up this plea, Rule 31 needs to be reproduced in extension alongwith government instructions.

31. (1) The appointing authority or any authority to which it is subordinate or any other authority empowered by the Government in this behalf,

may place a Government servant under suspension where :

(a) an inquiry into his conduct is contemplated or is pending ; or

(b) a complaint against him of any criminal offense is under investigation or trial.

(2) A Government servant who is detained in custody whether on a criminal charge or otherwise, for a period longer than fortyeight hours shall be

deemed to have been suspended by the appointing authority under this rule.

(3) An order of suspension under subrule (1) may be revoked at any time by the authority making the order or by any authority to which it is subordinate.

(4) Where a penalty of dismissal or removal from service imposed upon a Government servant under suspension is set aside in appeal or on review

under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to

have continued in force on and from the date of the original order of dismissal or removal and shall remain in force until further orders.

(5) Where a penalty of dismissal or removal from service imposed upon a Government servant is set aside or declared or rendered void in

consequence of or by a decision of a Court of law and the competent authority on a consideration of the circumstances of the case, decides to

hold a further inquiry against him on the allegations on which the penalty of dismissal or removal was originally imposed, the Government servant

shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal or removal and

shall continue to remain under suspension until further orders.

Government Instructions. (1) An officer on suspension entitled to ask that the matter should be investigated with reasonable diligence and charges

should be framed within reasonable period of time and if such steps are omitted then it would imply that the authorities are vested with a total,

arbitrary and unfettered power of placing its officers under disability and distress for an indefinite duration. The suspension order is bad if it is not

followed by charge sheet and inquiry within a reasonable time.

It has been observed that on occasions the power under the aforesaid rule is being invoked on unjustifiable grounds or on mere suspicion of

misconduct before prima facie case has been established.

It may be appreciated that frequent resort to suspensions even at slightest provocation is not only unwarranted but also counter productive.

Besides affecting morale in the service it puts avoidable strain on the public exchequer by way of subsistence allowance for nonwork done. Public

interest should be the guiding factor in deciding whether or not a government servant should be placed under suspension or whether such action

should be taken even while the matter is under investigation and before a prima

facie case has been established. It is, therefore, imperative that the discretion vested in the authorities should be exercised with due care and caution after taking all the factors into account.

For example where continuance in office of a government servant is considered likely to prejudice, investigation, trial or enquiry or his continuance

is considered likely to subvert the discipline in the office in which he works, the purpose can be achieved if he is transferred to some other station

or office as the case may be rather than to place him under suspension. Likewise if such a Government servant would like to proceed on leave that

might be due to him and if the authority concerned thinks that such a step would not be inappropriate, there should be no objection to leave being

granted instead of suspending him. Similarly, in case a where a Government servant has unauthorisedly absented from the duty, the proper course

is to initiate action against him under Article 128 of Jammu and Kashmir Civil Service Regulations and not to place him under suspension.

The following circumstances may, however, be considered appropriate to place a Government servant under suspension :

(i) Where the continuance in office of the Government servant will be against the wider public interests, e.g. if there is public scandal and it is

considered necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officer

involved in such scandals.

(ii) Where a preliminary enquiry into allegations made has revealed a prima facie case justifying criminal or departmental proceedings which are

likely to lead to his conviction or and dismissal, removal or compulsory retirement from service other than under Article 226(2) of Jammu and

Kashmir Civil Service Regulations.

(iii) Where the public servant is suspected to have engaged himself in activities prejudicial to interest of the security of the State.

(iv) Serious negligence and dereliction of duty resulting in loss to the Government.

Government Instruction (2). Competent authorities should endeavour to have chargesheet filed in Court, in case of prosecution, or served on the

Government servant, in case of departmental proceedings within three months from the date of suspension. Cases in which this is not possible such

authorities will report to the next higher authority, explaining the reason for delay.

The cases of Government servants under suspension should be reviewed by the competent authority periodically to see that steps could be taken

to expedite the progress of the court trial/departmental proceedings so as to reduce the period of suspension to barest minimum.

8. Its persual shows that under SubRule (1) where enquiry is contemplated into the conduct of a government servant or is pending or where a

complaint against him for any criminal offence is under investigation or trial, government may place him under suspension. Whereas under SubRule

(2) once a government servant is detained in custody whether on a criminal charge or otherwise for a period longer than 48 hours, he shall be

deemed to have been suspended by the appointing authority under the said SubRule. Therefore the conclusion that follows on examination of

SubRules (1) and (2) of Rule 31 is that under SubRule (1) discretion vests with the government to suspend its employee, whereas on the other

hand under SubRule (2) by deeming fiction of law he stands suspended by the appointing authority. In such a situation passing of the order is a

mere formality and nothing else. In the case of Jagjeet Singh v. State of U.P. (supra) reference was made to Rule 49A(2) of the Civil Services

(Classification, Control and Appeal) Rules (U.P.), 1930. Shri Bakshi urged that there may be circumstances beyond the control of a person being

not in a position to come out of detention before the expiry of 48 hours. Illustrating this submission he pointed out that the Presiding Officer of the

Court may be on leave, or it may choose to issue notice for a longer date, and the like. Therefore this cannot be made a ground to keep a person

under suspension by deeming function as noted above.

9. When a reference is made to Rule 49A(2) of the U.P. Rules, its language is somewhat different from Rule 31 of the Rules (supra). In any case

this matter need not detain us any further in view of the Full Bench decision of Allahabad High Court reported in 1997(3) SCT 309, ""Chandra

Shekhar Saxena v. Director of Education (Basic), U.P. Lucknow"", wherein decision of a learned Single Judge has been overruled. This position in

law was not even disputed by the learned counsel appearing for the petitioners.

10. So far the plea urged in SWP No. 713 of 99 that investigation was

undertaken before ordering the suspension of the petitioner is concerned, it does not hold good because the petitioner is now well aware that the challan stands already filed before the court of competent jurisdiction against him. Therefore the argument that earlier no case was made out does not improve the case of petitioner.

11. Similarly the plea of discrimination urged against the respondents for their having not suspended other similarly situate persons like petitioners, suffice it to say that Article 14 is a positive aspect of the Constitution, and the plea urged on behalf of the petitioners is negative one, therefore no benefit can be derived on behalf of the petitioners in any of the writ petitions.

12. Prima facie when suspension orders, impugned in these writ petitions are examined, by no stretch of imagination those can be said to be

punitive in nature, which is the only ground on which those can be questioned. Launching of prosecution does not in any manner deprive them from

any legal or fundamental rights. Similarly no right is taken away from them by the suspension order. With a view to streamline the working of its

staff, there is nothing which prevents the state to register a case and then get those investigated. It is only after investigation is complete that the

matter needs to be examined, whether there is enough material to prosecute the person concerned or not. As a consequence of this it is to be

further seen who has to decide the matter relating to adequacy or otherwise of the material. This is for the trial court to see whether prosecution is

able to make out a case prima facie or not and the proceed further in accordance with law.

13. So far plea that the impugned orders either suffer from nonapplication of mind or it is not necessary to suspend a government servant in each

case, are again the circumstances which have to be seen by the competent authority and not for this court. Record produced by Shri Singh

suggests that after being satisfied on the basis of material collected during the course of investigation, the competent authority had passed the

impugned orders of suspension against each one of the petitioners after due application of mind. That being so the submission to the contrary has

no merit.

14. A special reference needs to be made regarding SWP No. 614 of 99 in view of the final report submitted by Shri Chalotra, Inspector in the

case of Shri Jatinder Krishan Misri. After the report of Shri R.K. Chalotra, the then Inspector Vigilance was received, it was not accepted by the higher authorities. Thereafter another officer was deputed to examine the whole case, who on examination found that prima facie there is enough material to proceed against the petitioners. In these circumstances no benefit can be derived by the petitioner in this case from the report submitted by Shri Chalotra, the then Inspector Vigilance.

15. While dealing with the matter relating to stay the suspension of an employee, Supreme Court of India in 1994(2) SCT 625, ""State of Orissa v.

Bimal Kumar Mohanty"" , observed that normally the courts are not expected to interfere with the orders passed by the administrative authorities

and the courts would not interfere with such interim orders. Exception carved out to this Rule was if the discretion vested in the authorities and the

Tribunal is misused or exercised in excess beyond its scope without any justification, in such cases court would be justified in interfering (this is not

the situation in all these four writ petitions) with such orders. It was further observed that where an employee is placed under suspension on serious

allegations of misconduct, Tribunal will not be justified to interfere and directing the authorities not to suspend the employee without the leave of

Tribunal. In such circumstances appeal of the State of Orissa was allowed and the order of Tribunal was set aside thereby upholding the

suspension order.

16. It may be noted in this context that besides the suspension order being punitive, other two grounds are there to question the same are, where it

is passed malafide or is not passed by a competent authority. Otherwise an employer is within his legal authority to proceed further in situations

referred to under Rule 31(supra).

17. Even otherwise a government servant can always be put under suspension in the absence of departmental proceedings but pending a criminal

charge against him (See AIR 1964 SC 787, R.P. Kapur v. Union of India).

18. What is the effect of nonobservance of the government instructions referred to in Rule 31 (supra), those are meant for guidance of the

authorities concerned, however those cannot be taken to be a part of the Rule itself and are thus not justiciable (See 1989 SLJ 141, ""Mohammad

Sikander Bhat v. State of J&K"", and 1997 SLJ 133, ""G.A. Ganie v. State of

J&K").

19 Whenever a government servant is put under suspension the purpose seems to be that he is obstructed from performing the function of his office

as also from holding the position and from enjoyment of privileges for the time being. Another purpose of ordering suspension is to facilitate the

enquiry. In fact it is in the nature of an interim measure when an incumbent is deprived in the discharge of his functions. It neither reduces him in

rank or lowers him down in status. Besides this, he continues to be a person in the government service. Only difference that comes after suspension

is that he gets suspension allowance instead of salary together with allowances etc. It is also by now well settled that suspension order is

administrative in nature and cannot be said to be even quasijudicial in any circumstances. For taking this view reference can be made to 1998(2)

SCT 817 (J&K) : SWP No. 937 of 97. ""Hem Raj v. State of J&K and another"", decided on 19.3.98 , as also to a decision in SWP No. 1722 of

98, ""G.N. Wani v. State and others"", decided on 14.12.1998.

20. Reliance was placed on 1996(4) SCT 21 (SC) : 1996(9) SCC 1, ""P.S. Rajya v. State of Bihar"". When a reference is made to this decision it

has no applicability to the circumstances of the present case. Any of the petitioners at no point of time was exonerated in departmental proceeding

on identical charges for which challans are in the process of being or have in fact been filed. That being so this decision does not advance the case

of petitioners in any manner whatsoever.

21. No other point is urged.

22. As a result of aforesaid discussion there is no merit in these writ petitions which are accordingly dismissed. Interim order passed on

14.10.1998 in SWP No. 1709 of 98 and in SWP No. 614 of 99 on 6.4.99 shall stand vacated forthwith.

23. Respondent State is directed to review case of each one of the petitioners periodically with a view to decide whether to continue with the

suspension or not, thereafter to take a conscious decision by means of a speaking order. No costs.

24. Record produced by Shri J.P. Singh has been returned to him in court. Copy of the judgement be placed on the record of other cases.

Petitions dismissed.