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**(2012) 12 RAJ CK 0027**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 10285 of 2012**

Madan Lal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision :** 13-12-2012

**Acts Referred:**

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 7

**Citation :** (2013) LabIC 632

**Hon'ble Judges :** Govind Mathur, J

**Bench :** Single Bench

**Advocate :** Sukesh Bhati, for the Appellant; I.S. Pareek, Addl. Government Counsel, for the Respondent

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## Judgement

Govind Mathur, J.—By the order dated 5.11.2008 the petitioner was placed under suspension on being lodged in a case pertaining to offence punishable under Sections 7, 13(1)(d) and 13(2) of Prevention of Corruption Act, 1988. By way of filing a petition for writ (S.B. Civil Writ Petition No. 11835/2010), the petitioner prayed for a direction for the respondents to review his suspension in accordance with sub-rule (5) of Rule 13 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as "the Rules of 1958"). This Court vide order dated 27.8.2010 disposed of the writ petition aforesaid with a direction to the petitioner to make a representation to the competent authority to review the order of suspension dated 5-11-2008. The competent authority in turn was directed to examine the order dated 5-11-2008 without being impressed by the instructions given by the Government of Rajasthan under the circular dated 10.8.2001. In pursuant to the directions given, the Superintendent of Police re-considered the matter and decided to continue the petitioner under suspension in light of Government of Rajasthan Circular dated 10.8.2001. Being aggrieved by the same, this petition for writ is preferred. It is submitted by learned counsel for the petitioner that the circular dated 10.8.2001 was not required to be taken into consideration by the competent authority while examining case of the petitioner for revocation of suspension, however, in

flagrant violation of the directions given by this Court, the competent authority without application of mind rejected the petitioner's representation by placing reliance upon the Government of Rajasthan Circular dated 10.8.2001 only.

2. Heard learned counsel for the parties.

3. The petitioner is facing suspension from a period of more than four years. His suspension was made on the count that a criminal case was lodged against him for the offence punishable under the provisions of Prevention of Corruption Act. Such suspension cannot be termed illegal in view of the fact that allegation of involvement in a criminal case pertaining to offence under the Prevention of Corruption Act, 1988 certainly shakes public confidence in public service, however, such suspension is not required to be kept in currency for an indefinite period.

4. This Court in the case of Subhash Singh v. State of Rajasthan & Ors. decided on 3.9.2012 considered this aspect thoroughly and held as under:--

The next issue deserves consideration is the suspension of the petitioner since 1.4.2008. It is submitted that no disciplinary action against the petitioner has yet been initiated by the respondents and the criminal case lodged against the petitioner is at its inception and that will take huge time in arriving at its logical consequence, as such further continuation of the suspension shall be unjust and arbitrary. With all vehemence, it is asserted that a civil servant cannot be kept under suspension for an indefinite period, as that is having several ill-effects, not only upon the officer concerned but for entire service and public at large. As per learned counsel at the one hand a competent Government servant is sitting idle and languishing himself from last about 4? years and at the same time State exchequer is burdened by making the payment of subsistence allowance to him without utilizing his services. This Court in the case of Prem Prakash Mathur v. State of Rajasthan & Ors., reported in 2006 (1) CDR 291 (Raj), while considering the effects of a prolong suspension, held as under:--

The petitioner being facing a trial for criminal offence was placed under suspension. The Government of Rajasthan by its circular dated 10.8.2001 issued guidelines to its competent officers to the effect that no public servant who is facing criminal trial be reinstated by revoking suspension till he is acquitted from the charges levelled against him. The circular referred above relates to the Government servants who are facing criminal trial pertaining to the charges of moral turpitudes. It is true that the petitioner is also facing charges of serious nature involving moral turpitude but in present case it is required to be seen as to whether retention of petitioner under suspension is really warranted in the existing circumstances.

It is well settled that an order of suspension is not an order imposing punishment on a person but is an order made against him before he is found guilty to ensure smooth disposal of the proceedings initiated against him. The proceedings so initiated should be completed expeditiously. In event the disciplinary proceedings

or the criminal trial, as the case may be, do not reach to their logical consequence within a reasonable period then it is required that the appointing authority or the authority competent to place public servant under suspension should review the decision to continue such servant under suspension. This Court in similar circumstances in the case of *Shaukat Ali v. State of Rajasthan & Ors.*, reported in 1992 (5) WLR Raj 855, held as under:--

Though technically and legally suspension is not a punishment but the ground reality is that in worse than a punishment. It results in the humiliation of an employee not only before the members of the family but also in the eyes of the world at large. A disciplinary authority or its superior is empowered to place an employee under suspension with a view that enquiry proposed to be held by it is not hampered with and delinquent employee is punished for this misconduct. However, suspension of Government employee without expeditiously proceeding with a departmental enquiry or with a criminal case result in grave and serious consequences. On the one hand, it demoralizes the Government servant; on the other the Government has to pay him subsistence allowance over a long period without taking any work from him and virtually a delinquent officer is paid for setting idle. All Governmental executive action has to be inspired by dictates of reasonableness, Unjust and arbitrary actions are anathema to the rule of law. Principles of natural justice require that a departmental enquiry, and for the matter a criminal trial, should be conducted expeditiously and without loss of time. If this is not done, the executive Government may keep a person under continued suspension for any number of years and in case eventually the charges are found to be groundless or not proved, it may have to pay him heavy arrears of salary etc. I am in agreement (with due respects) with their Lordship of the Madras High Court when they say that there is a very clearly a distinct principle of natural justice, that an officer is entitled to ask if he is suspended from his office because of grave averments or grave reports of misconduct, that the matter should be investigated with reasonable diligence, and that charges should be framed against him within a reasonable period of time and if such a principle were not to be recognized, it would imply that the executive is being vested with a totally arbitrary and unfettered power of placing its officers under disability and distress, for an indefinite duration.

In the present case there is no allegation against the petitioner that he has in any way delayed the trial of criminal case. The only reason given by the respondents is that the circular dated 10.8.2001 restrains reinstatement of a Government servant by revoking his suspension till he gets acquittal from the criminal charges. In my considered opinion the circular dated 10.8.2001 cannot curtail the discretion vested with the appointing authority with regard to placing, continuing or revoking suspension of a Government servant. The appointing authority or the authority competent under Rule 13 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 is required to exercise the powers vested with him independently by taking into consideration all the facts, circumstances and the legal position existing.

This Court in the case of Samrath Singh Vs. State of Rajasthan and Another, , while dealing with the same issue, held as under:--

Sub-rule (1) of Rule 13 empowers competent authority with a broad discretion to place a Government servant under suspension in the event of contemplation of pendency of disciplinary proceedings or where a case against him in respect of criminal offences under investigation or trial. The Government of Rajasthan by circular dated 10.8.2001 provided certain instructions to the competent authorities to exercise powers under Rule 13 referred above. As per circular dated 10-8-2001, it is clarified that if a public servant is caught red-handed accepting bribe by the Anti Corruption Bureau, then he should be placed under suspension without any exception and the suspension of such public servant should not be revoked till his exoneration by the competent Court. The circular further provides that in any case where sanction is granted for prosecution of a public servant in a case relating to corruption, such public servant should be placed under suspension compulsorily and that should not be revoked till pendency of criminal case before the Court concerned. According to circular dated 10.8.2001 a public servant should be mandatorily placed under suspension, if a challan has been filed before the competent Court by the prosecution against him relating to the offences of murder, dowry, dowry death, rape and other offences involving moral turpitude and the public servant placed under suspension for the reasons aforesaid should be continued as such till his exoneration.

It is pertinent to note here that the circular in question at the one hand restricts discretion of the competent authority as given under Rule 13 to place an incumbent under suspension and at the same time also snatches away the power of the competent authority to revoke such suspension as prescribed under Rule 13(5) of the Rules of 1958. True it is, suspension of a civil servant is an administrative action and the Government is having ample power to provide necessary guidelines to the competent authorities for exercising powers as per Rule 13, but at the same time it is also well settled that the administrative instructions can always be given to fill up the unoccupied field, however, such instructions in no way encroach the space already under occupation of an statute. In the present case the circular dated 10.8.2001 nowhere provides instructions to the competent authority as to how powers under Rule 13 are required to be exercised, but it imposes mandate upon the discretion of the competent authority. Such imposition of a mandate over statutory discretion is not permissible under administrative jurisprudence. The State Government would have been right in providing guidelines or a mode to exercise discretion under Rule 13 of the Rules of 1958. The State Government could have given instances and instructions to the competent authority to exercise its discretion to place an incumbent under suspension in particular circumstances but not an order to place Government servant under suspension mandatorily in specific cases. It is for the competent authority to examine facts of each and every case and to settle desirability to place an incumbent under suspension by applying objective

discretion. The suspension of an employee, looking to the facts and circumstances of the case may be desired urgently or on emergent basis but in those circumstances also the competent authority must record its satisfaction for exercising powers under Rule 13. If such satisfaction is not recorded and suspension is made merely on basis of the instructions given in circulars or merely by a word of mouth or by slip of pen, then that is nothing but colorable exercise of power. In the present case it is nowhere said by the respondents that before placing the petitioner under suspension the desirability to do so was objectively considered. It is specific case of the competent authority that he placed the petitioner under suspension as per instructions of the Government of Rajasthan.

From the averments made in reply to the writ petition it also appears that the respondents simply acted upon the circular dated 11.10.2007 and placed the petitioner under suspension. It also appears that the order impugned was passed with retrospective effect by treating the petitioner under suspension from the date he was arrested by the Anti corruption Bureau.

As a matter of fact the deeming provision under Rule 13(2) of the Rules of 1958 is having no role in present case as the petitioner after getting released from judicial custody was permitted to resume the duties. The work done by the petitioner while holding the post could not be undone by giving retrospective effect to the suspension. Beside that, no order placing the petitioner under suspension was passed by the competent authority when the petitioner was in judicial custody or immediately after his release and before resuming the duties. In such circumstances, the deeming provision as relied upon by the respondents is having no consequence.

In the case in hand to the petitioner was placed under suspension by acting upon the circular dated 10.8.2001. The respondents unequivocally stated in para 12 of the reply to the writ petition that as per the circular dated 10.8.2001, in case of trap, an employee cannot be reinstated until exonerated by the competent Court.

In view of the reply given by the respondents I am satisfied that the law laid down by this Court in the case of Samrath Singh (supra) is having complete application in the instant matter too. The petitioner is facing suspension from last more than 4? years. It is also not in dispute that the criminal trial is at its initial stage as no charges have yet been framed. If the trial Court frames the charges against the petitioner then the trial shall take huge time in its completion. In such circumstances, I do not find any just reason to further continue the petitioner under suspension. The respondents to avoid every possibility of tampering with the evidence and also to avoid a wrong message in public at large about continuation of a tainted person in service may post the petitioner at a place and office that is not having much concern with day to day public duties. A field posting may be denied to the petitioner to avoid all apprehensions, but no reason exists for further continuation of suspension, which has completed a huge term of four years and five months.

5. In the instant matter, the petitioner is facing suspension since 5.11.2008. A period of more than four years has already expired. The trial against the petitioner shall certainly consume more time in getting concluded. The petitioner, a public servant, cannot be kept under suspension for such a huge period merely due to pendency of a criminal trial, as such, his suspension is required to be revoked by taking appropriate caution to protect evidence and other material available against him from tampering with influence. For the reasons given above, this petition for writ deserves acceptance. Accordingly the same is allowed. The suspension of the petitioner from service under order dated 5.11.2008 stands revoked forthwith. The competent authority shall be at liberty to provide posting to the petitioner at a place of his choice with a view to prevent the petitioner from tampering with evidence or influencing the same in any manner.

No order as to costs.