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**(2016) 02 MP CK 0058**  
**In the Madhya Pradesh High Court**  
**Case No : W. P. No. 3269 of 2015**

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|---------------------------------|----|------------|
| Rajeev Lochan Sharma and others | Vs | APPELLANT  |
| State of M.P. and others        |    | RESPONDENT |

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**Date of Decision :** 18-02-2016

**Acts Referred:**

Constitution of India, 1950 — Article 16, 226

**Citation :** (2016) 2 MPLJ 522

**Hon'ble Judges :** Sujoy Paul, J.

**Bench :** Single Bench

**Advocate :** Anil Khare, Senior Advocate with H.S. Chhabra, Advocate, for the Appellant; Lalit Joglekar, Panel Lawyer and Swapnil Ganguly, Advocate, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Sujoy Paul, J.—In this petition filed under Article 226 of the Constitution of India, petitioners have challenged the suspension orders dated 27-2-2015 (Annexure P/7).

2. Draped in brevity, the relevant facts are that the petitioners are employees of respondent No. 2/M.P. State Mining Corporation Limited (Corporation). The Corporation, by impugned order dated 27-2-2015 placed the petitioners under suspension. In the suspension order it is stated that petitioners demanded bribe for payment of vehicle bill of the complainant. The petitioners were caught red-handed by Special Police Establishment of Lokayukta Organization. A criminal case under section 7 and section 13(1) (d) and 13(2) of Prevention of Corruption Act is registered against the petitioners on 24-7-2013. The registration number of criminal case is 88/13. It is further stated in the suspension order that challan has already been filed before the Special Court on 18-2-2015. Thus, by invoking Clause-54(1) of M.P. State Mining Corporation Limited (Service and Conduct Rule) (Rules), the petitioners are placed under suspension.

3. Shri Anil Khare, learned Senior counsel for the petitioners criticized this order and contended that a plain reading of Clause-54 makes it clear that it is only an enabling provision. Employees can be placed under suspension provided a criminal charge is pending against the employee. It is urged that as per Clause-54 the words "criminal charge is pending" must be treated as "framing of charge" as per the provision of Criminal Procedure Code. It is submitted that in the present case the trial would be "warrant trial" as per section 240 of Criminal Procedure Code. Hence the aforesaid words must be understood as "framing of charge" in a criminal case. Secondly, it is urged that the petitioners are placed under suspension without independent application of mind. They were suspended because of the letters issued by the Lokayukta Organization. To bolster this submission, attention is drawn on letters dated 19-2-2015 (Annexure P/4) and 24-2-2015 (Annexure P/5). Learned counsel for the petitioners also relied on certain note-sheets which are obtained under the Right to Information Act, 2005 and filed with the rejoinder. By taking this court to the said note-sheets, it is argued that the petitioners are placed under suspension on the basis of Rule 9(1) (b) of the M.P. Civil Services (CCA) Rules, 1966 (hereinafter called as 'CCA Rules?'). It is further submitted that CCA Rules are differently worded. As per Rule 9(1) (b) (first proviso) a Government servant shall be invariably placed under suspension when challan for a criminal offence involving corruption or other moral turpitude is filed against him. It is further submitted that in the present case Clause-54 is an enabling provision and there is no element of compulsion in that clause to place the employees under suspension. It is urged that since in Clause-54 of the Rules, the words "criminal charge is pending" is not defined, the relevant provision of CCA Rules i.e. Rule 9 may be seen in this regard. Rule 9 talks about filing of challan for a criminal offence.

4. Shri Swapnil Ganguly, learned counsel for the Corporation contends that aforesaid two letters were written by Lokayukta Organization to the Corporation but the said letters were not the reason for placing the petitioners under suspension. By placing reliance on the judgment of this Court passed in W. P. No. 438/15 (Ashok Mishra v. State of M.P.), it is submitted that the Lokayukta Organization in its duty can apprise the department about the legal position. Such reminders in relation to performance of duty of the employer, by no stretch of imagination can be treated to be a pressure or threat created by the Lokayukta Organization. Arguments are also advanced by Shri Pankaj Dubey, learned counsel for the Lokayukta Organization and Shri Lalit Joglekar, Panel Lawyer for the State. It is common ground taken by the respondents that in view of the reasons assigned in the suspension order, it is clear that necessary ingredients for invoking Clause-54 of the Rules were available. It is submitted that the contention of the petitioners that words "criminal charge is pending" must relate with "framing of charge" as per Criminal Procedure Code, is a misconceived notion. It is submitted that the words "criminal charge" must be treated in the manner in which it is understood by a common man. It is further urged that in view of serious allegations mentioned in the suspension order, no

interference be made. Shri Pankaj Dubey relied on the judgment of Calcutta High Court in the case of Narendra Chandra Rudra Pal v. Subrali Bhuiya, AIR 1925 Calcutta 822.

5. The parties confined their arguments to the extent indicated above.

6. I have bestowed my anxious consideration on the rival contentions and perused the record.

7. I deem it proper to reproduce Clause-54 of the Rules on which heavy reliance is placed by the parties :?

"54. Suspension

(1) If a Criminal charge is pending against an employee he may be placed under suspension by the appointing authority or by an authority empowered in this behalf by the Board, by a general or special order."

(Emphasis supplied)

The interesting conundrum in this case is about the meaning of words "criminal charge is pending". Shri Anil Khare, learned Senior counsel has taken pains to submit that the said words must be understood as "framing of the charge" in the criminal case. This point needs serious consideration. This is trite law that the intention of rule maker is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. (See : Gwalior Rayon Silk Mfg. (Wvg) Co. Ltd. v. Custodian of Vested Forests, 1990 Supp. SCC 785, State of Maharashtra v. Handed Prabhani Operator Sangh, (2000) 2 SCC 69 and Grasim Industries Ltd. v. Collector of Customs, (2002) 4 SCC 297.

8. It is indisputable that Clause-54 does not talk about criminal charge in a criminal case. Thus what has not been said is not-required to be read into or injected into the statute. The plain language of statute talks about pendency of a criminal charge. The word "criminal charge" is defined in Black Law Dictionary as under:?

"An accusation of crime, formulated in a written complaint, information or indictment and taking shape in a prosecution."

As per this dictionary meaning and as per meaning of "charge" which is understood in common parlance, it is related to accusations or imputations about the crime and does not mean the same thing as "charge" in Criminal Procedure Code. Thus, in my view, as per the text and in the context in which the words "charge is pending" are used must be related to accusation and not related to "charge framed" in a criminal case. This is also settled that the interpretation must depend upon the text and the context. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. (See : RBI v. Peerless General Finance and Investment Co. Ltd., (1987)

1 SCC 424. Adopting the principle of literal construction of the statute alone, in an circumstances without examining the context and scheme of the statute, may not subserve the purpose of the statute. In the words of V. R. Krishna Iyer, J. such an approach would be "to see the skin and miss the soul". Whereas, "The judicial key to construction is the composite perception of the deha and the dehi of the provision". (See: Board of Mining Examination v. Ramjee, (1977) 2 SCC 256, Ajay Maken v. Adesh Kumar Gupta, (2013) 3 SCC 489).

9. As analysed above, the contention of the petitioners cannot be accepted that the words "criminal charge" must be read as "framing of charge" in a criminal case.

10. In my considered opinion, the language of the statute is clear and the words "criminal charge" is not linked with any stage of any criminal case. I find support from the judgment of the Supreme Court in the case of S. Govinda Menon v. Union of India, AIR 1964 SC 787. In the said case the appellant before the Apex Court was a member of the Indian Administrative Service. He was the First Member of the Board of Revenue, Kerala State and was holding the post of Commissioner of Hindu Religious and Charitable Endowments. On the basis of certain complaints containing allegations of misconduct against the appellant in the discharge of his duties as such Commissioner the Kerala Government instituted certain preliminary enquiries and thereafter started disciplinary proceedings against him and also placed him under suspension under Rule 7 of the All India Services (Discipline and Appeal) Rules. One of the grounds urged by the appellant was that the order of suspension which was dated March 8, 1963 was not in compliance with rule 7 inasmuch as definite charges were framed against him only on 6th June, 1963. On the basis of rule 5(2) it was argued that the word "charges" which occurred in this rule and in rule 7 should be given the same meaning and no order of suspension could be passed under rule 7 before the charges in terms of Rule 5(2) were framed against him. This was turned down by Supreme Court observing : It is seen that "Rule 5(2) aforesaid prescribes that the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges. The framing of the charge under Rule 5(2) is necessary to enable the member of the Service to meet the case against him. The language of rule 7(1) is however different and that rule provides that the Government may place a member of the Service under suspension "having regard to the nature of the charge/charges and the circumstances in any case if the Government is satisfied that it is necessary to place him under suspension. In view of the difference of language in rule 5(2) and rule 7, the Apex Court was of the opinion that, the word charges? in rule 7(1) should be given a wider meaning as denoting the accusation or imputation against the member of the Service.

The Apex Court held that the words "charge" should be given wider meaning as accusation or imputation against the officer. The similar question again cropped-up before the Supreme Court in the case of Government of India, Ministry of

Home Affairs and others v. Tarak Nath Ghosh, (1971) 1 SCC 734. The Apex Court opined that when serious allegations of misconduct are imputed against a member of a Service normally it would not be desirable to allow him to continue in the post where he was functioning. If the disciplinary authority takes note of such allegations and is of opinion after some preliminary enquiries that the circumstances of the case justify further investigation to be made before definite charges can be framed, it would not be improper to remove the officer concerned from the sphere of his activity inasmuch as it may be necessary to find out facts from people working under him or look into papers which are in his custody and it would be embarrassing and inopportune both for the officer concerned as well as to those whose duty it was to make the enquiry to do so while the officer was present at the spot.

It was further held in Tarak Nath Ghosh (supra) that in principle, there is no difference between the position of an officer against whom definite charges have been framed to which he is required to put in his written statement and a situation where on receipt of allegations of grave misconduct against him the Government is of the opinion that it would not be proper to allow the officer concerned to function in the ordinary way.

In para-10 of the said judgment, the Apex Court further held that there are series of judgments which throw considerable light on power of master; including the Government to suspend the servant or an officer under the rules of service or even dehors such rules. In view of the judgment of Tarak Nath Ghosh and S. Govinda Menon (supra), it is not possible to give a restrictive meaning to the words "criminal charge". Thus, this contention being devoid of substance, is rejected.

11. The second aspect is related to the question of pressure allegedly mounted by the Lokayukta organization. No doubt, the Lokayukta organisation has written certain letters to the respondent/ Corporation. However, it is seen that the reasons for placing the petitioners under suspension are spelled-out in the suspension order itself. I am unable to hold that petitioners are placed under suspension because of any incorrect, irrelevant or extraneous consideration. The basic question is whether the relevant ingredients are available in the present case for placing the petitioners under suspension ? It is trite law that suspension is not a punishment as held in the case of State of Orissa Through its Principal Secretary, Home Dept. v. Bimal Kumar Mohanty, (1994) 4 SCC 126. The relevant portion reads as under :?

"Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words, it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the

delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc."

(Emphasis supplied)

It was further held that the authority also should keep in mind the public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge.

12. It is profitable to mention here that in Bimal Kumar Mohanty (supra) serious allegations of financial irregularities were made against the officers. The Apex Court opined that since serious allegations of misconduct have been alleged against the respondent, the tribunal was not justified in interfering with the order of suspension of the employee.

13. In the present case, the petitioners are placed under suspension because of the reasons mentioned in the suspension order. They were caught red-handed while accepting the bribe. The challan has already been filed before the Court on 18-2-2015. Thus, a criminal charge is already pending against the petitioners. This is also not in dispute that the charge has also been framed by the Special Court on 5-11-2015.

14. In view of the aforesaid discussion, it is clear that necessary ingredients for placing the petitioners under suspension were available and respondents have not committed any legal error in placing the petitioners under suspension. Hence, no interference is warranted by this Court. The petition is devoid of substance and is hereby dismissed. Interim relief is vacated. There shall be no order as to costs.