
(1989) 04 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No. 4881 of 1988

Machhindra Pandurang Chavan

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 13-04-1989

Acts Referred:

Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 — Rule 4(1)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 161, 323
Prevention of Corruption Act, 1988 — Section 5(1), 5(2)

Citation : (1989) 3 BomCR 501 : (1989) 2 LLJ 353 : (1989) MhLj 505

Hon'ble Judges : V.S. Kotwal, J; C.S. Dharmadhikari, J

Bench : Division Bench

Judgement

1. The petitioner was working as Minimum Wage Inspector (Agriculture). On 16th of October 1986 the petitioner was apprehended by the Anti-Corruption Bureau for accepting illegal gratification from one E. S. Pattan Shetti of Gandhinglaj. Thereafter he came to be transferred from Kolhapur district to Sangli District. In pursuance of the said transfer order the petitioner took charge at Sangli on 5th of March 1987. After completing preliminary enquiry, the Anti-Corruption Bureau filed a criminal case against the petitioner u/s 161 of the Indian Penal Code read with Sections 5(1)(d) and 5(2) of the Prevention of Corruption Act. In view of this pendency of criminal proceedings the petitioner came to be suspended under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. It is this order of suspension which is challenged by the petitioner in the present petition.

2. Shri N. H. Seervai, learned counsel appearing for the petitioner, contended before us that the petitioner was involved in a false criminal case. He had brought this fact to the notice of the concerned Minister vide complaint dated 9th January 1987. Thereafter petitioner came to be transferred on 1st March 1987 from Kolhapur to Sangli district. On 8th of April 1987 the Additional Commissioner accorded sanction u/s 6 of the Prevention of Corruption Act to prosecute the petitioner. Thereafter a criminal case was filed against the petitioner which came to be committed to the Sessions Court on 12th of October

1987. Almost after 18 months of the incident, he came to suspended vide order dated 29th of August 1988. Thus according to the learned counsel this order of suspension is unwarranted, excessive and amounts to abuse of power. It tantamounts to punishment. The transfer of the petitioner from Kolhapur to Sangli district was in itself sufficient punishment. There is nothing on record to show that the petitioner was tampering with the evidence and/or was influencing witness. From 1st of March 1987 to 29th of August 1988 no move was made to suspend the petitioner. Thus this belated suspension is wholly unwarranted and unjustified. It is also contended by the learned counsel that such a suspension order could not have been passed without giving an opportunity of being heard to the petitioner and therefore is void being violative of principles of natural justice. In support of this contention reliance was placed upon the decision of this Court reported in, *Rajeshwar Sayanna v. State of Maharashtra* and anr 1984 1 LLK 298 and a decision in Writ Petition No. 203A of 1982, *Dhondiraj Vithalrao Patil v. State of Maharashtra* decided by Kanade and D. B. Deshpande, JJ. on 5th of July 1982. According to the respondents immediately on apprehension, petitioner was transferred from Kolhapur district to Sangli district. The competent authority was of the opinion that even after transfer the petitioner may tamper with the record and office material. After investigation a criminal case came to be filed against him which is still pending. The petitioner was caught red handed while accepting bribe of Rs. 200/- The post of Minimum Wage Inspector (Agril.) is declared as a sensitive post vide Government Resolution dated 10th of April 1987. The competent authority came to the conclusion that if the petitioner is allowed to discharge his duties, he is likely to abuse his office for his personal gains and, therefore, it was not in the public interest to allow him to continue in active services till the disposal of the criminal case. The suspension of the petitioner is pending the criminal cases of serious nature and, therefore, it was not necessary to give him an opportunity of being heard before passing such an order of interim suspension. The said suspension did not amount to punishment.

3. So far as the decisions on which reliance is placed by the counsel for the petitioner is concerned, it is contended by the respondents that they are decided on their own facts and further they run counter to the laws laid down by the Supreme Court. The said decisions have no application to the facts and circumstances of the present case.

4. It is by now well settled that suspension is of two kinds i.e. as a punishment or as an interim measure pending disposal of the enquiry or pending criminal proceedings. On general principles Government like any other employer has right to suspend a public servant in one of two ways. It may be suspension of public servant pending departmental enquiry or pending criminal proceedings which is called as interim suspension or the Government may proceed to hold departmental enquiry and after his being guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. (See *R. P. Kapur v. Union of India* and anr. 1964 2 LLJ 164 and *Balvantray Ratilal Patel Vs. The State of Maharashtra*, as also *P.L. Shah Vs. Union of India (UOI)* and

Another, . The Additional Labour Commissioner, Pune in exercise of the powers under rule 4, sub-rule (1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, has issued the impugned order of suspension to petitioner. The relevant portion of the said rule reads as under :-

"4(1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order may place a Government servant under suspension :-

- a) where a disciplinary proceedings against him is contemplated or is pending, or
- b) where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State, or
- c) where case against him in respect of any criminal offence is under investigation, inquiry or trial :

Provided.....

(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority -

(a) with effect from the date of his detention, if he is detained in police or judicial custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction."

It would appear from this rule that since the criminal proceeding were pending, it was permissible to place the petitioner under suspension during the pendency thereof. In *Vagadia Parambhai Bhurabhai v. T. J. Trivedi and anr.* 1986 Lab IC 1971 the Division Bench of the Gujarat High Court had an occasion to consider somewhat similar question. After making a reference to *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another, , A. M. Ahmadi, J.* (as he then was) speaking for the Bench, has observed as under :-

"..... While it cannot be disputed on principle that the principle of natural justice must be extended to administrative actions involving civil consequences it must be conceded that insistence on the application of the rule of natural justice, namely, affording a hearing before an order is passed, cannot be permitted if it is likely to result in defeating the administrative action required to be taken with promptitude, having regard to the circumstances of the case on hand. Inflexible and rigid application of the rule of *audi alteram partem* to Rule 5 of the rules would have the effect of setting at naught the very object or purpose of placing a civil servant under suspension. If a civil servant charged of committing an act involving moral turpitude cannot be placed under suspension unless he is given

an opportunity of showing cause against the proposed order, he would continue in service till the hearing is completed which would not be in public interest. To continue a civil servant who is alleged to have betrayed a tendency to demand and accept illegal gratification would be against public interest and would defeat the very object of prompt action i.e. suspension in public interest, if the procedure of giving a hearing before such an order is passed is required to be undergone. We are, therefore, in agreement with the view taken in Lakshman's case (supra). We, therefore, do not think that Rule 5 is ultra vires the Constitution on the plea that the procedure prescribes thereunder is in violation of the principles of natural justice".

Since in the present case the suspension is interim pending the criminal trial, principles of natural justice would not apply to such an order of suspension.

5. It is also not possible for us to accept the contention of Shri Seervai that only because the petitioner was transferred from Kolhapur to Sangli district, his suspension was either unwarranted or uncalled for. Such a question also came for consideration before the Division Bench of Gujarat High Court in Solanki J. S. v. Principal Chief Conservator of Forests and anr. 1986 (1) LIC. 1256. This is what A. M. Ahmadi, J. (as he then was) speaking for the Bench has observed in this context as under :

"28. The question then is whether these two decisions lay down any absolute rule of law that the State Government has power either to suspend or to transfer, but it cannot resort to both, namely, suspension as well as transfer. The Rules as stated above do not contain anything to show that the Government cannot resort to suspension and transfer simultaneously. Even the Supreme Court in Tarak Nath Ghosh's case 1971 L.I.C. 487 has nowhere said that even if the facts of a given case so warrant, the State Government cannot exercise both the powers simultaneously or one after another.

This does not, however, mean that the Government should exercise the powers to suspend and transfer in all the cases before it. This power to do both is neither limited by the Rules nor by the ratio of any decision of the Supreme Court. In the opinion of this Court the said power to do both is wide not because the Government should exercise it in all cases indiscriminately and without circumspection, but because in a fit and proper case it might not feel the want of power when the circumstances of a given case warrant it. The need to suspend a Government servant against whom serious allegations of misconduct are made cannot be doubted. The object of suspending the Government servant who is facing serious allegations/charges is to put him out of the field of his influence to enable a fair investigation into the charges. In a given case; it may be sufficient to transfer him to put him out of action and it may not be necessary to suspend him also. In another case, it may be sufficient to suspend him to remove him from the field of influence, but it may not be necessary to simultaneously change his headquarters. But cases are not difficult to conceive where it may become absolutely necessary for the Government to not only suspend him, but also

change his headquarters. In cases where a delinquent is alleged to have accepted illegal gratification, it would be necessary to suspend him from service because transferring him to another place would not serve the purpose in as much as the possibility of his including in similar activity elsewhere cannot be ruled out. Such a Government servant who is under suspension may be found to be interfering with the course of inquiry, namely, recording of statements of his erstwhile subordinates. Tampering with the evidence of witnesses other than civil servant etc. and hence it may become necessary for the State Government to change his headquarters even while under suspension to put him out of harms way. While it may be true to say that the exercise of such a power of suspension as well as transfer may become necessary in rare cases, it is not possible to agree with the view that the power does not exist. There is nothing in the rules which we have discussed earlier which places such a restriction on the Government's power to transfer and suspend a civil servant facing grave charges of misconduct....."

We respectfully agree with the view taken by the Gujarat High Court in the aforesaid decisions. In the present case the petitioner is being prosecuted for an offence u/s 161 of the Indian Penal Code read with Section 5(1)(d) and 5(2) of the Prevention of Corruption Act. It is alleged that the petitioner was caught red-handed while taking bribe of Rs. 200/-. In the affidavit filed in reply it is contended by the respondents that if the petitioner is allowed to discharge his duties in the employment, he is likely to abuse his office for his personal gains and, therefore, it is not in the public interest to allow the petitioner to continue in active services till the disposal of the criminal case. It is also stated in the affidavit that the post of Minimum Wage Inspector (Agril.) is declared as a sensitive post vide the Government Resolution dated 10th April 1987.

6. So far as the two decisions of this Court i.e. in Dhondiraj's case (supra) and Rajeshwar Sayanna's case (supra) are concerned, they are obviously distinguishable. The view taken in Rajeshwar Sayanna's case is not followed by the Karnataka High Court in Sundareshan Vs. Superintendent of Police, Kolar, obviously in view of the decisions of the Supreme Court in the field. Suspension in those matters was under the provisions of the Village Police Act. In Dhondiraj's case (supra) he was arrested on a charge under Sections 341, 147, 148, 149 and 324 of Indian Penal Code, and not under Prevention of Corruption Act, which is a very serious offence, Precedents on legal propositions are useful and binding but variety of circumstances and peculiar features of each case cannot be identical. As a fact it was held thereon that suspension worked as a penalty and therefore the rules of natural justice required that the petitioners should have been heard before any such order came to be passed. Further if it is held that in these cases the Division Bench took a view that in all cases of interim suspension, petitioner must be heard before an order of suspension is passed, then such a view obviously runs counter to the decisions of the Supreme Court. Neither In Dhondiraj's case (supra) nor in the case of Rajeshwar Sayanna (supra) reference is made to the decisions of the Supreme Court in the field. In

Dondiraj's case (supra) it was further observed by the Division Bench that "it does not appear from the affidavit in reply filed on behalf of the learned Sub-Divisional Magistrate that he has perused the papers of investigation before passing the order of suspension and therefore, it does not appear that he had subjective satisfaction in the matter. In that context the aforesaid observations were made by the Division Bench. In Rajeshwar Sayanna's case (supra) the offences for which the Police Patil came to be prosecuted were under Sections 323, 448, 504 and 506 of the Indian Penal Code. It was conceded by the Government Pleader thereon that there is nothing on record to show that the competent authority had perused the papers of investigation for his subjective satisfaction before the order of suspension was passed. Therefore the law laid down therein will have to be understood in this context. The offences for which Police Patils were prosecuted prima facie, were not acts involving moral turpitude.

7. Somewhat similar contention seems to have been raised before Lentin and Mehta, JJ. in Appeal No. 226 of 1989 in Writ Petition No. 451 of 1989 decided on 14th of March 1989. While negating such a contention this is what the Division Bench has observed :-

"The three authorities namely (i) Puramchand v. S. of Police, Aurangabad 1983 (I) BCR 362, (ii) Ridge v. Baldwin 1964 AC 40 ; and (iii) Andhra Cement Co. Ltd. Vs. Regional Provident Fund Commissioner, Hyderabad and Another, cited by the Appellant's learned counsel, Mr. Pradhan, are irrelevant. The ratio of these authorities is that before you dismiss, you must be given a hearing. To equate suspension with dismissal and say that even before you suspend you must give hearing is a mistake and makes a fetish of the principles of natural justice".

In the present case all the relevant factors were duly considered by the competent authority before ordering the suspension. The Petitioner was holding a sensitive post of Minimum Wage Inspector (Agril.) He was caught red-handed while taking bribe of Rs. 200/-. Criminal case u/s 161 of the Indian Penal Code read with Section 5(1)(d) and 5(2) of the Prevention of Corruption Act, is pending against him. The competent authority came to the conclusion that if the petitioner is allowed to discharge his duties in the employment, he is likely to abuse his office for his personal gains and, therefore, it is not in the public interest to allow him to continue in active services till the disposal of the criminal case. His continuance is likely to cause embarrassment to Government as he was trapped in a corruption case. Mere transfer would not have served the purpose. Hence it cannot be said that the competent authority has not applied its mind to the material on record or has passed the order without any application of mind or the said order is in any way illegal or unwarranted. It cannot be forgotten that the power vested in the competent authority could be exercised as and when occasion requires.

Hence we do not find any substance in this writ petition. Rule discharged with no order as to costs. Interim stay stands vacated.