

(2016) 05 RAJ CK 0139

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 186 of 2016.

State of Rajasthan and Others - Appellants @HASH Jagraj Singh

Date of Decision : 10-05-2016

Acts Referred:

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 13(2), Rule 22

Citation : (2016) 4 RLW 3087 : (2016) 4 WLC 587

Hon'ble Judges : Govind Mathur and G.R. Moolchandani, JJ.

Bench : Division Bench

Advocate : Dr. P.S. Bhati, Additional Advocate General, assisted by Mr. B.L. Bhati, Advocate, for the Appellants; Mr. V.K. Mathur with Mr. Anirudh Purohit, Caveator, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Govind Mathur, J. - Exercising powers under Rule 13(2) of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (hereinafter referred to as "the Rules of 1958"), the Director, Secondary Education Rajasthan, Bikaner, by an order dated 6/7.11.2013, placed the respondent petitioner under suspension on being lodged a case against him at Anti Corruption Bureau, Sriganganagar. Being aggrieved by the order aforesaid he preferred an appeal to the competent authority as per Rule 22 of the Rules of 1958.

2. The case of the respondent petitioner before the appellate authority was that the foundation to place him under suspension is absolutely false as he was never trapped while receiving any kind of gratification, though a case was lodged against him on basis of the statement given by co-employee who was trapped red handed. The appellate authority did not choose to decide the appeal on merits by relying upon a circular dated 7.7.2010 providing guidelines to review an order of suspension. As per the circular aforesaid, no order of suspension, if founded on allegation relating to involvement of a Government servant in a case relating to Prevention of Corruption Act, shall be reviewed on merits prior to three years from the date of the grant of sanction for prosecution and filing the

charge sheet before the competent court.

3. To challenge the order passed by the appellate authority, the respondent petitioner preferred a petition for writ (SB Civil Writ Petition No. 6388/2014) that came to be accepted vide judgment dated 18.2.2015. Learned Single Bench, while accepting the writ petition, held that the remedy given under Rule 22 of the Rules of 1958 is a statutory remedy available to a Government servant and the circulars issued by the Government in its administrative capacity are no bar for filing the statutory appeal prior to period of three years from the date of the grant of sanction by the authority competent and filing of charge sheet before the competent court. Learned writ court directed the respondent petitioner to appear before the appellate authority on 27.2.2015 and further a direction was given to the appellate authority to hear and decide the appeal in accordance with law within a period of one month therefrom. In pursuance to the direction given by the writ court, the respondent petitioner appeared before the appellate authority on 27.2.2015 and further on 15.4.2015. He also submitted certain additional documents to the appellate authority. The appellate authority decided the appeal under an order dated 5.5.2015, though as per the directions given, was required to be decided within a period of one month. Surprisingly enough, the appellate authority this time too decided the appeal by relying upon the circulars dated 7.7.2010 and 12.1.2011 which were held non-applicable by writ court while deciding the writ petition bearing numbers 6388/2014.

4. On rejection of the appeal, the respondent petitioner again preferred a petition for writ with assertion that the appellate authority erred while not examining the appeal on merits by relying upon the circulars which were found not applicable while adjudicating an appeal under Rule 22 of the Rules of 1958. Learned writ court by the judgment impugned dated 4.11.2015 accepted the writ petition and set aside the order passed by the appellate authority as well as the order passed by the authority competent placing the respondent petitioner under suspension. Learned Single Bench also imposed a cost of Rs. 25,000/-, to be recovered from the officers concerned.

5. While challenging the judgment impugned dated 4.11.2015, the argument advanced by learned counsel for the appellants is that the learned Single Bench erred while setting aside the order placing the petitioner under suspension in view of the fact that if the appellate authority committed any wrong, then the appropriate course was to remand the matter back for adjudication of merits afresh. It is further submitted that the order placing the respondent petitioner under suspension was a justified one to maintain public faith in civil service as the officer was found involved in a case relating to an offence punishable under the Prevention of Corruption Act, 1988. It is asserted that no occasion was there to impose a cost of Rs. 25,000/- and further to mention that "the appellate authority is a high ranking officer in the Government of Rajasthan in the cadre of I.A.S and is thus, expected to be having at least a basic knowledge of relevant legal provisions. That apart, as already observed above, there was no scope

whatsoever for the appellate authority to have avoided deciding the appeal on merits and thereby circumventing the Court's order dated 18.2.2015 whereby, it was directed that the appeal should be decided on merits after considering the objections and arguments raised by the suspended employee."

6. While contesting the appeal, learned counsel appearing on behalf of the respondent petitioner submits that the remedy given under Rule 22 of the Rules of 1958 is a statutory remedy and that is not at all dependent to any circular issued by the Government of Rajasthan in its administrative fiat. The appellate authority was under obligation to consider and decide the appeal on its own merits. The writ court while accepting the first writ petition preferred by the respondent petitioner clarified this position of law, even then the appellate authority failed to adhere the settled law, hence, no wrong is committed by the court by setting aside the order of suspension as well as the order passed by the appellate authority and further by making certain observations about the officer concerned and also by imposing a reasonable cost. According to the respondent petitioner the order placing the petitioner under suspension is apparently bad being founded on a fact non-existent. It is asserted that the respondent petitioner was never trapped red handed, though a case against him was lodged pertaining to an offence punishable under the Prevention of Corruption Act. According to learned counsel, the case too is an out come of a conspiracy as it is based upon a statement made by the person who in fact was trapped while accepting illegal gratification. In alternative, it is also urged that the respondent petitioner was placed under suspension on 7.11.2013, a period of more than 2? years has already been passed, but neither the sanction is granted by the competent authority nor any charge sheet has yet been filed, therefore, no useful purpose shall now be served by keeping the respondent petitioner under suspension. The further continuance of the respondent petitioner under suspension, as per learned counsel, shall be an arbitrary action.

7. Heard learned counsels.

8. It is not at all in dispute that in the first petition for writ preferred by the respondent petitioner, a writ court held that the appeal under Rule 22 of the Rules of 1958 is a statutory remedy and this power is required to be exercised by the appellate authority concerned irrespective of any circular issued by the Government of Rajasthan in its administrative fiat instructing the authorities concerned for not reviewing the order of suspension prior to the period of three years from the date of granting sanction for prosecution and further from the date of filing the charge sheet before the competent court. It is also not in dispute that the circulars on which the appellate authority rely, pertain to review of a decision for continuance of a Government servant under suspension and not for adjudication of an appeal under Rule 22. The remedy given under Rule 22 of the Rules of 1958 is a statutory remedy against an order of suspension and it is required to be examined on its own merits. The administrative instructions given by the State Government relating to review of suspension are having no

application for entertaining and adjudicating an appeal under the provision aforesaid. No wrong, thus, is committed by learned Single Bench in setting aside the order passed by the appellate authority.

9. In this legal background, it is apparent that the appellate authority erred while rejecting the appeal preferred by the respondent petitioner under order dated 5.5.2015, as such, we do not find any wrong in the observations made by learned Single Bench that the appellate authority is a high ranking officer in the Government of Rajasthan in the cadre of Indian Administrative Service and is, thus, expected to be having at least basic knowledge of relevant legal provisions. As a matter of fact what appears from perusal of the order passed by the appellate authority that it did not care even to read the judgment passed by the writ court on 18.2.2015 in SB Civil Writ Petition No. 6388/2014. As already stated, by the judgment aforesaid learned Single Bench in quite unambiguous terms held that the circulars relied upon by the appellate authority are no bar for filing appeal prior to three years. In totality of the facts, we do not find any just reason to expunge the observations made by the learned Single Bench.

10. So far as the order of suspension is concerned, as per Rule 13 of the Rules of 1958, the appointing authority or any authority to which it is subordinate or any authority empowered by Government in that behalf, may place a Government servant under suspension in several eventualities including on his detention in custody whether in a criminal charge or otherwise for a period exceeding 48 hours. The respondent petitioner was placed under suspension on this count, though the order of suspension mentions that he was trapped red handed while accepting illegal gratification. Be that as it may, it is a fact admitted that a criminal case was lodged against the respondent petitioner for committing offences punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act read with Section 120-B Indian Penal Code. He may have been implicated in the case on basis of the statement given by a co-employee who was trapped red handed, but this fact in no manner cool downs the truth about lodging the first information report against him. In such circumstance, we are of considered opinion that mere mentioning of a fact which is not completely correct, in a suspension order, is not sufficient to set aside the suspension. The court in normal course should be slow in interfering with an order of suspension. Interference with such an order should not be made until that is in violation of statutory provisions or is an out come of malafides or resulting into an action shockingly arbitrary. We are of considered opinion that no such eventuality was existing in the instant matter at the time of passing the order of suspension. As a matter of fact, on being lodged a criminal case of serious nature, specially relating to the offences punishable under the Prevention of Corruption Act, the authority empowered was justified in placing the petitioner under suspension to maintain public faith in civil service. The order of suspension, thus, is not bad from its inception. We are of considered opinion that learned Single Bench erred while holding the order of suspension illegal from inception and by quashing the same, however, we find force in the argument advanced by learned counsel for

the respondent petitioner that the suspension of the respondent petitioner is a prolonged one and its further continuance shall be unjust and arbitrary. It is a fact admitted that the respondent petitioner herein is facing suspension from last more than 27 years and no substantial progress has taken place in the criminal case. It is also a fact relevant that the respondent petitioner is going to retire from service on attaining the age of superannuation in the month of July, 2016. After a lapse of 27 years and also being at the verge of retirement, he would also not be in position to temper with the evidence available against him. If he even now be allowed to continue under suspension, then that shall be having its arbitrary effects including the adverse effects on his post retrial rights.

11. As already stated, learned Single Bench also fastened a cost of Rs. 25,000/- upon the authority that passed the order of suspension as well as upon the appellate authority. We are of the view that there was no fault on the part of the authority that passed the order of suspension, therefore, no cost could have been imposed upon that. The appellate authority certainly committed a grave error by deciding the appeal by relying upon the circulars which were not at all applicable in light of the directions given by a writ court in the case of the respondent petitioner himself. The appellate authority should have at least read and understood that judgment before deciding the appeal. The approach of the appellate authority is too casual, thus, certainly deserves to be saddled with a reasonable cost, which in our opinion shall be Rs. 5,000/-. The cost is required to be recovered personally from the officer who decided the appeal.

12. Accordingly, this appeal is disposed of in the terms that the order passed by the appellate authority dated 5.5.2015 is declared illegal, hence is quashed. The order dated 6/7.11.2013, placing the respondent petitioner under suspension stands revoked forthwith. The officer who decided the appeal vide the order dated 5.5.2015 in violation of the law laid down and the directions given under the judgment dated 18.2.2015 in SB Civil Writ Petition No. 6388/2014 is saddled with a cost of Rs. 5,000/- which is required to be paid to the Rajasthan High Court Legal Aid Committee, Jodhpur within a period of one month from today.