
(1998) 12 J&K CK 0008
In the Jammu And Kashmir High Court
Case No : LPA (SW). 447 Of 1997

State of J&K and Others

APPELLANT

Vs

M.Anawar Hussain and Others

RESPONDENT

Date of Decision : 09-12-1998

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 31
Constitution of India, 1950 — Article 226

Citation : (2002) 2 SCT 278 : (1999) 1 SriLJ 84

Hon'ble Judges : M.Y.Kawoosa, J and T.S.Doabia, J

Bench : Division Bench

Advocate : S.Kakkar, C.M.Koul, Advocates appearing for the Parties

Judgement

1. An order of suspension passed by the appellantstate Government was subject matter of challenge in the writ petition. This order was passed on

27th Feb, 97. Among other events which have been recounted in this order it also reictes as under:

Now, therefore, considering the preliminary report of the Inquiry Committee, the aforementioned officers/ officials against whom a prima facie

case of embezzlement/ misappropriation of Government money is established, are hereby placed under suspension, with immediate effect in the

public interest.

The suspended officers/officials shall remain attached with the office of Divisional Commissioner, Jammu during their suspension period.

2. The above order as indicated above was subject matter of challenge in the writ petition. The learned Single Judge of this court came to this

conclusion that the above order does not fall within the parameters of Rule 31 of the J and K Classification, Control and Appeal, Rules 1956. The

reason given was that this order does not indicate whether any inquiry against conduct or misconduct of the respondent writ petition was pending or in contemplation.

3. The portion which has been quoted above makes it apparent that a preliminary inquiry was conducted. A prima facie conclusion was arrived at.

After recording this conclusion, further action was taken. Respondent writ petitioners were suspended.

4. In view of the above situation findings recorded by the learned Single Judge that there was nothing on the record that some misconduct is being looked into is not correct.

5. The power to suspend when a inquiry into the conduct of the employee is pending, or contemplated is an inherent of the employer.

6. On general principals the Government, like any other employer, has a right suspend a Government servant. In V.P. Gindroniya Vs. State of

M.P., AIR 1970 Sc 1494, the Supreme court of India explained the three categories of suspension as follows:

There Kinds of suspension are known to law. A public servant may be suspended as a mode of punishment or he may be suspended during the

pendency of an inquiry against him, if the order appointing him or statutory provisions governing his service provide for such suspension. Lastly, he

may merely be forbidden from discharging his duties during the pendency of an enquiry against him which act is also called suspension. The right to

suspend as a measure of punishment as well as the right to suspend the contract of service during the pendency of an enquiry are both regulated by

the contract of employment or the provisions regulating the conditions of service. But the last category of suspension referred to earlier is the right

of the master to forbid his servant from doing the work which he had to do under the terms of the contract of service or the provisions governing

his conditions of service at the same time keeping in force the master's obligation under the servant to refrain rendering his service but the must fulfill

his part of the contract.

7. A government servant can be placed suspension pending a criminal charge against him although no departmental proceedings are initiated

against him at the time. It is equally well settled that an order of interim suspension can be passed by the Government while even though there is no

such term in the contract or service rules. See *R.P.Kapoor V Union of India*, AIR 1964 SC 787.

8. Thus suspension can be ordered pending departmental enquiry. Suspension of a Government servant pending departmental enquiry into

allegations against his conduct is resorted to for facilitating enquiry. Suspension pending departmental enquiry is something temporary and does not

involve punishment. It means a temporary deprivation of the officer's functions or the right to discharge his duties but does not amount to any

lowering down or reduction of his rank or status. Nor does he cease to be a member of the Government service. The real effect is that though he

continues to be a Government servant, he is not permitted to work and is paid only a "subsistence allowance" which is less than he would have

been entitled but for the suspension. Suspension pending enquiry is an administrative and not a quasi judicial order. It can be made if the authority

concerned on getting a complaint, considers, that it requires enquiry and that it is necessary to suspend the Government servant pending the

enquiry. The basic idea underlying the root word "Suspend" and all its derivatives is that a person in the service of the Government while holding an

office and performing its functions or holding a position or privilege, should be interrupted in doing so and debarred for the time being from further

functioning in the office or holding the position or privilege. He is intercepted in the exercise of his functions or his enjoyment of the privilege and put

aside as it were for a time and excluded during the period from his functions or privileges.

9. From the perusal of the decision of the Supreme Court of India, it becomes apparent:

i). That the employer is within its rights to suspend a government servant when an enquiry into his conduct is contemplated or is pending;

ii). When a complaint against him of any criminal offence is under investigation or trail.

iii). That the order of suspension is normally not to be interfered with in the exercise of judicial review. The exception to the above rule can be:

a). Where an order is mala fide, or b). Where the order is not passed by the competent authority.

10. In the present case inquiry was contemplated. As a matter of fact state counsel submits that the inquiry has since been 'completed. The inquiry

officer has submitted his report. Further, action is in progress. The learned counsel appearing for Sh.A.K. Razdan and Sh. R.K Koul submits that they have been exonerated. In view of the above it cannot be said that the appellantstate was not conducting any inquiry. As such it is held that the state Government was competent to suspend the respondentwrit petitioners. The other passed iv the State Government was perfectly in accordance with the law This appeal is allowed. Order under appeal is vacated.