
(1987) 12 GUJ CK 0003
In the Gujarat High Court

R.S. Jagtap

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 15-12-1987

Acts Referred:

Citation : (1988) 1 GLR 429

Hon'ble Judges : J.P. Desai, J

Bench : Single Bench

Judgement

J.P. Desai, J.—The petitioner was given charge-sheet on 10-2-1986 in connection with some alleged mis-conduct of June, 1984. The Inquiry Officer submitted report on 31-7-1987 and thereafter on 9-11-1987, the respondent No. 2 director General of Police, Gujarat State issued notice to the petitioner to show-cause why he should not be dismissed from service and at the same time passed the order placing the petitioner under suspension. Being aggrieved with the order of suspension, the petitioner has filed this petition. The petition has been admitted by this Court and at that time, the ad-interim relief was granted in terms of para 18(B) and 18(C). The petitioner, in pursuance of the aforesaid interim order, has been reinstated in the service and he is now in active service.

2. The petitioner was not placed under suspension at the time of giving charge-sheet to him in the month of Feb. 1986. Even after the receipt of the report of the Inquiry Officer in the month of July, 1987, the Director General of Police, Competent Authority, did not think it fit to place the petitioner under suspension. But after receiving the report of the Inquiry Officer in the month of November, 1987, he thought it proper to place the petitioner under suspension because he had reached tentative decision to dismiss the petitioner from service and issued a notice to the petitioner to show-cause why that penalty should not be imposed upon him.

3. The Concerned Authority did not think it proper to place the petitioner under suspension for the period of 1 year and 5 months i.e. the period during which the inquiry proceeded. It was only 4 months after the receipt of the report of

Inquiry Officer that the petitioner had been issued show-cause notice and was placed under suspension. It is difficult to contemplate how the petitioner could have been placed under suspension pending inquiry when inquiry was almost over and report of the Inquiry Officer was received. The learned Addl. G.P. submits that because notice was issued to the petitioner to show-cause against the proposed order of dismissal, the petitioner might adopt dishonest means and therefore, it was thought it proper to suspend the petitioner from service. If the Charges were so grave, then the petitioner should have been suspended in the month of February 1986 without waiting till the result of the inquiry. On the contrary, the fact that the petitioner has been placed under suspension while issuing notice, would show that the concerned authority had already made up its mind to dismiss the petitioner and that show-cause notice was given only to make it appear that an opportunity was given to the petitioner to had his say. I do not think that a person can be placed under suspension pending inquiry in the circumstances stated above. It may be that at the time of giving chargesheet, the concerned authority may not think it proper to suspend the petitioner immediately and may wait till some evidence is recorded or may suspend the delinquent if he is tampering with the witnesses, but it is difficult to contemplate how the petitioner could be suspended after the inquiry is almost over.

4. One Police Inspector G.I. Patil was also suspended after the inquiry was over and he filed Spl. C.A. No. 4949 of 1987 before this Court and this Court allowed the said Spl. Civil Application by the judgment dated 14-10-1987. In that case also, the petitioner was suspended after the inquiry was almost over. The only difference in that case was that there were two persons against whom joint inquiry was held and while said Shri G.I. Patil was suspended, the other delinquent was not suspended. Except that, difference in the facts, the facts are almost identical so far as the said case of Shri Patil and the present case is concerned. That decision was rendered by this Court on 14-10-1987 and that decision stands because no appeal appears to have been filed against the said order. It is surprising that inspite of the aforesaid decision dated 14-10-1987 in Spl. C.A. No. 4949 of 1987 wherein the Director General of Police was a party-respondent, the present order of suspension is passed. The Director General of Police should have realised that when there was a decision of this Court laying down that a person cannot ordinarily be suspended after inquiry is almost over, it was not proper for him to again pass an order of similar nature suspending the present petitioner at the close of inquiry. If the Director General of Police was inclined to take a different view, he should have gone in appeal against the judgment of this Court rendered in Spl. C.A. No. 4949 of 1987, but he could not have ignored that decision and passed a similar order again within a month from the decision rendered on 14-10-1987. I hope that the Director General of Police will realise the seriousness of following the judgment of this Court and see that he does not pass any such orders which are directly in conflict with the decision of this Court. The decision of this Court stands till it is reversed or modified by a higher forum. I hope that such an incident will not be repeated at the end of the

Director General of Police.

5. As a result of the aforesaid discussion, this Spl. C.A. is allowed and the order of suspension is hereby quashed.

6. The petitioner has already replied to "the show-cause notice. The Director General of Police should take decision in the matter at the earliest and if any order is passed dismissing or removing the petitioner from the services, that order should not be implemented for a period of 15 days so as to enable the petitioner to prefer appeal to the appropriate authority as may be permissible under the Rules.

Rule made absolute to the above extent with no order as to costs.