
(1997) 02 RAJ CK 0035
In the Rajasthan High Court
Case No : C.W. Petition No. 4913 of 1992

Saroj Sharma

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-02-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 306, 307, 34, 498A

Citation : (1997) 1 RLW 450 : (1997) 2 WLC 422 : (1997) 1 WLN 209

Hon'ble Judges : V.G. Palshikar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.G. Palshikar, J.—By this petition, the petitioner has challenged the order dated 28.9.89 by a writ of certiorari on the ground that it is illegal and unsustainable in law.

2. The petitioner is employed as a Physical Instructor in Soorsagar Girls School, Bikaner, where she was working in September" 89, when on 14th September" 89 First Information Report was lodged against the petitioner on the allegations of having committed offences punishable under Sections 302, 498A read with Section 34 of the Indian Penal Code. Amongst the other allegations made in the First Information Report, one allegation was that the petitioner had illicit relationship with Kishan Lal and, therefore, both of them, with the common object and intention of removing permanently the wife of Kishan Lal, murdered her. The petitioner was arrested on 23rd September 1989 and was released on bail on 29th September" 89. After completion of the investigation, challan was filed and the petitioner is being prosecuted under Sections 306 and 498A of the Indian Penal Code. The trial is pending before the Special Judge, Bikaner.

3. In view of the fact that the petitioner was under detention for more than 48 hours, she was deemed to be under suspension under Rule 13 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958, (hereinafter referred

to as "The Rules of 1958"). The formal order testifying this legal position was, therefore, issued on 28.9.89.

4. On 27.4.92 a letter was issued by the Director of Education, directing reinstatement of the petitioner after revocation of suspension. However, on 1.5.92, this letter dated 27.4.92 was quashed. Hence, this petition was filed, challenging the order of suspension claiming it to be illegal and unsustainable in law, as according to the learned Counsel Rule 13 of the Rules of 1958 does not envisage permanent suspension as is being inflicted by the impugned order.

5. For proper appreciation and adjudication of the rival contentions raised on behalf of the petitioner and the State, It would be necessary to consider the provisions of Rule 13 of the Rules. It reads as under:

13. Suspension-(1) The Appointing Authority or any authority to which it is subordinate or any other authority empowered by the Government in that behalf may place a Government servant under.

(a) Where a disciplinary proceeding against him is contemplated or pending.

or

(b) where a case against him in respect of any criminal offence is under investigation or trial

Provided that where the order of suspension is made by an authority lower than the Appointing Authority, such authority shall forthwith report to the Appointing Authority, the circumstances in which the order was made.

(2) A Government servant who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of detention by an order of the Appointing Authority and shall remain under suspension until further orders.

(3) Where a penalty of dismissal, removal or compulsory retirement from Service imposed upon a Government servant under suspension is set aside in appeal or on review under these Rules, 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, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence or by a decision of a Court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegation on which the penalty of dismissal, removal or compulsory retirement 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, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5) An order of suspension made or deemed to have been made under this Rule may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

6. A perusal of the rule quoted above, shows that a Government servant detained in custody for a period exceeding 48 hours shall be deemed to have been suspended with effect from the date of detention by an order of the Appointing Authority and shall remain under suspension until further orders. It is obvious, therefore, that though by operation of law the suspension for detention for a period exceeding 48 hours is automatic or deemed, a formal order of detention by the Appointing Authority is a legal necessity. The order and the suspension shall remain until further orders. Sub-rule (3) and Sub-rule (4) deal with the consequences resulting out of imposition of penalty, dismissal, removal or compulsory retirement. Sub-rule (5) provides that an order of suspension made, or deemed to have been made in this Rule (emphasis supplied), may at any time be revoked by the Authority which may or is deemed to have made the order or by any Authority to which that authority (making the order of suspension) is subordinate.

7. The scheme of the Rule for suspension is, therefore, obvious, sub-rule [1] provides for the contingencies in which suspension can be made and sub-rule [2] provides for deemed suspension in the event of detention beyond 48 hours. Sub-rule (3) and (4) provide for consequential orders in relation to suspension in cases of imposition of penalty and Sub-rule (5) deals with re-vocation of an order of deemed suspension. The argument made on behalf of the petitioner is that the deemed suspension is liable to be revoked and cannot be continued indefinitely. Reliance is placed on several authorities by the learned Counsel for the petitioner for this proposition. The first judgment on which reliance is placed is printed in *Keva and Others Vs. State of Rajasthan*, This Division Bench judgment ruling is pressed into service by the learned Counsel for the proposition that even an order of deemed suspension need not be continued and requires careful scrutiny and review. This ruling, in my opinion, is not applicable to the facts of the present case as the same are entirely different from those on the basis of which the aforesaid decision was rendered by the Division Bench. The main writ petition in that case, was filed challenging the action of the Government of not permitting the petitioner to join the Training Course for which he was selected prior to commission of the alleged offence. Analysing the alleged offence, it was held that there is no rational connection between the employment and the allegation of misconduct. The petitioner in that case, was charged u/s 306 of the Indian Penal Code in relation to the suicide by his wife and since he was suspended because of his detention, he was not allowed to join training after his selection to Rajasthan Tehsildar Service. The proposition canvassed in this background of facts are stated in para 6 of the aforesaid rulings. All the five contentions raised before the Division Bench pertain to an order of suspension made under Rule 13(1) of the Rules of 1958. We are concerned with deemed suspension under Rule 13(2) of the Rules of 1958. This material alters the situation in fact and in

law. The Division Bench was not called upon to decide the scope and extend of the deemed suspension of Rule 13(2) of the Rules of 1958.

8. However, the Division Bench has considered the provisions of Rule 13(2) of the Rules of 1958. The Division Bench has observed in para 10 as under:

Sub-rule (2) of Rule 13 is quite specific which says that in case a person remains under custody exceeding 48 hours he may be suspended with effect from the date of detention and such suspension shall continue till further orders. It is enacted for the simple purpose that while under detention a Government servant may not earn his wages. Sub-rules (2) and (5) of Rules 13 make it clear that the Appointing Authority which has exercised the power of suspension under Rule 13, has a duty to see that the order of suspension may be revoked, if the same is not needed at any time subsequently.

9. The Division Bench has, thus, held that sub-rules [2] and (5) of Rule 13 make a complete provision regarding deemed suspension and what has been held by the Division Bench, therefore, is that in such case of deemed suspension, a duty is cast on the appropriate authority to see whether the order of deemed suspension is liable to be revoked as not needed at any subsequent time. This decision is, consequently of no help to the petitioner as it does not require automatical revocation of the suspension order made under Rule 13(2). It enjoins a duty on the Appointing Authority to consider continuance of such deemed suspension. In the present case, such consideration was given, the order was revoked and the revocation order was again withdrawn or cancelled. In such circumstances, it cannot be said, relying on this decision that the order of suspension or the order of cancellation of revocation of suspension is in any manner bad.

10. Yet another case cited at the Bar is 1989(1) RLR 601 wherein it has been observed by a Division Bench of this Court that continuation of suspension for a long period, without following the guidelines and instructions issued by the Government for suspension matters, need not be sustained. In the present case, there is no evidence and averment that the guidelines and instructions issued by the Government in this regard have not been followed. This decision is, therefore, of no help to the petitioner.

11. Then the learned Counsel cited yet another judgment of this Court reported in 1990(1) RLW 121 where it has been observed by this Court that a private dispute between the neighbours has no bearing on the official conduct of the Government servant and where it does not involve moral turpitude of an offence u/s 307 of the Indian Penal Code and its invoking cannot be continued. It was, therefore, quashed. Obviously, the facts are entirely different and the ratio laid down by this case has no bearing on the facts of the present case. It is, however, pertinent to note that in this very decision it has been categorically observed by the learned Judge of this Court that a Government servant who remains in custody for more than 48 hours will be deemed to be under suspension from the

date of arrest continuing till it is revoked. It supports the view that I have taken that Sub-rule (5) of Rule 13 of the Rules of 1958 forms a complete provision in itself, regarding deemed suspension.

12. Reliance is then placed on yet another judgment of this Court reported in 1996 (1) RLW, 126 where a prolonged suspension was quashed on the ground that the Review Committee has not properly examined the case of the petitioner therein for his continued suspension in light of the changed circumstances. In the present case, the petitioner's claim for revocation of deemed suspension was considered and factually an order of revocation was made on 27.4.92. It was later on cancelled on 1.5.92. The petition does not give any substantial reasons, much less acceptable, for warranting a conclusion that the Appointing Authority has not properly examined the case of the present petitioner for her continued suspension in light of the circumstances. This ruling, therefore, is of no help.

13. Three decisions of the supreme Court were cited by Mr. M.R. Singhvi, learned Counsel for the respondents, for the proposition that none of the authorities cited by the petitioner, apply in the present case as they do not deal with the continuancy of deemed suspension envisaged by Rule 13(2) of the Rules of 1958. According to him, even though, reference to Rule 13(2) is passingly made in these authorities, the same being not in issue in those cases, even if some law is laid down in relation to Rule 13(2), it is liable to be ignored on the principles of stare decisis. They are liable to be held per-incurium. Having explained and distinguished the cases cited on behalf of the petitioner, I see no reason to go into this aspect of law of stare decisis or per-incurium in the present case, as in my opinion, none of the cases cited at the Bar has any direct bearing as a precedent in the matter of revocation of petitioner's suspension.

14 In the result, the petition fails and is dismissed. The interim order of stay is, hereby, vacated.