
(2013) 12 MP CK 0030
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4342 of 2013

Mukesh Kumar Dubey

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 17-12-2013

Acts Referred:

Citation : (2013) 12 MP CK 0030

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Namrata Kesharwani, for the Appellant; Vivek Agrawal, Learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Yadav, J.—With consent of learned counsel for the parties, petition is heard finally. Orders dated 14.2.2012 and 5.3.2013 are being assailed vide this petition.

2. By order dated 14.2.2012, petitioner, a lower Division Clerk, Jabalpur Development Authority, was placed under suspension, because criminal case as to disproportionate assets being registered by the special Police Establishment Lokayukta Organization and search proceedings being carried out.

3. Whereas by order dated 5.3.2013 an appeal preferred by the petitioner against suspension has been dismissed.

4. Petitioner belonging to Class III Ministerial Cadre, Development Authority is governed by Madhya Pradesh Development Authority Services (Officers and Servants) Recruitment Rules, 1987.

5. Rule 55 of the Rules lays down the circumstances which entails suspension of Authority employees. Sub-Rule (1) stipulates suspension pending departmental enquiry, Sub-Rule (2) deems suspension of Authority employee who is detained in custody whether on a criminal charge or otherwise, for a period longer than

forty eight hours, Sub-Rule (3), relevant in the present context, stipulates:

An Authority employee against whom criminal charge is pending may, at the discretion of the disciplinary authority be placed under suspension until the termination of the proceedings if the charge is connected with this position is an Authority employee or is likely to embarrass him in the discharge of duties in the Authority or involves moral turpitude.

Provided that in the case of an Authority employee on deputation to the Authority the disciplinary authority shall, without delay inform the lending authority of the circumstances in which that employee was placed under suspension.

6. Challenge to the order dated 14.2.2012 is on the ground that the suspension of the Authority employee under Rule 55 (3) of 1987 Rules could be only when a criminal charge is pending and not on an investigation or registration of FIR for offence u/s 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988.

7. Whereas order dated 5.3.2013 passed by the Appellate Authority is questioned on the ground that though directed to decide the appeal by taking into consideration the stipulation under Rule 55 (3) by order dated 22.1.2013 passed in Writ Petition No. 3300/2012 yet the appeal has been decided in a cryptic manner.

8. Respondents on their turn support the order of suspension.

9. Considered the rival submissions.

10. It appear from Rule 55 (3) of 1987 Rules that an Authority employee can be placed under suspension against whom "criminal charge is pending." Whether criminal charge mentioned herein would mean the framing of charge under the Criminal Procedure Code, 1973 (referred to as code) or whether it means accusation or imputation which is criminal in nature.

10. The expression "charge" is not defined in the Code. Section 2(b) only says "Charge" includes any head of charge when the charge contains more heads than one.

11. It is usually used and understood, "charged with crime" means something more than suspected or accused of crime by popular opinion or rumour, and implies that the offence has been alleged against the party according to the forms of law "(The Major Law Lexicon:- Edn. P. Ramanatha Aiyar, 4th Edition, 2010).

12. The "charge" as held in *Birichh Bhuian and Others Vs. State of Bihar*, "would mean a precise formulation of a specific accusation made against a person of an offence alleged to have been committed by him." When adjudged in the context of master servant relation, where the service is governed by conduct rules the expression "criminal charge is pending" in the considered opinion of this Court,

cannot be construed to be framing of specific charges by the competent Court of jurisdiction before initiation of a trial. Because as held in *Birchh Bhuian and others V. State of Bihar* (Supra) it is an accusation made against a person in respect of an offence alleged to have been committed by him and the accusation which is criminal in nature would tantamount to pending criminal charge for the purpose of Rule 55 (3) of 1987 Rules.

13. This view finds support in decision by Calcutta High Court in *Binoy Bhusan Mondal Vs. State of West Bengal*, which shall dwell on scale of rule 3(3) of All India Service (Discipline and Appeal) Rules 1969:

12. It appears that under rule 3(3) a member of the service in respect of, or against, whom an investigation, inquiry or trial relating to a criminal charge is pending, may be suspended until the termination of all proceedings relating to that charge. In so far as rule 3(3) is concerned, it does not mean of the same nature as "charge" is used in the Cr.P.C. "Charge" here, in my opinion, means accusation or imputation which is a nature of crime. Giving that meaning, in my opinion, there is no difficulty in reading the words "investigation", "inquiry" or "trial". At the trial of a criminal case "charge" has a definite meaning. In the present case there is no doubt that there was a first information report and on that basis of the first information report investigation is pending. Investigation as defined in the Criminal Procedure Code, includes all the proceedings under the Code for the collection of evidence. At the investigation stage there cannot be any inquiry or trial. The "inquiry" has been defined as that "inquiry" includes every inquiry other than a trial. The "inquiry" or "trial" is to be found in part VI of Cr.P.C. which is proceeding in prosecution. The "inquiry" is not a trial. Therefore "inquiry" and "trial" in the criminal case cannot go hand in hand at the same time. Investigation is a stage before either enquiry or trial has commenced.

14. Thus adjudged, the action of respondent in purported exercise of powers under Rule 55 (3) of 1987, Rules, cannot be faulted with. In the result petition fails and is dismissed. No costs.