
(2019) 07 J&K CK 0026

In the Jammu And Kashmir High Court

Case No : Writ Petition (WP) No. 2397 Of 2019, CM 4564 Of 2019

Sarfaraz Ahmad Bhat

APPELLANT

Vs

State Of Jammu & Kashmir And & Ors

RESPONDENT

Date of Decision : 22-07-2019

Acts Referred:

Constitution Of Jammu And Kashmir, 1956 — Section 103
Jammu And Kashmir Civil Services (Classification, Control And Appeal) Rules, 1956 — Rule 31
Constitution Of India, 1950 — Article 226
Jammu And Kashmir Civil Service Regulations — Article 128, 226(2)

Citation : (2019) 07 J&K CK 0026

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Asifa Padroo, M. Rais-ud-Din Ganai

Final Decision : Dismissed

Judgement

Ali Mohammad Magrey, J

1. In this petition, filed under Article 226 of the Constitution of India read with Section 103 of the State Constitution, the petitioner has craved the

indulgence of this Court in granting him the following relief(s):

I. ISSUE an appropriate Writ, direction or order, including the one in the nature of writ of Certiorari quashing the Government Order No.153-HUD of

2019 dated 04.07.2019 issued by the respondent No.1, so far as it relates to the Petitioner;

II. ISSUE an appropriate Writ, direction or order, including the one in the nature of writ of Mandamus, commanding the respondents to reinstate the

Petitioner into services and allow him to perform his duties;

III. ISSUE a Writ, direction or order, directing the respondent No.1 to keep in

abeyance the impugned order till the reply of the Petitioner as sought by the Respondent No.3 vide communication dated 01.07.2019, is not considered.

IV. Any other writ, order or direction which this Honâ??ble Court may deem fit and proper in the attendant facts and circumstances of the case may be issued in favour of the Petitioner and against the respondents.â??

2. The petitioner contends that he is a member of the respondent Department and was posted as I/C Executive Officer, Municipal Committee,

Ganderbal. It is stated that after putting in a considerable and unblemished period of service, the petitioner came to be confirmed as Revenue Officer

in terms of Government Order No.35-HUD of 2019 dated 23rd of January, 2019. It is further submitted that the respondent No.3, vide communication

No. DULB/Estt/84-II/12415-17 dated 1st of July, 2019, charge-sheeted the petitioner with reference to enquiry regarding affairs of Municipal Council,

Anantnag with the direction to the petitioner to submit his reply to the charges alleged in the said communication within a period of seven days and to

explain the reason as to why his case shall not be referred to the Administrative Department for taking action against him in terms of the J&K Civil

Service (Classification, Control & Appeal) Rules, 1956 for the omissions/commissions committed. It was further provided in the communication

aforesaid that in case the petitioner fails to comply with the directions therein, it shall be presumed that he has nothing to say in his defense and further

action as warranted under laws, shall follow without any further notice. Thereafter, as stated, the petitioner, alongwith other Executive Officers, while

being posted at MC Anantnag, vide Government Order No.153-HUD of 2019 dated 4th of July, 2019, was placed under suspension with immediate

effect, pending further enquiry into the alleged charges of misappropriation, irregularities in financial transactions, gross negligence and misconduct. It

is these orders that have been called in question by the petitioner herein this petition.

3. Learned counsel for the petitioner submits that the respondents have issued the impugned order of suspension of the petitioner without issuing any

show cause notice or a reasonable opportunity of being heard to the petitioner, thereby violating the principles of natural justice. The learned counsel

further submits that it was obligatory upon the respondents to allow the petitioner to defend himself by way of giving him an opportunity to submit the

reply as was sought vide communication dated 1st of July, 2019, but the respondents, without waiting for the reply of the petitioner, issued the order whereby the petitioner was placed under suspension.

4. Learned counsel for the respondents, in unison, plead that suspension is not a punishment, but is only aimed at forbidding or disabling an employee to discharge the duties of office or post held by him/her. It is further submitted that recourse to the process of placing an employee under suspension is only taken with a view to refrain such an employee 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 not get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry 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 enquiry.

5. Heard the learned counsel for the parties, perused the pleadings on record and considered the matter.

6. Rule 31 of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956, running under the head "Placing a

Government servant under suspension", being relevant, is taken note of thus:

"31. Placing of Government servant under suspension":

(1) The appointing authority or any authority to which it is subordinate or any other authority empowered by the Government in this behalf, may place

a Government servant under suspension where:

(a) an inquiry into his conduct is contemplated or is pending; or

(b) a complaint against him of any criminal offence is under investigation or trial.

(2) A Government servant who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours shall be

deemed to have been suspended by the appointing authority under this rule.

(3) An order of suspension under sub-rule (1) may be revoked at any time by the authority making the order or by any authority to which it is

subordinate.

(4) Where a penalty of dismissal or removal from service imposed upon a Government servant under suspension is set aside in appeal or on review

under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have

continued in force on and from the date of the original order of dismissal or removal and shall remain in force until further orders.

(5) Where a penalty of dismissal or removal from service imposed upon a Government servant is set aside or declared or rendered void in

consequence of or by a decision of a Court of law and the competent authority on a consideration of the circumstances of the case, decides to hold a

further inquiry against him on the allegations on which the penalty of dismissal or removal was originally imposed, the Government servant shall be

deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal or removal and shall continue

to remain under suspension until further orders.

Government instructions.-(1) An officer on suspension is entitled to ask that the matter should be investigated with reasonable diligence and charges

should be framed within reasonable period of time and if such steps are omitted then it would imply that the authorities are vested with a total arbitrary

and unfettered power of placing its officers under disability and distress for an indefinite duration. The suspension order is bad if it is not followed by

charge sheet and enquiry within a reasonable time.

It has been observed that on occasions the power under the aforesaid rule is being invoked on unjustifiable grounds or on mere suspicion of

misconduct before prima facie case has been established.

It may be appreciated that frequent resort to suspensions even at slightest provocation is not only unwarranted but also counter productive. Besides

affecting morale in the services it puts avoidable stain on the public exchequer by way of subsistence allowance for non-work done. Public interest

should be the guiding factor in deciding whether or not a Government servant should be placed under suspension or whether such action should be

taken even while the matter is under investigation and before a prima-facie case has been established. It is, therefore, imperative that the discretion

vested in the authorities should be exercised with due care and caution after taking all the factors into account.

For example where continuance in office of a Government servant is considered likely to prejudice, investigation, trial or enquiry or his continuance is

considered likely to subvert the discipline in the office in which he works, the purpose can be achieved if he is transferred to some other station or

office as the case may be rather than to place him under suspension. Like-wise if such a Government servant would like to proceed on leave that

might be due to him and if the authority concerned thinks that such a step would not be in appropriate, there should be no objection to leave being

granted instead of suspending him. Similarly, in case where a Government servant has unauthorisedly absented from duty, the proper course is to

initiate action against him under article 128 of Jammu and Kashmir Civil Service Regulations and not to place him under suspension.

The following circumstances may, however, be considered appropriate to place a Government servant under suspension:

(i) where the continuance in office of the Government servant will be against the wider public interests, e.g. if there is public scandals and it is

considered necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officer

involved in such scandals;

(ii) where a preliminary enquiry in to allegations made has revealed a prima facie case justifying criminal or departmental proceedings which are likely

to lead to his conviction or and dismissal, removal or compulsory retirement from service other than under Article 226 (2) of the Jammu and Kashmir

Civil Service regulations;

(iii) where the public servant is suspected to have engaged himself in activities prejudicial to the interest of the security of the State;

(iv) serious negligence and dereliction of duty resulting in loss to the Government.

Government Instructions (2)- Competent authorities should endeavor to have charge-sheet filed in Court, in case of prosecution, or served on the

Government servant, in case of departmental proceedings within three months from the date of suspension. Cases in which this is not possible such

authorities will report to the next higher authority, explaining the reason for delay.

The cases of Government servants under suspension should be reviewed by the competent authorities periodically to see that steps could be taken to

expedite the progress of the court trial/departmental proceedings, so as to

reduce the periods of suspension to barest minimum.â??

7. A bare perusal of the above provision of law reveals that the appointing authority or any authority to which it is subordinate or any other authority

empowered by the Government, in this behalf, has the power to place a Government servant under suspension where an inquiry into his/her conduct is

contemplated or is pending and/ or if a complaint against a Government servant of any criminal offence is under investigation or trial. In the case on

hand, the respondent Department, in pursuance of various complaints of irregularities in financial procedures, building permission and other issues

received from different quarters, ordered an enquiry to be conducted into the affairs of the Municipal Council, Anantnag, vide order No.

DULB/Estt/84-II/588 of 2019 dated 23rd of April, 2019. Thereafter, the enquiry was conducted and the enquiry committee submitted its report/

findings/ recommendations in the matter vide No. DULB/Estt/9596 dated 15th of May, 2019. Finally, the Government, vide Government Order

No.153-HUD of 2019 dated 4th of July, 2019, on the basis of preliminary enquiry report submitted by the enquiry committee and pending further

inquiry into the alleged charge of misappropriation, irregularities in financial transaction, gross negligence and misconduct, has placed the petitioner,

alongwith others, under suspension. In this backdrop, the respondents appear to have followed the procedure in vogue in the process of placing the

petitioner under suspension pending further inquiry into the charges of misappropriation, irregularities in financial transaction, gross negligence and

misconduct.

8. Law on the subject of placing Government employees under suspension is no more res integra. The Honâ??ble Supreme Court, while dealing with

the issue aforesaid as involved herein this petition, in case titled â??R.P. Kapur v. Union of Indiaâ??, reported as â??(1966) II LLJ 164 SCâ??, has

held as under:

The general principle therefore is that an employer can suspend an employee pending an inquiry into his conduct and the only question that can arise

on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension

and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the

period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in this statute or the rules

framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in

our opinion apply with equal force in a case where the Government is the employer and a public servant is the employee with this modification that in

view of the peculiar structural hierarchy of Government, the employer in the case of Government, must be held to be the authority which has the

power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him

pending a departmental inquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental inquiry against him.

9. In *U.P. Rajya Krish Utpadan Mandi Parishad & Ors. v. Sanjiv Rajan*, reported as (1993) II LLJ 958 SC, laid down as under:

Ordinarily when there is an accusation of defalcation of monies the delinquent employees have to be kept away from the establishment till the

charges are finally disposed of. Whether the charges are baseless, malicious or vindictive and are framed only to keep the individual concerned out of

the employment is a different matter. But even in such a case, no conclusion can be arrived at without examining the entire record in question and

hence it is always advisable to allow disciplinary proceedings to continue unhindered.

From the charge-sheet it is clear that the allegations against the first respondent are grave inasmuch as they indicate that the amounts mentioned

therein are not deposited in the bank and forged entries have been made in the pass-book and the amounts are shown as having been deposited. In the

circumstances, the High Court should not have interfered with the order of suspension passed by the authorities. In matters of this kind, it is advisable

that the concerned employees are kept out of the mischief's range. If they are exonerated, they would be entitled to all their benefits from the date of

the order of suspension.

10. Again, in case titled *State of Orissa v. Bimal Kumar Mohanty*, reported as (1994) 4 SCC 126, Hon'ble the Supreme Court has

held that since serious allegations of misconduct have been alleged against the respondent therein, the Tribunal was quite unjustified in interfering with

the orders of suspension of the respondent therein pending enquiry.

11. This Court in case titled *Abdul Hamid Khan v. State & Ors.*, passed in *WP(C) No.1680/2019; CM No.3123/2019*, has also

declared that as per well settled position of law, suspension is not a punishment and, therefore, no interference is warranted in an order of suspension.

12. On an appreciation of the law discussed above, it is, thus, settled that normally when an appointing 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 the

disciplinary authority.

13. The judgment of law, as cited and relied upon by the learned counsel for the petitioner, rendered by the Madurai Bench of the Madras High Court

in the case of *K. S. Abdul Rashid v. The State of Tamil Nadu*, is not applicable to the facts and circumstances of the case on hand, moreso, in

view of the mandate of law laid down by Hon^{ble} the Supreme Court, as discussed hereinabove.

14. It, needs, must be said as well that suspension is not a punishment, but is only aimed at forbidding or disabling an employee to discharge the duties

of office or post held by him/her. In other words, it is to refrain the concerned employee 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.

15. As regards the contention of the petitioner with reference to violation of principles of natural justice on part of the respondents in not providing him

an opportunity of being heard before issuing the suspension order, the same needs to be appreciated in light of Rule 31 of the Jammu and Kashmir

Civil Services (Classification, Control and Appeal) Rules, 1956, as extracted

hereinabove, which empowers the competent authority to suspend an employee to prevent him/her from functioning on the post held by him/her in case of contemplated enquiry into his/ her conduct or during the pendency of a departmental inquiry or a criminal proceeding. What the authority is required to do is to pass an order within the four corners of Rule 31 (supra) after due application of mind, but examination of the said rule does not contain any condition which would prevent the competent authority from exercising the power of suspension, unless the employee is heard and it has to be like that because suspension is not a punishment, therefore, no cause to interfere with the order of suspension.

16. In view of the preceding analysis, coupled with the law enunciated hereinabove, I am of the considered view that there is no merit in the petition of the petitioner. Accordingly, the same fails and shall stand dismissed in limine alongwith the connected CM. It is, however, made clear that this Court has not expressed any opinion insofar as the merits of the departmental enquiry case pending against the petitioner is concerned, which is required to be investigated into and proceeded in accordance with law by the competent authority.

17. There shall, in the attending facts and circumstances of the case, be no order as to costs.