
(2015) 12 RAJ CK 0050
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8759/2014

Om Prakash Yadav

APPELLANT

Vs

The State of Raj. and Others

RESPONDENT

Date of Decision : 18-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 7

Citation : (2016) 1 WLN 358

Hon'ble Judges : Jaishree Thakur, J.

Bench : Single Bench

Advocate : Vineet Dave, Advocate, for the Appellant; Kusum Rao, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Jaishree Thakur, J.—The challenge in the present writ petition is to orders dated 6.8.2013 and 12.2.2014 placing the petitioner under suspension with retrospective effect, i.e., from 27.6.2013.

2. It is submitted by the counsel for the petitioner that he was promoted on the post of Senior Geologist against the vacancies of the year 2002-2003. On account of promotion, one Shri Manoj Kumar B. Meena filed several false and bogus complaints against the petitioner as well as other senior officials and continued to do so. On 14.3.2013, Shri Meena requested for change of the channel for submission of Annual Performance Appraisal Report for the year 2012-2013 with a request that his Annual Performance Appraisal Report may be filed by an officer of any other Zone other than the Udaipur Zone which was with the petitioner. As the petitioner had received other APARs from other subordinate officers with the exception of Sh. Meena, the petitioner requested Sh. Meena to forward his APAR for the period 1.4.2012 to 31.3.2013. Sh. Meena replied that the requirements of APAR would be fulfilled only after receiving the order of change of channel. Thereafter, Sh. Meena filed a false complaint against the

petitioner before the Anti-Corruption Bureau, Rajsamand stating therein that the petitioner had made a demand of bribe of Rs. 20,000/- Rs. 25,000/- for filling the APAR. Upon this complaint, a trap was conducted by the officials of Anti-Corruption Bureau on 27.6.2013 and the petitioner was falsely trapped by the officials and arrested on the same day itself. It is also submitted that despite filing of the false complaint on 25.6.2013 Sh. Meena requested the petitioner to fill his APAR pertaining to 2012-2013 on 27.6.2013, which was duly filled. After arrest, the petitioner was enlarged on bail under Section 438 of the Code of Criminal Procedure and the bail order specifically records the fact that there appears to be great animosity between the petitioner and the complainant which is long pending. On release from jail, the petitioner submitted his joining with the respondent-department on 15.7.2013 and worked on that day. Subsequent to his joining, the petitioner was informed by the Additional Director that it had been decided to allow the petitioner to continue work only after receiving instructions from the Secretary, Mines. Faced with this situation, the petitioner addressed a letter to the Additional Director, Geology, Udaipur Zone regarding clear instructions about his joining. By an order dated 6.8.2013 issued by the State Government, the petitioner was ordered to be placed under suspension. The same order was subsequently amended by an order dated 12.2.2014 whereby the petitioner has been considered and deemed to be suspended with effect from 27.6.2013. Aggrieved against the suspension, the petitioner moved a representation dated 25.5.2014. Since the representation was undecided the petitioner has preferred the instant writ.

3. Mr. Vineet Dave, learned counsel appearing on behalf of the petitioner has submitted by that the order of suspension is not sustainable on account of the fact that a false complaint has been filed by Sh. Meena, who was in the habit of filing false and frivolous complaints against the officials. It is further submitted that the suspension order has been passed in mechanical manner without considering the facts objectively or on coming to a conclusion whether suspension of the petitioner was at all necessary, desirable or inevitable. Moreover, if a Government Servant, after getting released from judicial custody, is permitted to resume his duties then the deeming provision of rule 13(2) of the Rules of 1958 would not be applicable and after joining, he could not have been suspended with retrospective effect from 27.6.2013. It is submitted that bail was granted to the petitioner on 3.7.2013 and even the bail order noted that there was animosity between the petitioner and the complainant. It is further argued that by keeping a Government Servant under suspension for a long period of time, merely due to pendency of criminal trial, would not be appropriate. Learned counsel appearing for the petitioner has relied upon the following judgments: (1) Samrath Singh v. State of Rajasthan & Anr., S.B. Civil Writ Petition No. 8249/2007 decided on 30.9.2009, (2) Subhash Singh v. State of Rajasthan & Ors., S.B. Civil Writ Petition No. 2345/2011 decided on 3.9.2012, (3) Om Prakash Pandiya v. the State of Rajasthan & Anr., S.B. Civil Writ Petition No. 4073/2001 decided on 4.5.2015, (4) Ajay Kumar Choudhary Vs. Union of India (UOI) and

Others , (5) PremPrakash Mathur v. State of Rajasthan & Ors., S.B. Civil Writ Petition No. 3971/2004 decided on 20.9.2005.

4. Notice was issued of the writ petition and replies have been filed on behalf of respondent Nos. 1 and 2 and respondent No. 4, submitting that the writ petition is not maintainable, as suspension is not a punishment. It is further submitted that the petitioner was caught red handed on 27.6.2013 on account of taking bribe of Rs. 20,000/- and a case has been lodged against the petitioner under Sections 7 , 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. It was further submitted that the petitioner remained in judicial custody from 27.6.2013 to 2.3.2013 and on this account, an order dated 12.2.2014 came to be passed treating the petitioner as deemed suspended with effect from 27.6.2013. Reliance has been placed upon rule 13(2) of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short "the Rules of 1958") to contend that the said rule is a deeming provision and in case a person remains in custody for over a period of 48 hours, it comes into force automatically and such person shall be deemed to have been suspended with effect from the date of his detention and his suspension shall remain in force until further order. Reliance has been placed upon a judgment rendered in Rajendra Singh Vs. The Municipal Board, .

5. I have heard learned counsel for the parties and perused the record of the case.

6. By an order dated 12.10.2015, this Court was pleased to direct the respondents to decide the representation of the petitioner. The representation was dismissed on the ground that the review of suspension order can only be made after a period of three years of the suspension order being passed.

7. It is the admitted position that the petitioner was arrested on 27.6.2013 and was placed under suspension by an order dated 6.8.2013, which was subsequently modified on 12.2.2014 with retrospective effect, that is from the date he was arrested. Rule 13(2) of the Rules of 1958 empowers the authorities to place such Government Servant who is detained in custody whether on a criminal charge or otherwise for a period exceeding 48 hours with effect from the date of detention. The Government of Rajasthan has issued a circular dated 10.8.2001 to the effect that a public servant, who is facing criminal trial in dowry deaths, moral turpitude, grievous offenses, trap cases etc. is not to be reinstated in service by revoking suspension till (emphasis supplied) such time he is acquitted from the charges leveled against him. The legality of the circular dated 10.8.2001 came to be considered in a judgment of Om Prakash Pandiya v. the State of Rajasthan & Anr., S.B. Civil Writ Petition No. 4073/2001 wherein this Court was pleased to hold that the circular which stipulates that any person who has been detained for more than 48 hours is not to be reinstated in service till such time he is not acquitted from the charges leveled against him, is only advisory in nature and the same cannot be held to have any statutory force. Based on this judgment this court directed the authorities to look in to the

representation filed. The representation has been decided holding that three years have not expired so no review can take place.

8. In the present case, the authorities concerned suspended the petitioner without satisfying itself or applying its mind as to whether or not suspension would be justified under the given circumstances and the same is not justified. Reliance can be placed upon a judgment of this Court in the case of *Ashutosh Darshora v. State of Rajasthan & Ors*, S.B. Civil Writ Petition No. 473/2007 decided on 29.4.2008 wherein it was held that:--

"in every case, where the government servant is facing trial for criminal charges, including the charges relating to the Prevention of Corruption Act, suspension is not must. The competent authority, before placing an incumbent under suspension, must consider its necessity. The unwarranted suspension of a government servant not only deprives the employer from utilizing his services but also put a burden on public fund in the form of payment of subsistence allowance. The Government must review the suspension of the government servant time to time, and if it is found that the suspension is not required, it should be revoked."

9. In the case of *Samrath Singh Vs. State of Rajasthan and Another*, , this court while noting several other judgments, dealing with a similar issue, where the Government Servant had been placed under suspension after having been caught red handed accepting bribe, came to hold that it is for the competent authority to examine facts of each and every case to settle the desirability of placing the incumbent under suspension. In that case too, the Government Servant, after being released from custody, was permitted to join duties, and this court held that if a delinquent employee has allowed to join work, the deeming provisions under rule 13(2) of the Rules of 1958 could not be invoked. In *Samrath Singh's* case (supra) it was held that:--

"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 colourable 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."

10. An argument has also been raised by the petitioner that a period of two and half years have already passed and the trial against the petitioner shall certainly take considerable time in being concluded. Despite being placed under suspension, to date no departmental proceedings have been initiated against him and as such keeping him under suspension would not serve any purpose. In a case referred to as Subhash Singh v. State of Rajasthan & Ors., S.B. Civil Writ petition No. 2345 of 2011 it was held that a Government Servant could not be kept under suspension for an indefinite period of time as this amounts to a burden on the State exchequer, especially when no disciplinary action has been initiated by the department itself and the criminal case is at its very inception. In Subhash Singh's case (supra), it was held that:--

"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 1/2 years and at the same time State exchequer is burdened by making the payment of subsistence allowance to him without utilising 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 WLR 1992(S) 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 recognised, 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."

11. In a recent judgment of the Hon"ble Supreme Court reported as Ajay Kumar Choudhary Vs. Union of India (UOI) and Others it was held that suspension is essentially temporary in nature and must perforce be of short duration. The Supreme Court has directed that the suspension of a Government servant shall not be extended beyond a period of three months, if within this period the Memorandum of Charges/charge-sheet is not served on the delinquent officer/employee. Extending the principle of right to a speedy trial in a criminal case to the issue of suspension in service law jurisprudence, the Hon"ble Supreme Court held that:--

"Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay."

12. The stand of the respondents is that by virtue of rule 13(2) of the Rules of 1958 being a deeming clause, the petitioner is under suspension from the date he was arrested, is not tenable in view of the fact that this court has held that if a person is allowed to join service after being released from custody, the work put in could not be washed away. Learned counsel appearing on behalf of the respondents has urged that this Court should not interfere in the orders of suspension while relying upon the judgment reported as Rajendra Singh Vs. The Municipal Board, , wherein it was held that the suspension of the petitioner could not be set aside. This case has no application to the facts of the present case especially when the petitioner was allowed to join service and the order suspending him has been passed with retrospective effect.

13. In the present case, the petitioner was arrested on a complaint filed by Sh. Meena. The order granting bail notices the fact that there is great animosity between the petitioner and the complainant. The trial is at its nascent stage, is most likely to take some time to concluded and the respondents have neither pleaded nor have been able to show that the petitioner is likely to hamper the investigation or is responsible in delaying the conclusion of the case. Moreover, it is to be noted that the department suspended the petitioner just by acting upon the mandatory instructions issued by the State Government (which have been held to be advisory in nature in Om Prakash Pandiya (supra), as too date the department has not served petitioner with any charge sheet though a period of two and a half years has passed. In view of whatever discussed above and having perused the judgments relied upon by the learned counsel for the petitioner I am of the opinion that the same are wholly applicable to the facts of this case. Consequently I find no just and valid reason to continue the petitioner under suspension.

14. This petition for writ succeeds and the orders dated 6.8.2013 and 12.2.2014 are set aside and further continuation of the petitioner under suspension is declared unwarranted. The respondents are directed to revoke suspension of the petitioner within a period of two weeks from receipt of copy of this judgement.

15. No order as to costs.