
(1984) 08 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 1379 of 1984

Rambhan Raghobaji Rewatkar

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 09-08-1984

Acts Referred:

Constitution of India, 1950 — Article 309

Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 — Rule 29(1)

Citation : (1986) 1 LLJ 107

Hon'ble Judges : Ginwala, J;D.V. Patel, J

Bench : Division Bench

Judgement

Ginwala, J.—The petitioner, who was then working as Sales-tax Officer, Class I at Nagpur, has been placed under suspension under Government Resolution dated 31st March, 1983 pending investigation in respect of the charge of demanding and accepting illegal gratification. The said order of suspension continued till 11th June, 1984 when this petition was filed, and is still continuing. Relying on the circular issued by the State Government on 18th September, 1974, the petitioner contends that the suspension cannot continue beyond a period of six months and that if it had to be continued beyond that period, it could be done so only for a further period of three months under the orders of the Chief Secretary to the Government. He contends that in view of the clear directions given in the circular, the order placing him under suspension should have been revoked and he should have been permitted to resume his duties. It is with this grievance that he has come to this Court for appropriate relief.

2. The said circular has been produced at Annexure A in this petition.

3. In its return, the State Government contends that "the circular is not mandatory and the cases of serious nature involving the offence under Prevention of Corruption Act are not covered by that circular about the progress of the prosecution." It is contended that in view of the serious nature of the offence of which the petitioner is charged, it is not a fit case where the order of

suspension could be revoked and he could be reinstated in service. It is submitted that it is entirely the discretion of the State Government whether to or not to prosecute the person after six months and that it depends upon facts and circumstances of each case.

4. The contention of the State Government that the circular does not cover cases involving offences under Prevention of Corruption Act appears to be misconceived. Bare perusal of the circular would at once show that cases of officers who are suspended pending investigation of charges of corruption under the provisions of Prevention of Corruption Act, are not exempted from its operation.

5. However, at the hearing, Mr. A. A. Desai, the learned Assistant Government Pleader for respondent 1, submitted that at any rate the said circular not being statutory instrument or rule could not be sought to be enforced by the petitioner against the State Government. Mr. Desai submitted that the circular contains mere executive or administrative instructions for the guidance of the officers concerned and the petitioner cannot base any right whatsoever on it. In support of this contention, Mr. Desai submitted that the very fact that this circular is marked as "confidential" would indicate that the State Government never intended this to be a rule governing conditions of service of its employees and if that is so, it cannot confer any right on the petitioner or persons like him for getting the suspension order revoked after the period of six months or the extended period of nine months. Mr. Desai further submitted that in any case that circular does not hold the field in view of specific provision now being made by the State Government in that behalf by the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 made in exercise of the powers conferred by Art. 309 of the Constitution. Mr. Desai pointed out that R. 4(1), which authorises the authority concerned to place an employee under suspension, itself lays down the outer limit for the period of suspension and Cl. (c) of this Sub-rule, according to him, would show that in case where an employees is suspended because of the case against him in respect of any criminal offence being under investigation, inquiry or trial, the outer limit would be the termination of the inquiry or trial, as the case may be and it cannot be said that in such a case the suspension is for an indefinite period. He pointed out that the said rules under which the petitioner has been suspended do not lay down any definite period for which the suspension can last and on the expiry of which it was to be revoked.

6. On the other hand, Mr. Manohar, the learned counsel for the petitioner, submitted that in spite of the abovesaid rules made by the State Government, the circular would survive its effect by virtue of R. 29(1)(iv)(a) under which the previous operation of any notifications of orders made, or anything done, or any action taken under the rules repealed are saved. Mr. Manohar strenuously contended that the circular prescribes the condition of service relating to suspension of government employees and though it does not specifically state so, it has been issued in exercise of the power derived by the State Government

from proviso to Art. 309 of the Constitution. He submits that this, being the condition of service governing the employee, it was enforceable in the court of law and if the State Government contravened the provisions of this circular, it can be said that it is guilty of breach of statutory duty cast upon it. For the proposition that the circular is a rule made under proviso to Art. 309 of the Constitution, Mr. Manohar seeks to rely on the decision of Full Bench of this Court in Chandrakant Sakharam Karkhanis and Others Vs. State of Maharashtra and Others, . Mr. Manohar further submitted that it is not open to the Government to place its employee under suspension for an indefinite period as doing so would be in contravention of principles of natural justice and in support of this proposition, he seeks to rely on the decision of a Division Bench of the Madras High Court in the The State of Madras Vs. K.A. Joseph, .

7. The question, therefore, which falls for consideration is as to what is the nature or effect of this circular. It is true that it is nowhere stated in it that it has been issued by the State Government in exercise of the power derived under the proviso to Art. 309 of the Constitution. But, as held by the Full Bench of this Court in Chandrakant's case (supra), that cannot be a circumstance to hold that it has not been made in exercise of the said power. The Full Bench has held that although a circular, Order or Resolution of the Government does not expressly state that the same is made or issued in exercise of the powers conferred under the proviso to Art. 309, it could be construed to be one issue or made in exercise of the said power if some conditions are satisfied, namely, the contents of such circular, order or resolution mainly or substantially deal with the topic of recruitment rules and/or service conditions of Government employees and secondly it contains rules or principles of general applicability. According to the Full Bench, if the said instrument does not meet these two requirements, it can be taken merely as containing executive instructions and will not partake of the nature of rules made under the said article governing the conditions of service of government employees.

8. It cannot be gainsaid that the circular is of general application. It is not issued merely to cover a particular case or small class of cases. It contains directions as to how the cases of those Government employees who are suspended pending investigation are to be dealt with and when their suspension would be revoked. However, this by itself would not make it a rule embodying conditions of service as contemplated by the proviso to Art. 309 of the Constitution. The question, therefore, remains whether in issuing this circular, the Government intended to make a rule governing conditions of service. This, in our opinion, is not so and one factor which goes strongly against the petitioner is the fact that the circular has been marked as "confidential". It is impossible to conceive that a rule governing conditions of service of Government employees made under the proviso to Art. 309 of the Constitution would be treated as confidential. The very purpose of making such rule is to apply it to all the Government employees and if that is so, it cannot be kept secret from them. In our view, therefore, this circular cannot be treated as a rule governing conditions of service namely

suspension of government employees and is, therefore, not enforceable in Court of law.

9. In view of what we have said above, it is not necessary for us to consider whether the circular has survived the Rules of 1979. However, if our finding is required on it, we would say that it does not. Sub-rule (1) of R. 29 lists the rules which stand repealed on the commencement of the Rules of 1979. Proviso (a) to sub-rule (1) merely says that such repeal shall not affect the previous operation of any notifications or orders made, or anything done, or any action taken under the rules so repealed. Obviously, therefore, only those notifications or orders which are made under the rules which are repealed are saved. The circular under consideration does not appear to have been issued or made under any of the rules which have been repealed. It is not, therefore, possible to say that this circular is saved under this rule.

10. Coming to the decision of the Madras High Court in *State of Madras v. K. A. Joseph* (supra), no doubt the principle propounded therein is exemplary. It is true that no government employee should suffer indefinite suspension. Now whatever has been said by the Madras High Court seems to be in the context of some order passed therein which has not been reproduced in the judgment. Even the rules have not been reproduced. It is not possible to say in what circumstances such an order came to be passed and whether the suspension was pending any investigation over which the State Government would not have any control. As we have pointed out in the present case under R. 4(1)(c), the suspension would be coterminous with the investigation, inquiry or trial which would not be indefinite in that sense of the term. It is not, therefore, possible to say that the petitioner has been placed under suspension indefinitely thus violating the principles of natural justice as held by the Madras High Court. However, we hope that the State Government would look into the matter and see that speedy action is taken against the petitioner if it is contemplated. For these reasons, the writ petition is dismissed and the rule discharged.