

(2020) 02 RAJ CK 0650

In the Rajasthan High Court

Case No : Special Appeal Writ No. 1111 Of 2019

State Of Rajasthan And Ors

APPELLANT

Vs

Manvendra Singh And Ors

RESPONDENT

Date of Decision : 04-02-2020

Acts Referred:

Limitation Act, 1963 — Section 5
Indian Penal Code, 1860 — Section 143, 323, 336, 341
Prevention Of Corruption Act, 1988 — Section 7
Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 — Rule 13,
13(1), 13(2), 13(5), 22, 34
Constitution Of India, 1950 — Article 226

Citation : (2020) 02 RAJ CK 0650

Hon'ble Judges : Sangeet Lodha, J;Mahendar Kumar Goyal, J

Bench : Division Bench

Advocate : Prakhar Gupta, Harshita Thakral, V.B.Sharma, Lokesh Kumar Sharma

Final Decision : Partly Allowed

Judgement

1. This intra court appeal is directed against judgment dated 21.12.18 passed by the learned Single Judge of this Court, whereby the writ petition preferred by the respondent assailing the legality of order dated 17.7.17 issued by the Superintendent of Police, District Sawai Madhopur, placing him under suspension in exercise of the power conferred under Rule 13 of Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (for short "the Rules of 1958"), has been allowed and the suspension order has been revoked. Further directions are issued that the respondent shall be posted at a place where he would not be having any public dealings and would not be in position to affect in any manner the witnesses in the criminal case and if so required, he may be posted in the district other than Sawai Madhopur under the same Range.

2. The present appeal reported to be barred by limitation for 131 days, is accompanied by an application under Section 5 of the Limitation Act. Having heard the learned counsel for the parties, we are satisfied that the appellants were prevented from filing the appeal within limitation for sufficient cause. Accordingly, the application under Section 5 of the Limitation Act is allowed.

3. The respondent has preferred an application for vacation of the interim order passed by this Court. However, with the consent of learned counsel for the parties, the matter is finally heard at this stage.

4. The facts relevant are that a criminal case was registered at Police Station, Chauth Ka Barwara arising out of FIR No.82/17 dated 29.4.17 for the offences under Sections 323, 341, 143, 336 IPC, which was being investigated by the respondent holding the post of Head Constable. During the course of investigation, one of the accused Ramsingh Gurjar made a complaint before the Anti Corruption Bureau, Sawai Madhopur on 15.5.17. On the basis of the complaint made, the Anti Corruption Bureau conducted the proceedings of the trap. It is alleged that the respondent being suspicious of the trap proceedings did not accept the bribe and ran away from the police station. On the basis of the proceedings taken, a case for offence under Section 7 of Prevention of Corruption Act, 1988 was registered against the respondent for demanding the bribe. Pending investigation, vide order dated 17.7.17 issued by the Superintendent of Police, District Sawai Madhopur, the respondent was placed under suspension. On 6.11.17, the respondent preferred an application for revocation of the suspension order. The application preferred was rejected by the District Superintendent of Police vide communication dated 11.11.17 stating that in the matter where a Government servant against whom a case is registered by Anti Corruption Bureau/Police and is under suspension for three years, the suspension order is reviewed by the Committee constituted by the Governor after lapse of one year since filing of the charge sheet and therefore, the application preferred for reinstatement cannot be considered. The respondent challenged the legality of the suspension order dated 11.7.17 and not the order dated 11.11.17 rejecting the representation made for revocation of suspension order by way of writ petition before this Court.

5. After due consideration of the rival submissions, the learned Single Judge

opined that Rule 13 (5) of the Rules of 1958 is an independent power of the disciplinary authority to revoke the order of suspension passed by it and there is no precondition for exercise of revocation of suspension. The learned Single Judge held that the circulars issued by the State Government dated 7.7.10 and 12.1.11 laying down the limitation to examine the revocation of suspension order after a period of three years from the date of suspension and after a period of one year from the date of the charge sheet impinging on the independent power available to the disciplinary authority as well as appellate authority under the Rules of 1958 deserve to be ignored while considering the application seeking revocation under Rule 13(5) of the Rules of 1958 or while considering an appeal under Rule 22 of the Rules of 1958. Considering the issue of prolong suspension, the learned Single Judge opined as under:

15. The disciplinary authority/appellate authority has to consider independently the facts and circumstances, nature of offence alleged, circumstances in a given case and also whether keeping the person under suspension would be necessary for the purpose of continuance of the case. In other words, if the concerned individual is likely to affect the departmental proceedings or the criminal case pending before the authority or the Court by influencing the witnesses, then the suspension may be continued, otherwise the departmental authorities ought to have taken into consideration that 50%/75% of the salary is being paid to a suspended employee by way of subsistence allowance without taking any work from him. Thus, the concerned person is receiving amount without work. There is other aspect if the concerned authorities are of the view that such a person on account of his alleged misconduct departmental or criminal, is likely to affect the atmosphere of the Officer where he is posted, a decision can always be taken to post the said individual at a different place or transfer him to some other place so that he cannot in any manner disturb or affect the working at other place. Such individuals against whom departmental action is being sought to be taken and are reinstated ought not to be placed in sensitive posting place. They ought to be given work wherein there is no direct public involvement and they should continue to work at such place till a verdict is given by competent Court deciding the criminal case or in the departmental enquiry.

16. In light of the aforesaid observations, this Court examined the facts of the present case. It is noticed that the petitioner has remained under suspension since 17.07.2017 and almost one and a half year has elapsed. The said Constable has been received subsistence allowance without performing any duty.

17. Taking into consideration that the charge-sheet has been filed on 6.4.2018 and there is likelihood of the criminal case to continue for years together and also taking into consideration the allegations levelled, this Court is of the view that no purpose would be served in prolonging the suspension of the petitioner further and the suspension order is accordingly revoked.

6. Mr. Prakhar Gupta, learned counsel appearing for the appellant contended that the circulars issued by the Government provide that if a public

servant is caught taking bribe red handed by the Anti Corruption Bureau, without exception he should be suspended forthwith. In corruption cases

other than trap cases, on prosecution sanction being issued, the public servant shall be compulsorily suspended if he has not been already suspended.

Further, in the cases of grievous offences like murder, dowry death, rape and of moral turpitude, if the charge sheet is filed by the police before the

Court of competent jurisdiction, the public servant shall be placed under suspension if not already suspended. That apart, as per the circular issued, the

suspension order can be revoked after a lapse of three years from the date of suspension or in case of challan being filed after a lapse of one year on

the recommendation of the Committee constituted for the purpose after due consideration of merits in each case. Learned counsel urged that the

legality of the circulars issued was not challenged in the writ petition and therefore, the learned Single Judge has seriously erred in directing that these

circulars issued impinging on the power of the disciplinary authority to revoke the suspension at any time deserve to be ignored. Learned counsel

submitted that the circulars have been issued to fill up the gap and supplement the rules which do not cover the specific situations where the

employees are facing charges of serious offences. Learned counsel submitted that being custodian of law and order, integrity and uprightness are the

virtues most indispensable for personnel working in the police force and therefore, the decision of the disciplinary authority in declining to revoke the

suspension was not required to be interfered with by the learned Single Judge.

Relying upon the decision of the Supreme Court in the matter of U.P.Rajya Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan", reported in 1993 Supp. (3) SCC 48, learned counsel submitted that where there is charges of corruption against an employee and case is registered against him under the Anti Corruption Law, he deserves to be kept away from the establishment till the charges against him are finally disposed of. Whether the employees should or should not continue in their office during the pendency of inquiry or trial is a matter to be assessed by the authority concerned and should be interfered with by the Court unless the suspension order passed is found to be actuated by malafides. Learned counsel submitted that the order placing the respondent under suspension was passed on 17.7.17 and the respondent made an application seeking revocation of suspension on 6.11.17 i.e. after a lapse of less than four months and thus, in no manner, it could be considered to be a case of prolonged suspension warranting interference by this Court in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India. Learned counsel submitted that the disciplinary authority rejected the application preferred by the respondent relying upon the circular issued by the State Government and thus, if according to the learned Single Judge, the circulars were to be ignored and the respondent's suspension order was required to be reviewed on merits, then, the matter was required to be remanded to the disciplinary authority for fresh consideration in terms of Rule 13 (5) of the Rules of 1958 and thus, the learned Single Judge has seriously erred in revoking the suspension order considering the same to be a case of prolonged suspension.

7. On the other hand, learned counsel appearing for the respondent submitted that under Rule 13 (5) of the Rules of 1958 it is the discretion of the authority concerned to revoke the suspension made or deemed to have made at any time and thus, the circulars issued which encroach upon and restrict the discretionary power conferred upon the authority are per se illegal and arbitrary and thus, the learned Single Judge has committed no error in holding that such circulars issued by the State Government deserve to be ignored. Learned counsel submitted that a Government employee cannot be placed under suspension for indefinite period and it is for this reason, the authority empowered is vested with the discretion to revoke the suspension order at any time. Obviously, the matter with regard to revocation of

suspension under Rule 13 (5) has to be considered by the authority concerned and the discretion vested in him cannot be restricted by issuing executive instructions in terms that for particular number of years, the power conferred shall not be open to be invoked. Learned counsel submitted that if the Court comes to the conclusion that the learned Single Judge could not have straightaway revoked the suspension order, then, the matter deserves to be remanded to the disciplinary authority for consideration afresh in terms of Rule 13 (5) of the Rules of 1958.

8. We have considered the rival submissions and perused the material on record.

9. Indisputably, as per Rule 13 (1) of the Rules of 1958, 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 suspension where a case against him in respect of any criminal

offence is under investigation or trial. It also cannot be disputed that the suspension made under Rule 13 (1) or deemed to have been made under Rule

13 (2) of the Rules of 1958, may be revoked by the authority issuing the suspension order or any higher authority at any time. Apart from the

revocation of the suspension order once made under Rule 13 (5), the Government servant placed under suspension may appeal against an order of

suspension to the authority to which the authority which made or is deemed to have made the order is immediately subordinate, under Rule 22 of the

Rules of 1958. Further, under Rule 34 of the Rules of 1958, the Governor is empowered to review any order which is made or is appealable under the

Rules of 1958 and thus, the suspension order issued by the competent authority can be even reviewed by the Governor. But then, the suspension order

once issued shall remain in force unless the same is rescinded invoking the powers as aforesaid, or the Government servant is acquitted of the criminal

charges or exonerated in disciplinary proceedings or the disciplinary authority proceeds to pass the penalty order on account of conviction of the

Government servant in criminal case or his being found guilty of the charges in the disciplinary proceedings.

10. From bare perusal of the Rule 13 (5) of the Rules of 1958, it is manifestly clear that the power of the authority concerned to revoke the suspension

order exercising his discretion is not inhibited by any conditions and the suspension order is permissible to be revoked at any time and thus, the circular

issued by the State Government providing for consideration of matter of revocation of suspension order only after expiry of the stipulated time since suspension or after filing of the charge sheet cannot be enforced so as to curtail the power of the competent authority to revoke the suspension order at any time for justifiable reasons. In this view of the matter, in our considered opinion, the learned Single Judge was absolutely justified in holding that executive instructions issued by the State Government by way of circulars putting fetters on an independent power of the competent authority under Rule 13 (5) and curtailing the power of appellate authority under Rule 22 of the Rules of 1958, deserves to be ignored. We are in agreement with the learned Single Judge that while exercising the power under Rule 13(5), the authority empowered was required to consider the facts and circumstances of the case, the nature of the offence alleged etc. to arrive at the conclusion as to whether the suspension deserves to be continued or the same deserves to be revoked.

11. A bare perusal of the order dated 11.11.17 reveals that the representation made by the respondent has been declined to be considered by the Superintendent of Police solely relying upon the circular dated 12.1.11 issued by the State Government. We are of the opinion that if the authority concerned has declined to exercise the power conferred under Rule 13 (5) of the Rules of 1958 influenced by the circular issued by the Government which in no manner could be construed to have curtailed the discretion vested in the authority to revoke the suspension order at any time, the matter was required to be remanded to the authority concerned for consideration afresh and the suspension order should not have been straightaway revoked by the learned Single Judge.

12. There is yet another aspect of the matter. The case against the respondent for offence under Section 7 of the Prevention of Corruption Act, 1988 was registered on 12.7.17, he was placed under suspension on 17.7.17 and just after a few months, on 6.11.17, the respondent proceeded to make an application to the Superintendent of Police seeking revocation of suspension order when the matter was still under investigation. It has come on record that the prosecution sanction against the respondent was issued on 21.2.18 and till the filing of the reply by the respondents before the learned Single Judge on 21.5.18, the charge sheet though prepared was not filed before the

criminal court of competent jurisdiction. Thus, on the facts and in the circumstances of the case, the respondent's suspension, at the relevant time, could not have been considered to be a case of prolonged suspension.

13. As laid down by the Supreme Court in Sanjiv Ranjan's case (supra), ordinarily, when there is an allegation of defalcation of the money, the delinquent employee have to be kept away from the establishment till the charges are finally disposed of. In our considered opinion, the charge of demand of bribe, that too, by a police officer is also a serious charge and therefore, the matter with regard to revocation of suspension order of such Government servant needs to be appropriately assessed by the authority concerned. We are firmly of the opinion that the respondent does not deserve indulgence by this Court so as to revoke the suspension order straightaway where the authority empowered under the Rules of 1958 has not even applied its mind to the facts and circumstances of the case as to whether the suspension of the respondent deserves to be revoked or not.

14. In view of the discussion above, the order impugned passed by the learned Single Judge to the extent of revocation of suspension order deserves to be set aside and the matter deserves to be remanded to the authority concerned for consideration afresh in terms of Rule 13 (5) of the Rules of 1958 uninfluenced by the circulars issued by the State Government as aforesaid.

15. In the result, the appeal is partly allowed. The order impugned passed by the learned Single Judge to the extent of revocation of suspension order is set aside. The matter is remanded to the District Superintendent of Police, District Sawai Madhopur to consider the application of the respondent for revocation of suspension order afresh in accordance with law as discussed above. The entire exercise for disposal of the application seeking revocation of suspension order shall be concluded within a period of four weeks from the date of receipt of certified copy of this order. No order as to costs.