
(2014) 01 RAJ CK 0051

In the Rajasthan High Court

Case No : Civil Special Appeal No. 239 of 2013 in CWP No. 3056 of 2013

Prakash Dharu

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 17-01-2014

Acts Referred:

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

Citation : (2014) LabIC 1748 : (2014) 3 SCT 505

Hon'ble Judges : Govind Mathur, J; Banwari Lal Sharma, J

Bench : Division Bench

Advocate : Vandana Bhansali, Advocate for the Appellant; Anil Bissa, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

1. To question correctness of the order dated 22.3.2013 passed by learned single Bench, this special appeal is preferred. The appellant, an Assistant Sub-Inspector in Rajasthan Police, was placed under suspension by the competent authority under order dated 17.7.2012 on being caught red handed by the Anti Corruption Bureau, while accepting a bribe of Rs. 5000/-. The petitioner-appellant challenged the same by way of filing a petition for writ, mainly on the count that the power placing the petitioner under suspension was exercised arbitrarily and further that the matter was under investigation and the delay in that was causing prejudice to him. Learned single Judge, while dismissing the petition for writ, observed as under :--

I would deem it just and proper to direct the Anti Corruption Bureau to expedite the investigation into the matter of the FIR against the petitioner and reach a conclusion thereon expeditiously and in no event beyond of period of three months from the presentation of certified copy of this order. The petitioner would also be free to make any representation as he deems fit to the Anti Corruption Bureau to render assistance in the pending investigation.

2. Being dissatisfied with affirmation of the order of suspension, this appeal is preferred and the argument advanced by counsel for the appellant is that the competent authority exercised powers under Rule 13 of the Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958 (hereinafter referred to as "the Rules of 1958") in quite mechanical manner. It is asserted that a Government servant should not be placed under suspension without adequate application of mind and without examining the actual need to place a Government servant under suspension. According to learned counsel, the purpose of placing a person under suspension is to prevent the person concerned to remain in the position that may be sufficient to influence and tamper with the evidence available against him. The competent authority, therefore, must examine the possibilities of tampering with the evidence in the event of continuation of Government servant/employee in service and suspension should be made only after arriving at a conclusion about positive chances of influencing the evidence. As per learned counsel in the instant matter no such consideration was made.

3. Heard learned counsels.

4. In service jurisprudence suspension is a device to keep a Government servant out of touch from his service duties due to several reasons including maintaining faith of the public at large in service, to remove any eventuality of causing any injury to the adverse material available against the delinquent Government servant/employee that may be used in establishing his delinquency. The device is of an interim nature and that does not break the relationship of master and servant, but precludes the employee from discharging his official duties. Suspension is neither stigmatic, nor a punishment, but certainly it is an extraordinary eventuality, thus, should be exercised very cautiously and by proper application of mind. In the instant matter the appellant, who is a member of Rajasthan Police, was caught red handed while accepting bribe. Acceptance of bribe or illegal gratification is not only a serious misconduct, but a crime too. It also cause damage to entire service and its general reputation. In the event of serious and well founded allegation of accepting bribe, the suspension from service is highly desirable. Beside that, it is further relevant to notice that Rule 13 of the Rules of 1958 in specific terms empowers competent authority to place a Government servant under suspension in such eventuality. The petitioner was caught red handed by the Anti Corruption Bureau while accepting bribe and on basis of that a criminal case was lodged, thus, the causing of injury to the reputation of service at large was on face. In such a circumstance suspension of the petitioner-appellant was a correct measure, hence, the order of suspension does not suffer from any wrong.

5. The next question that requires consideration is that the petitioner is facing suspension since 17.7.2012. He is also getting subsistence allowance in accordance with the Rules. As per the respondents the suspension of the petitioner is yet desirable as a criminal case has already been registered against

him for the offences punishable under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act.

6. True it is, suspension of a person who is found involved in corruption cases is highly desirable, but at the same time the competent authority is required to review the need of such suspension, as that cannot remain in currency for an indefinite period. The prolong suspension too is having its adverse effects to service as well as for the employee. This Court in *Prem Prakash Mathur v. State of Rajasthan & Ors.*, reported in 2005(9) RDD 3962 (Raj), while considering the issue in relation to prolong suspension held as under:--

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.

7. In the case in hand the petitioner was placed under suspension on 17.7.2012. He is receiving subsistence allowance without discharging duties. It is also not in dispute that the criminal case lodged against him will also take huge time in its disposal. Keeping a Government servant under suspension for such indefinite period shall ruin his efficacy as well as that shall be an unnecessary burden on State exchequer. In such circumstance, specially when the investigation has already been completed and there are no chances of tampering with the evidence available, it shall be appropriate to revoke the suspension. The eventuality of causing injury to public faith in service may be checked by adopting the precautionary measures. The respondents may give non field posting to the employee in a District of the employer's choice. We are of the opinion that after a lapse of about one and half year from the date of suspension the better course is to revoke suspension of the petitioner and to post him with same non field duties, in stead of making payment of subsistence allowance without utilising his service. Accordingly, the special appeal is disposed of by directing the respondents to revoke suspension of the petitioner-appellant and further to post him outside his parent police range on a post that is not carrying field duties.