
(2015) 10 RAJ CK 0023
In the Rajasthan High Court
Case No : Civil Writ Petition No. 10574 of 2015

Prahlad Rai Verma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-10-2015

Acts Referred:

Constitution of India, 1950 — Article 311
Penal Code, 1860 (IPC) — Section 120B
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 19(1)(c)
Rajasthan Municipalities Act, 2009 — Section 335

Citation : (2015) 4 LLN 536

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Sachin Acharya, for the Appellant; Pratishtha Dave, Advocates for the Respondent

Final Decision : Allowed

Judgement

Arun Bhansali, J—This writ petition has been filed by the petitioner aggrieved against the order dated 7.9.2015 passed by the Director and Joint Secretary, Directorate, Local Self Department, Rajasthan, Jaipur, whereby the petitioner has been placed under suspension.

2. The petitioner, who was initially appointed as Assistant Revenue Inspector on 22.12.1983 was last promoted in 1994 on the post of Revenue Inspector and at the time when the order impugned placing the petitioner under suspension was passed, he was discharging his duties on the post of Executive Officer, Municipal Board, Itawa.

3. It is inter-alia indicated in the writ petition that in the year 2009, the services of the petitioner were transferred from the Municipal Board, Kethun to Municipal Board, Rawatbhata where he was posted as Executive Officer. The Anti Corruption Bureau ("ACB") lodged an FIR on 18.7.2012 against the petitioner and Chairman, Municipal Board for the offence under Sections 13(1)(d), 13(2) of

the Prevention of Corruption Act, 1988 ("the PC Act") read with Section 120B IPC. After conclusion of investigation, prosecution sanction against the petitioner was sought and was granted on 27.6.2014 by the Executive Officer, Municipal Board, Rawatbhata; however, the Assistant Director (Vigilance), Local Self Department, Jaipur vide his letter dated 21.10.2014, opined that the Executive Officer, Municipal Board, Rawatbhata had no jurisdiction to grant prosecution sanction against the petitioner and the competent authority was only the Municipal Board, Keshoraipatan and directed cancellation of the prosecution sanction, however, the ACB filed challan against the petitioner before the Court of Special Judge (Anti Corruption Cases), Udaipur. However, at the time of taking cognizance against the petitioner, same was resisted by the petitioner on the ground that the prosecution sanction was not in accordance with law, which objection was upheld by the Special Judge and clarification was sought regarding the sanction. Whereafter, the petitioner was paced under suspension by order impugned dated 7.9.2015.

4. It is inter-alia submitted by learned counsel for the petitioner that the appointing authority of the petitioner as Revenue Inspector is the Board in terms of Section 335 of the Rajasthan Municipalities Act, 2009 ("the Act of 2009") and the Director has no power and jurisdiction to suspend the petitioner and therefore, the order of suspension being wholly without jurisdiction deserves to be quashed and set-aside.

5. It is submitted with reference to the order passed by the Additional Director (Vigilance) (Annex. 13) and the order dated 2.7.2015 passed by the Special Judge (Anti Corruption Cases), Udaipur (Annex. 14) that the appointing authority of the petitioner is Municipal Board, Keshoraipatan and as such, the action of the Director in placing the petitioner under suspension cannot be sustained; the powers under Rule 13 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 ("the Rules of 1958") can only be exercised by the appointing authority and it is only the Municipal Board which is having jurisdiction to place the petitioner under suspension.

6. Submissions were also made regarding the validity of the order of suspension as well. It was inter-alia submitted that the sanction has been granted by the authority having no jurisdiction and merely because the petitioner remained in custody for four days cannot ipso facto lead to passing of the suspension order. It was submitted that the order Annex.-15 has been passed mechanically without application of mind to the facts and circumstances of the case and therefore, the order impugned deserves to be quashed and set-aside.

7. Reliance was placed on *Samrath Singh v. State of Rajasthan & Anr.* S.B. Civil Writ Petition No. 8249/2007, decided on 30.9.2009; *Som Prakash v. State of Rajasthan* TSB. Civil Writ Petition No. 4357/2006, decided on 13.12.2010 and *Sukh Singh v. State of Rajasthan* S.B. Civil Writ Petition No. 8339/2011, decided on 6.7.2014.

8. Vehemently opposing the submissions made by learned counsel for the petitioner, learned counsel for the respondents supported the order Annex.-15 placing the petitioner under suspension.

9. It was submitted that the petitioner has been placed under suspension as he was prima-facie found involved in Case No. 279/2012 registered by ACB and keeping in view the fact that until and unless any conclusion is reached after detailed enquiry, keeping the petitioner posted on his present post may lead to possibility of influence or interference in the enquiry/investigation exercising powers under Rule 13 of the Rules of 1958, the petitioner has rightly been suspended; Rule 13(2) of the Rules of 1958 provides for automatic suspension of a Government servant if he is detained in custody for a period of more than forty-eight hours unless the same is revoked by any express order and therefore, the order passed does not call for any interference, the power of suspension is absolute and does not call for any interference.

10. Regarding the jurisdiction of Director to put the petitioner under suspension, it is contended that under Rule 2 of the Rules of 1958, appointing authority means the authority empowered to make appointment to the grade of service, in which the Government servant is included for the time being and as the petitioner was holding the post of Executive Officer, the appointment authority was admittedly State Government/Director and therefore, the order was rightly Passed.

11. Further submission were made regarding nature of allegation against the petitioner and it was submitted that no interference is called for in the facts and circumstances of the case.

12. I have considered the rival submissions made by learned counsel for the parties and have perused the material placed on record.

13. The petitioner has questioned the validity of the order Annex.-15 passed by the Director and Joint Secretary principally on two grounds - (1) for lack of jurisdiction/authority to passing the order and (2) non-application of mind while passing the order impugned.

14. The order dated 7.9.2015 (Annex. 15) reads under:-

15. A bare look at the order reveals that the petitioner, who had worked as Executive Officer, Municipal Board, Rawatbhata was arrested on 5.11.2014 by the ACB, Kota in connection with Case No. 279/12 and remained in custody from 5.11.2014 to 11.11.2014; allegedly, the petitioner did not inform the State Government about the facts and continued to work on his post and when complaint was received by the State Government, report was sought from the Deputy Director, Local Self Government, Udaipur, who gave his report on 19.6.2015; whereafter, it is indicated that from the said facts it was prima facie clear that the petitioner was involved in the case registered by the ACB and till such time, detailed enquiry was held and a conclusion is arrived at there was

likelihood of enquiry being interfered with, in case petitioner was kept on the present post and as the petitioner remained in judicial custody for more than forty-eight hours, exercising powers under Rule 13(2) of the Rules of 1958, the petitioner was placed under suspension; the order was signed by the Director and Joint Secretary.

16. It is not in dispute that the suspension of the petitioner is governed by the provisions of Rule 13 of the Rules of 1958. Sub-rule (1) of Rule 13 provides that the appointing authority or any authority to which it is subordinate or any other authority empowered by the Government in that behalf may place a Government Servant under suspension. Further sub-rule (2) of Rule 13 provides that a Government servant who is detained in custody for a period exceeding forty-eight hours shall be deemed to have been suspended w.e.f. the date of detention, by an order of authority competent to place a Government servant under suspension under sub-rule (1) and shall remain under suspension until further orders.

17. The definition of appointing authority under Rule 2(a) of the Rules of 1958 reads as under:-

"(a) Appointing Authority in relation to a Government servant means-

(i) the authority empowered to make appointments to the service of which the Government Servant is for the time being a member or to the grade of the service in which the Government Servant is for the time being included or

(ii) the authority empowered to make appointments to the post which the Government Servant for the time being holds, or

(iii) the authority which appointed the Government Servant to such Service, grade or post, as the case may be, or

(iv) where the Government Servant, having been a permanent member of any other service or having substantively held any other permanent post, has been in continuous employment of the Government, the authority which appointed him to that service or to any grade in that Service or to any grade in that Service or to the post, -Whichever authority is the highest authority:

Provided that where Government or the Head of Department has delegated the powers to a subordinate authority; the Head of the Department concerned shall be the Appointing Authority for the purpose of rule 23(2)(a)(b)."

18. It may further be noticed that the term appointing authority in the Rules of 1958 has also been used in Rules 15 & 16, wherein the said rules refer to the appointing authority for the purpose of imposing certain penalties, including penalties of dismissal and removal.

19. The expression appointing authority has come to be considered by the Hon"ble Supreme Court in the context of disciplinary proceedings contemplated under Article 311 of the Constitution of India wherein in the case of Mysore State

Road Transport Corporation Vs. Mirja Khasim Ali Beg and Another, AIR 1977 SC 747 : (1977) 1 LLJ 262 : (1977) 2 SCC 457 : (1977) 2 SCR 282 , the Hon"ble Court pointed out that a Government servant had a constitutional right not to be dismissed or removed from service except by an order of the authority, which appointed him or which was equivalent to or coordinate in rank with that authority and order of dismissal or removal by any other authority is violative of Article 311 of the Constitution of India.

20. A bare look at the expression appointing authority, as it appears in relation to the Rules 15 & 16 are concerned, which relates to imposition of penalty of dismissal or removal, the same has to be construed as an authority which appointed the Government servant or an equivalent or co-ordinate or higher authority, which interpretation is warranted by Article 311 of the Constitution of India. However, such a restriction on the construction of the term appointing authority in relation to Rule 13 which deals with suspension is not warranted.

21. The definition of appointing authority as noticed above is contained in four clauses of sub-rule (a) of Rule 2 of the Rules of 1958. For the purpose of punishment involving dismissal or removal, the appointing authority is that which is mentioned under clause (iii) or clause (iv), as the case may be namely the authority which appointed the Government servant. The above two clauses alone, on account of the constitutional stipulation under Article 311, apply to such punishment.

22. The suspension contemplated under Rule 13 does not, however, attract such an embargo and the appointing authority, who is empowered to place a Government servant under suspension in terms of Rule 13 is, therefore, not necessarily the authority defined under clauses (iii) and (iv) of Rule 2 of the Rules of 1958, but any one of the four authorities mentioned under the sub-rule. As would be evident from sub-rules (i) & (ii), the authority empowered to make appointment to the service of which the Government servant "is for the time being a member" or to the grade of the service on which the Government servant for the time being included or "the authority empowered to make appointment to the post which the Government servant for time being holds" are also included in the definition of appointing authority.

23. Admittedly, "for the time being" the petitioner was working as Executive Officer and appointing authority for the said post is Government and therefore, in the instant case, the Director and Joint Secretary, Directorate, Local Self Department, Jaipur squarely fall within clause (i)/(ii), as he was at the time of order of suspension, the competent authority to make appointment to the post which the petitioner held i.e. Executive Officer, on the date of suspension, and therefore was well competent to pass the order Annex.-15.

24. The submission made by learned counsel for the petitioner that for different provisions for the same officer, there cannot be different appointing authorities has no substance. The definition in Rule 2(a) itself contemplates four situations

and as noticed above-923, the appointing authority has to be determined in the context of the nature of order passed. Much reliance was placed on the orders Annex.-13 and Annex.-14, which pertained to grant of prosecution sanction. A look at provisions of Section 19(1)(c) of the PC Act reveals that the prosecution sanction can be granted by "the authority competent to remove the public servant from his office". As noticed, in view of stipulation contained under Article 311 of the Constitution of India the power is restricted as authority must be competent to remove the public servant from office but no such restriction can be invoked for the purpose of suspension.

25. In view of the above, there is no substance in the submissions made by learned counsel for the petitioner regarding the lack of competence of the jurisdiction in the Director and Joint Secretary in passing the order of suspension.

26. So far as the submissions made regarding the validity of the order passed by the respondents placing the petitioner under suspension is concerned, this Court in the case of Samrath Singh (supra) while indicating the philosophy of the suspension and the requirements for passing a valid suspension order held as under:-

"The concept of suspension during the inquiry or trial is an important and larger objective of ensuring free and fair conduct of proceedings. Where serious allegations of misconduct are imputed or the employee is undergoing trial for the grave charges, it may be undesirable in the interest of service to continue him on the post. In such circumstances, suspension is a mode for fair and free inquiry as otherwise it would be difficult to facilitate free investigation. However, in every case of suspension its desirability is required to be examined by the competent authority by taking into consideration existing facts. Although the suspension is not a punishment specified, an order of suspension is not required to be passed lightly or mandatorily in every case of the circumstances referred above. Suspension is not required to be resorted unless the allegations against government servant are so serious that those shakes public confidence in governance, if such employee is permitted to continue in office till establishment of his innocence. Before placing an incumbent under suspension, various eventualities are required to be taken into consideration by the competent authority.

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."

27. In the present case, a bare look at the order impugned (Annex. 15) as

quoted hereinbefore would reveal that the petitioner remained in custody from 5.11.2014 to 11.11.2014 for ACB Case No. 279/2012, an allegation was made that the petitioner did not inform about the facts and continued to work on the post and the State Government came to know of the same only when a complaint was received against the petitioner.

28. Further with reference to ACB Case No. 279/2012, it has been indicated that till detailed enquiry is held and a conclusion is reached, there was likelihood of interference in the enquiry. However, apparently, it has not been considered that qua the ACB Case No. 279/2012, a charge-sheet had already been filed by the ACB before the Special Judge (Anti Corruption Cases) Udaipur and essentially, nothing remained to be enquired into in this regard, further the fact that the petitioner remained in custody for more than forty-eight hours way-back in November, 2014, to place the petitioner under suspension for the fact that he remained in custody cannot be said to be a valid exercise of powers under Rule 13 of the Rules of 1958.

29. The submissions made by learned counsel for the respondents that as the suspension under Rule 13(2) of the Rules of 1958 is automatic, the petitioner was bound to be put under suspension is not borne out from the language of the provisions, inasmuch as, the provision envisages passing of the order by the authority competent to place the Government servant under suspension under sub-rule (1) and only implication of the provisions regarding the Government servant being deemed to have been suspended w.e.f. the date of detention is apparently in case the order of suspension is passed while the person is still in custody and not if the order is passed after a passage of 10 months, as in the present case.

30. Further there is no reference of any departmental proceedings having been initiated or contemplated against the petitioner regarding which there may be likelihood of any interference by the petitioner. It may also be noticed that the allegation pertains to the period when the petitioner was working as the Executive Officer, Municipal Board, Rawatbhata and presently, the petitioner is serving as Executive Officer, Municipal Board, Itawa and as the petitioner is not even serving at the place regarding which the charges are pending/likely to be investigated sometime in future, there does not appear to be any objective consideration by the competent authority while passing the order dated 7.9.2015 (Annex.-15) placing the petitioner under suspension.

31. In view of above discussion, while the jurisdiction of the Director and Joint Secretary to put the petitioner under suspension is upheld, it is apparent that the order impugned has been passed by the competent authority without proper application of mind, consequently, the writ petition is allowed and the order dated 7.9.2015 (Annex. 15) placing the petitioner under suspension is quashed and set-aside.

32. However, it would be open for the competent authority to examine all the

existing circumstances and pass a fresh order by exercising power within parameters of Rule 13 of the Rules of 1958, if the same is required in the circumstances of the case.