
(2013) 07 MP CK 0198

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5526 of 2011

Maresh Kumar Gupta

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 31-07-2013

Acts Referred:

Citation : (2014) 2 MPHT 302 : (2013) 4 MPLJ 55

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Praveen Newaskar, Dy. Government Advocate for State and Brijesh Sharma and Yogesh Chaturvedi, for the Respondent

Judgement

Sujoy Paul, J.—By filing this petition, the petitioner has challenged the order dated 27-5-2011 (Annexure P/1) whereby he was placed under suspension. Brief facts necessary for adjudication of this matter are as under:--

The petitioner was a teacher in the respondent DAV High School. He was given charge of the post of Principal. By the impugned order he was placed under suspension. This Court issued notice to the society (respondent No. 3). Two returns were filed by the society in this matter. Two counsel were engaged by two bodies on behalf of respondent No. 3 with the assertion that they are the lawful and actual body. Learned counsel appearing for the respondent No. 3 (two in number) contended that they are the actual body, who have right to manage affairs of the society.

2. Petitioner appeared in person, advanced singular contention. He submits that there is no bye-laws of the society and there exists no provision to place him under suspension. In addition, he submitted that there is no provision for treating the period of suspension for the purpose of grant of monitory benefits and, therefore, he is entitled for full pay and allowances for the said period.

3. I have heard learned counsel for the parties and perused the record.

4. In the opinion of this Court, question before this Court is limited. In the present writ petition filed by the teacher containing the relief against suspension, this Court is not obliged to deal with the question as to which body is a valid body to manage the affairs of the society. More so, when that question is admittedly pending before some other appropriate forum. Thus, the said contention is totally irrelevant and foreign to the controversy involved in this matter. The petitioner rightly contended that singular question aforesaid needs to be answered.

5. On a specific query by the Bench, learned counsel for the respondents could not answer or indicate any enabling provision to place the petitioner under suspension. Shri Brijesh Sharma, Advocate for the respondent No. 3, although initially relied on the Rules made by the State Government for suspending the employee of aided institutions, these rules are made under 1978, however he fairly admits that these rules stood repealed in the year 2008. Admittedly, in 2011 when the petitioner was suspended, these rules were not applicable and no other rule is shown to this Court permitting the suspension and regulating the period of suspension for the purpose of granting pay and allowances. Thus, the singular and pivotal question is whether the petitioner's suspension in absence of any enabling provision is justifiable and what benefits can be granted to him?

6. The Apex Court in R.P. Kapur Vs. Union of India (UOI) and Another, (five Judges) opined as under:

The authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceedings, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in section 16 of the General Clauses Act which is in consonance with the general law of master and servant. But what amount should be paid to the public servant during interim suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. This suspension must be distinguished from suspension as a punishment which is a different matter altogether depending upon the rules in that behalf. The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union, and T. Cajee Vs. U. Jormanik Siem and Another, , Rel. on.

(Emphasis supplied)

7. The Constitution Bench judgment in R.P. Kapur (supra) makes it clear that the Apex Court invoked general principle flowing from section 15 (sic : 16) of General Clauses Act and opined that there is inherent power of suspension with the employer. This was further considered by Calcutta High Court in Mahadeb Bhattacharjee v. State of W.B., reported in 2007(112) FLR 1163 and following R.P. Kapur (supra) it is opined that the employer has inherent power to place the

employee under suspension, but in absence of provision of limiting pay and allowances or subsistence allowances, the employee is entitled to get full salary. Calcutta High court took this view earlier also in Master Tapan Kumar Adhikari v. Calcutta Municipal Corporation of India, (1991) 1 Lab IC 982 (Cal) .

8. In the light of aforesaid legal position, it is clear that even if 2008 Rules are repealed, the employer had inherent power to place the petitioner under suspension. Thus, no flaw can be found in the action of the respondents in suspending the petitioner. Apart from this, at the cost of repetition, it is apt to mention that this Court is not obliged to decide in this petition as to which body was competent to place the petitioner under suspension. Bye-laws also show that to achieve the aim of society, necessary action can be taken by the general body. Considering the aforesaid, I am unable to hold that in absence of any provision of suspension the petitioner's suspension was impermissible.

9. Next question is whether petitioner is entitled for the full pay during suspension. As held in the aforesaid judgment, unless there is provision limiting pay and allowances during the suspension or grant of subsistence allowance, employee is entitled to get full pay during the suspension period because no provision was shown to this Court which permits the respondents to limit the salary during suspension period.

10. Thus, this petition deserves to be and is hereby partly allowed. No interference in the order of suspension, Annexure P/1, is called for. However, the respondents shall pay full pay and allowances to the petitioner for the period under suspension. The payment be made within 30 days from the date of production of copy of this order. Petition is partly allowed, No costs.