

(2015) 04 AHC CK 0060
In the Allahabad High Court
Case No : Writ A Nos. 3204 and 4648 of 2015

Sanjeev Nayan Mishra and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 20-04-2015

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2015) 4 ADJ 440 : (2015) 6 ALJ 44 : (2015) 111 ALR 20 : (2015) 3 AWC 3030 : (2015) 3 ESC 1435 : (2015) LabIC 4346 : (2015) 3 UPLBEC 2188

Hon'ble Judges : Vimlesh Kumar Shukla, J;Ranjana Pandya, J

Bench : Division Bench

Advocate : Y.S. Sachan and Manish Goyal, for the Appellant

Final Decision : Dismissed

Judgement

1. Brief background of the case giving rise to both writ petitions are that the State Government came out with policy decision for extending the benefit to the student taking education in the State of U.P. belonging to different categories such as Scheduled Caste, Scheduled Tribes and where the income of the parents do not exceed Rs. 2.00 lacs per annum to provide scholarship and fee reimbursement depending upon the category and the class to which a student belongs to. In the said direction Rules were framed known as U.P. Post Metric Scheduled Castes/Scheduled Tribes Scholarship Scheme Rules, 2012, vide Notification in Official Gazette dated 26.09.2012. In the said Rules in question, certain amendments have been carried, firstly on 02.07.2013 and then on 02.12.2013.

2. Large scale complaints have been received that there has been gross financial irregularities in distribution of scholarship in collusion of authorities and the institutions and on account of the same incumbents for whose benefit, scheme has been floated and formulated have not been extended the aforesaid benefit.

3. After acquiring the knowledge of the same, for academic year 2013-14 inquiry

committee was constituted on the directives of Directorate Social Welfare and the said inquiry committee submitted its report on 07.11.2014 giving therein the details of the financial irregularities that has been so committed and the said report in question has been made foundation and basis for placing Sanjeev Nayan Mishra, petitioner, who has been holding the charge of District Social Welfare Officer, Meerut at the said point of time, under suspension and Sanjeev Nayan Mishra, is now before this Court by filing Civil Misc. Writ Petition No. 3204 of 2015 questioning the validity of the decision so taken by the State Government of placing him under suspension.

4. Shiv Kumar Ojha, petitioner of Civil Misc. Writ Petition No. 4648 of 2015, who has been holding the charge of District Inspector of Schools, Meerut, at the relevant point of time based on the same report has also been placed under suspension by the State Government on 16.01.2015 and said action of State Government has same impelled him to be before this Court questioning the validity of the decision placing him under suspension.

5. As action against both the officers have been taken based on common inquiry report, accordingly both the writ petitions have been taken up together.

6. Sanjeev Nayan Mishra, District Social Welfare Officer, the petitioner of Civil Misc. Writ Petition No. 3204 of 2015, is submitting before this Court that as far as he is concerned, at no point of time he could be held responsible for the misconduct that has been so attributed to him, as it was not at all job of District Social Welfare Officer to upload the data in question and whatever decision has been taken on the same, has been on the basis of data furnished and the said data were to be scrutinized by the officers of the Education department, as per the scheme of things provided for. In view of this as far as he is concerned, he could not be placed under suspension and in the present case in mechanical manner without recording satisfaction that charges in question so leveled are substantiated from any material that would result in awarding major penalty, order of suspension has been passed.

7. Shiv Kumar Ojha, District Inspector of Schools petitioner of Civil Misc. Writ Petition No. 4648 of 2015 who is District Inspector of Schools has proceeded to mention that in reference of distribution of scholarship for the academic year 2013-14 certain financial irregularities has been pointed out in the inquiry report of Director, Social Welfare dated 20.11.2014 and the said inquiry report has been made foundation and basis for placing him under suspension whereas he has not at all distributed the scholarship as he has no role to play in the distribution of scholarship and whatever role is to be played, the same was to be played by the Regional Higher Education Officer, who has also been placed under suspension in the past but thereafter his suspension has been revoked. In view of this, his suspension order is bad.

8. In Civil Misc. Writ Petition No. 3204 of 2015, counter affidavit has been filed and therein reliance has been placed on the Government Order dated 01.09.2011

fixing responsibility in the matter of committing financial irregularities in distribution of fee reimbursement to the ineligible institutions by the District Social Welfare Officer and the copy of the chargesheet that has been so issued to the petitioner has also been filed as well as copy of the first information report lodged against the institutions has also been appended.

9. To this counter affidavit, rejoinder affidavit has been filed appending therein copy of the guidelines for the year 2011-12, copy of the letter written by the petitioner dated 04.07.2013 as well as copy of the letter written by the petitioner dated 08.11.2013.

10. In Civil Misc. Writ Petition No. 4648 of 2015, short counter affidavit has been filed appending therein copy of the Rules of 2012 as well as copy of the instructions received from the Director Social Welfare, U.P. dated 10.02.2013. Specific averment has been made that petitioner cannot escape from his liability, inasmuch as entire data received from the institutions up to 28.01.2015 has been forwarded by him and only data received during the period starting w.e.f. 29.01.2015 to 31.01.2015 has been forwarded by Regional Higher Education Officer and he played key role in the same having forwarded the application forms of the concerned institutions wherein large scale irregularities have been committed.

11. To this short counter affidavit also, rejoinder affidavit has been filed appending therein copy of the relevant provision as contained under U.P. Post Metric Scheduled Castes/Scheduled Tribes Scholarship Scheme Rules, 2012 so amended vide Notification dated 02.12.2013, copy of the letter dated 28.1.2014; copy of the report of District Level Committee dated 12.03.2014 and copy of the report of five members committee submitted by Joint Director (Admn.) dated 11.11.2014 and 07.11.2014 respectively have also been appended alongwith the rejoinder affidavit.

12. After pleadings mentioned above in the both the writ petitions have been exchanged, both the writ petitions have been taken up together for final hearing and disposal with the consent of the parties.

13. Sri Manish Goyal, Advocate representing Sanjeev Nayan Mishra, has assailed the validity of the suspension order on the ground that in the facts of the case suspension order is vitiated as authority who has proceeded to invoke the authority of suspension, at no point of time has objectively considered as to whether facts of the case would entail major penalty if the charges are provided eventually and as to whether there is any material connecting the petitioner with the purported charges in question, and in order to arrive at such a conclusion that there has been prima facie complicity of the petitioner, at primarily level, scrutiny was required to be done as to what was the functioning of the petitioner; as to in what way and manner petitioner has failed in performing and discharging duties and as to what was the adverse material that has been collected during the inquiry whereas under the scheme of thing provided for all

data were to be furnished by the educational institution and the verification was to be done by the Education department then merely on account of the fact that he is member of the committee, petitioner could not have been penalised, as such in view of this suspension order is liable to be quashed.

14. Much emphasis has also been laid on the fact that specific allegations have been detailed in paragraphs 17 to 23 of the writ petition pertaining to charges, and said averments have not all been specifically denied in paragraphs 16 and 17 of the counter affidavit and this additional circumstance also indicates that there is no material connecting the petitioner to the charges in question and the entire exercise of suspension is futile exercise.

15. Sri R.K. Ojha, Senior Advocate appearing with Sri A.K. Ojha, Advocate representing Shiv Kumar Ojha, District Inspector of Schools contended that in the present case there is nothing against the petitioner to connect him with the charges in question as after a particular date it was Regional Higher Education Officer, who was to forward forms in question and who was responsible for distribution of scholarship for those classes, and once petitioner has no role to play at all in the matter of distribution of scholarship, in view of this, continuance of the suspension in the facts of the case as against District Inspector of Schools has to be quashed and specially when suspension of Regional Higher Education Officer has already been revoked.

16. Sri A.K. Pandey, Additional Advocate General assisted by Dr. Y.K. Srivastava, Advocate submitted before this Court that in the present case preliminary inquiry report has been received wherein complicity of the petitioners has been clearly reflected then on objective satisfaction as policy that has been meant for student hailing from down trodden section of the society has been misused with impunity then in order to carry out free, fair and transparent inquiry order of suspension has been passed so that petitioners should be prevented from tampering of the record. Further it has also been contended that here selective action has not been taken rather action has been taken against all the institutions by lodging First Information Report and black listing them and process of recovery has also been pressed and once there is no malice in the action as taken and clearly there has been scam in misappropriating the money in question that was meant for social cause i.e. for upliftment of status of the students of down trodden section of the society and in view of this, to say that petitioners have prima facie no complicity qua the charges in question is unacceptable and charge-sheet has already been issued, as such this Court should refuse to interfere.

17. Sri Manish Goyal in rebuttal has contended that each one of the officer has distinctive job to perform and there are lots of check n balance in between them and it has also been contended that amount in question that has been received in the account of the students thereafter District Social Welfare Officer has hardly any control, in view of this, this Court should come in the rescue and reprieve of the petitioner.

18. Sri R.K. Ojha, Senior Advocate has also rebutted by contending that the authority to forward forms under the Government Order has been the Regional Higher Education Officer, as per letter dated 17.01.2014 and on 28.01.2014, all the forms which have been received by Shiv Kumar Ojha from 71 colleges has been forwarded to Regional Higher Education Officer; in view of this District Inspector of Schools should not be made scapegoat.

19. Before proceeding to consider the respective arguments that have been so advanced, the relevant provision regarding suspension of a government servant is being looked into.

20. The U.P. Government Servant (Discipline and Appeal) Rules, 1999 (hereinafter referred to as the 1999 Rules) have been framed under proviso to Article 309 of the Constitution of India. Rule 4 of the said rules deals with "suspension. Rule 4(1), which is relevant is quoted as below:--

"4. Suspension.--(1) A Government Servant against whose conduct an inquiry is contemplated or is proceeding may be placed under suspending pending the conclusion of the inquiry in the discretion of the Appointing Authority:

Provided that suspension should not be resorted to unless the allegations against the Government Servant are so serious that in the event of their being established may ordinarily warrant major penalty;

Provided further that concerned Head of the Department empowered by the Governor by an order in this behalf may place a Government Servant or class of Government Servants belonging to Group "A" and "B" posts under suspension under this rule;

Provided also that in the case of any Government Servant or class of Government Servants belonging to Group "C" and "D" posts, the Appointing Authority may delegate its power under this rule to the next lower authority."

21. Bare perusal of the Rule quoted above would go to show that a government servant against whose conduct an enquiry is contemplated or is proceeding can be suspended by the Appointing Authority pending the conclusion of enquiry. Discretion of placing an incumbent under suspension vests in Appointing Authority and has to be exercised by the Appointing Authority, but the said exercise of discretion has been hedged with the condition that authority of suspension should not be resorted to unless the allegations against government servant are so serious that in the event of same being established same may ordinarily warrant major penalty.

22. Such Rule has been subject matter of consideration in the past, in the case of Dr. Arvind Kumar Ram Vs. State of Uttar Pradesh and U.P. Jal Nigam, (2007) 4 AWC 4163 : (2008) 116 FLR 57 in following terms:

"From perusal of Rule 4 it is clear that a Government servant can be suspended by the appointing authority against whose conduct an inquiry is contemplated or

pending. The first proviso to the rule makes it obligatory for the appointing authority not to suspend an employee unless the allegations are so serious that in the event they are established then it would warrant the imposition of major penalty. The rule inherently lays down that suspension should not be resorted to by the appointing authority as a matter of routine but only after the appointing authority is satisfied that the allegations are so grave and serious against the government servant that if they are established it would result in removing or dismissing etc., the employee from service. In other words, every omission or error in discharge of duty by the Government servant may not be sufficient to suspend him. No hard and fast rule can be laid down as to what allegation would be serious, which may warrant major penalty. But the appointing authority under the first proviso to the rule is required to apply its own independent mind to the allegations against the employee and then arrive, on the material on record, to a prima facie conclusion that the allegations against the employee were such that it warranted suspension. Material on record, has been explained in *Jai Singh Dixit* (supra), means not only the complaint or allegations etc. but the circumstances justifying the opinion that on inquiry the employee may ordinarily be liable for major penalty.

The apex court in *State of Orissa Vs. Bimal Kumar Mohanty*, AIR 1994 SC 2296 : (1994) 68 FLR 970 : (1994) 2 JT 51 : (1995) 1 LLJ 568 : (1994) 1 SCALE 685 : (1994) 4 SCC 126 : (1994) 2 SCR 51 : (1994) 2 SLJ 72 : (1994) 1 UJ 665 has held in paragraph 12 as below:--

"12. It is thus settled law that normally when an appointed authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee."

The order of suspension is nothing but a temporary cessation of master and servant relationship. Therefore, it should not be resorted to as an administrative or routine order. An employee can be suspended pending an inquiry into his misconduct. But the first proviso to Rule 4 carved out an exception by making it obligatory on the appointing authority to exercise the discretion of suspending an employee only if the conditions mentioned in the proviso were satisfied. Sub-rule (1) of rule 4 cannot be read in isolation. The proviso is mandatory in character. The power under Sub-rule (1) cannot be exercised except as provided by the

proviso.

In *S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others*, AIR 1985 SC 582 : (1985) 1 SCALE 74 : (1985) 1 SCC 591 : (1985) 2 SCR 643 it was held,

"In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself."

The first proviso to rule 4(1) of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, provides that an employee can be suspended, only, if the allegations against him are serious and the appointing authority is satisfied that if it is proved then major penalty is liable to be imposed on the employee. It is squarely covered by the principle laid down in *S. Sundaram Pillai* (supra) in paragraph 42(3) that "it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself."

Rule 4(1) and the first proviso, in our opinion, should be read strictly and the appointing authority should exercise its discretion, after calling for the record and after applying its mind. Otherwise the exercise of discretion would lead to arbitrariness and would result in injustice and unfairness to the government servant. The intention of the rule being that suspension should be an exception, it must be followed strictly. The first proviso being a restriction on exercise of power of the appointing authority, it requires the subordinate authority to make recommendation on a fair and just consideration of material on record. Even if the subordinate authority fails to discharge its duty it does not absolve the appointing authority from discharging its obligation by calling for the records and consider objectively if the allegations were so serious that it would result in imposition of major penalty, unless a legations were such that there could be no doubt about the applicability of the proviso. Even in such cases, the rule of fair play must be read as requiring the appointing authority to record his own reasons. Otherwise it would be surrendering his discretion to the recommendation of the subordinate authority. Such action would be arbitrary and contrary to the letter and spirit of the rule."

23. Apex Court also time and again has issued guidelines, as to how cases pertaining to suspension of employees are to be dealt with in the case of *Krishi Utpadan mandi Samiti v. Sanjio Ratan* 1993 (3) Supp. SCC 483, Apex Court has taken the view, that as to whether the employee should or should not continue in their office during the period of enquiry is a matter to be assessed by the concerned authority ordinarily, and the Court should not interfere with the order of suspension unless they are passed malafide and without there being even a prima-facie evidence on record connecting the employee with the misconduct in question.

24. Apex Court in the case of Union of India (UOI) and Another Vs. Ashok Kumar Aggarwal, (2014) 140 FLR 737 : (2013) 15 JT 200 : (2013) 14 SCALE 323 : (2014) 1 SCJ 115 : (2014) 2 SCT 70 : (2014) 1 SLJ 408 , has taken the view as follows:

"7. During suspension, relationship of master and servant continues between the employer and the employee. However, the employee is forbidden to perform his official duties. Thus, suspension order does not put an end to the service. Suspension means the action of debarring for the time being from a function or privilege or temporary deprivation of working in the office. In certain cases, suspension may cause stigma even after exoneration in the departmental proceedings or acquittal by the Criminal Court, but it cannot be treated as a punishment even by any stretch of imagination in strict legal sense. (Vide: O.P. Gupta Vs. Union of India (UOI) and Others, AIR 1987 SC 2257 : (1987) 3 JT 532 : (1988) 1 LLJ 453 : (1987) 2 SCALE 457 : (1987) 4 SCC 328 : (1988) 1 SCR 27 : (1988) 1 SLJ 121 ; and Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, AIR 1999 SC 1416 : (1999) 2 CTC 579 : (1999) 82 FLR 627 : (1999) 2 JT 456 : (1999) 1 LLJ 1094 : (1999) 2 SCALE 363 : (1999) 3 SCC 679 : (1999) SCC(L&S) 810 : (1999) 2 SCR 257 : (1999) AIRSCW 1098 : (1999) 3 Supreme 376).

9. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

10. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc.

14. The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, particularly in State of

Madhya Pradesh and Others Vs. Shardul Singh, (1970) 20 FLR 81 : (1970) 1 SCC 108 : (1970) 3 SCR 302 ; P.V. Srinivasa Sastry and others Vs. Comptroller and Auditor General and others, AIR 1993 SC 1321 : (1993) 1 LLJ 824 : (1992) 3 SCALE 469 : (1993) 1 SCC 419 : (1992) 3 SCR 503 Supp ; Director General, E.S.I. and another Vs. T. Abdul Razak, etc., (1996) 5 AD 486 : AIR 1996 SC 2292 : (1996) 6 JT 502 : (1996) LabIC 2037 : (1996) 2 LLJ 765 : (1996) 5 SCALE 113 : (1996) 4 SCC 708 : (1996) 3 SCR 80 Supp : (1996) 3 SLJ 71 ; Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, AIR 1988 SC 2118 : (1988) 3 JT 576 : (1988) 2 LLJ 470 : (1988) 2 SCALE 641 : (1988) 4 SCC 319 : (1988) 2 SCR 821 Supp : (1989) 1 UJ 17 ; The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, AIR 1960 SC 806 : (1960) 1 LLJ 520 : (1960) 3 SCR 227 ; U.P. Rajya Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan, (1993) 2 JT 550 : (1993) 2 LLJ 958 : (1993) 2 SCALE 330 : (1993) 3 SCC 483 Supp : (1994) 1 SLJ 28 ; State of Rajasthan Vs. B.K. Meena and others, (1996) 7 AD 321 : AIR 1997 SC 13 : (1996) 74 FLR 2550 : (1996) 8 JT 684 : (1996) LabIC 2750 : (1997) 1 LLJ 746 : (1996) 7 SCALE 363 : (1996) 6 SCC 417 : (1996) 7 SCR 68 Supp : (1997) 1 SLJ 86 : (1996) 2 UJ 739 : (1996) AIRSCW 4160 : (1996) 7 Supreme 432 ; Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan, (1996) 2 AD 433 : (1996) 73 FLR 1247 : (1996) 3 JT 202 : (1996) 2 LLJ 245 : (1996) 2 SCALE 411 : (1996) 3 SCC 157 : (1996) 2 SCR 737 ; and Allahabad Bank and Another Vs. Deepak Kumar Bhola, (1997) 3 JT 539 : (1997) 1 LLJ 854 : (1997) 2 SCALE 623 : (1997) 4 SCC 1 : (1997) 2 SCR 1055 : (1997) 1 UJ 761 , wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21 of the General Clauses Act, 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned. Where the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without examining the entire record in question and in order that the disciplinary proceedings may continue unhindered the court may not interfere. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial can not be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a

prima facie evidence on record connecting the employee with the misconduct in question.

Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, it is not desirable that the court may find out as which version is true when there are claims and counter claims on factual issues. The court cannot act as if it an appellate forum de hors the powers of judicial review."

25. On the parameters of the provisions quoted above, the arguments advanced from both the sides is being adverted to. True as per human nature, Sanjeev Nayan Mishra is contending that as far as he is concerned he has limited role to play and data was to be furnished by Institution and verification exercise was to be carried out by the authority of the Educational Department in view of this, he has got no responsibility whatsoever and merely because he is Member Secretary of the Committee who has finalized the same, he cannot be penalized. Similarly, Shiv Kumar Ojha has contended that after sending the forms in question on 28.01.2014 to the office of Regional Higher Education Officer, he has got no concern with the same, and in the meeting of Committee where he participated as Member decision has been taken based on record.

26. Background of the case, as is reflected that on complaints being received Principal Secretary Social Welfare Department, U.P. on 13.06.2014 passed order for making verification of the scholarship that has been so accorded in district Meerut and Kanpur of academic session 2013-14 and pursuant to the said directives given by the State Government, Directorate, Social Welfare, U.P. vide its order dated 28.08.2014 under the Chairmanship of Joint Director of Education, Administration Headquarters constituted committee and the said committee after making inquiry into the matter submitted its report on 07.11.2014 and therein large scale irregularities have been found. Rule 9 of the U.P. Post Metric Scheduled Castes/Scheduled Tribes Scholarship Scheme Rules, 2012 provides that all the recognized institutions would give their names, details to be entered in "Master Data Base" as mentioned by Social Welfare Department pertaining to educational institutions by the prescribed date. Rule 11 clearly gives way and manner in which preferences are to be maintained keeping in view the financial constrains and Clause Cha clearly proceeds to mention that in case amount in question is left after exhausting list of the institutions, as mentioned in Ka, Kha, Ga, Gha then reimbursement can be made as per note appended to the same. Clause (IV) of Rule 12 of Rules 12 clearly proceeds to make mention that the application forms that would be deposited would be verified by the Committee and then after verification exercise it would be placed by the Head of Institution to Educational authority, who would examine the same and then it has to be placed before the District Level Committee and thereafter it is duty of the committee to accord approval. District Level Committee comprises of (i) Nominee

of District Magistrate (ii) Chief Treasury Officer (iii) District Inspector of Schools, Member (iv) District Social Welfare Officer, Member Secretary, and then take consequential action.

27. Once such is the scheme of thing and such are the duties that have been provided under the scheme of things provided for then the arguments that are being advanced on behalf of both the petitioners i.e. District Social Welfare Officer and District Inspector of Schools, respectively in the facts of the case that they have limited role to play on its face value appears to be attractive but on deeper scrutiny what we find that scheme in question has not been carried out in honest and bona fide manner, rather the scheme has been converted into scam, and once in the enquiry so held scam has been exposed, and it has been found that there has been active collusion of educational institutions with the officials, and once scam is not being disputed, then certainly there has been diversions and deviations in implementing the scheme in question. Both the petitioners are passing buck on others, taking shelter of the limited role they were required to play under scheme of things, whereas Sanjeev Nayan Mishra was the Member/ Secretary of the District Level Committee and Shiv Kumar Ojha has also been Member of the District Level Committee. Once Enquiry Committee has been constituted and it has submitted report, and therein large scale irregularities have been noted and said irregularities are not being disputed, whereas the said report holds authorities of education department and social welfare department responsible for creating such a situation then in the facts of the case both the officers being Member Secretary and Members of the Committee cannot escape from the responsibility rather being members of the Committee it was their duty to consider the matter objectively and then to have allowed grant of scholarship. Crores of rupees have been swindled away and petitioners are the mangers of the scheme in question and petitioner are endeavouring to hide and take shelter of Rules whereas Rules in question have been given complete good-bye and the welfare scheme in question has been taken to different level for the benefit of others and such activity was not at all possible until and unless there was active collusion inter se the authorities of Education Department, Social Welfare Department and the respective institutions. The nexus is clearly reflective from the preliminary enquiry report.

28. Fact of the matter is that prima facie there is abuse of power, right and privileged vested in the authorities. In what way and manner the said power and privileged has been misused is certainly subject matter of enquiry. What actual role has been played by the petitioners in the scam in question would be determined in enquiry and at this stage when petitioners have been placed under suspension pending enquiry there defence that they have not played any role cannot be entertained and petitioners should raise all such plea in defence, when they proceed to file reply to the chargesheet and only after enquiry is over, pin pointed responsibility could be fixed.

29. In the present case scam has been accepted wherein complicity of the

petitioners in the preliminary enquiry has been found. Once in the preliminary enquiry report on prima facie basis complicity of petitioners alongwith negligence and lapses are there then to say that at the point of time when authority has proceeded to pass order of suspension there has been no objective consideration and in mechanical manner order of suspension has been passed cannot be accepted.

30. Much emphasis has been laid on the fact that no satisfaction has been recorded by appointing authority that charges on being proved would entail major penalty, as such order of suspension is bad. The answer to this question could be easily found in paragraph -16 of the judgment in the case of Dr. Arvind Kumar Ram (Supra) wherein it has been mentioned that unless the allegations are such that there would be no doubt of applicability of proviso. Here it is a scholarship scam and there is no doubt of this fact that charges, if proved, same would entail major penalty.

31. The order of suspension passed by Appointing Authority cannot be ipso facto vitiated on account of non-mentioning of fact that the allegations are so serious that it would entail major penalty and whenever suspension order is subjected to challenge on this ground is particular, the Courts can always on the basis of material on record on prima-facie basis examine, as to whether the allegations against the employee are such that it would result in imposition of major penalty unless allegations are such that there can be no doubt about the applicability of proviso.

32. Much emphasis has been laid on the fact that Regional Higher Education Officer has been placed under suspension and his suspension has been revoked and petitioners are similarly situated.

33. This is true that Regional Higher Education Officer has been placed under suspension and thereafter his suspension has been revoked. In reference of Regional Higher Education Officer it has been informed that Shiv Kumar Ojha forwarded forms up till 28.01.2014 and Regional Higher Education Officer forwarded forms for remaining three days and in the same no infirmity has been found. We are not going into the merits of the revocation order, as putting an incumbent under suspension is the discretion of appointing authority and the authority concerned for valid reasons can revoke the order of suspension also. Moreover on account of said fact, the discretion exercised by appointing authority in placing petitioners under suspension cannot be faulted.

34. Consequently, in the facts of the case, once scam has been unearthed, petitioners do not dispute this fact that they were the managers of the scheme by virtue of being Members of District Level Committee and in preliminary enquiry report there is prima-facie indictment and in this background, in order to hold free, fair enquiry and to keep the petitioners out of mischief range, once order of suspension has been passed in bona fide exercise of authority, then in the facts of case, there is no occasion to interfere.

35. With the above observations, both the writ petitions are dismissed.