

(2017) 02 MP CK 0153
In the Madhya Pradesh High Court
Case No : 18456 of 2016

Suryaprakash Mishra

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 27-02-2017

Acts Referred:

Constitution of India, Article 14, Article 21 -
Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966, Rule 9(1), Rule 9, Rule 9(5), Rule 9(1)(b)

Citation : (2017) 02 MP CK 0153

Hon'ble Judges : Sujoy Paul

Bench : Division Bench

Advocate : Sanjay K Agrawal, Pushpendra Yadav

Judgement

1. This is fifth visit of the petitioner to this Court regarding his grievance against the suspension order dated 14.05.2010. The petitioner has fought a long drawn battle in the corridors of the Court against the said suspension order.

2. In short, the facts are that while working as Registrar, Vikram Vishwa Vidyalaya, Ujjain, the petitioner was placed under suspension vide order dated 14.05.2010 (Annexure-P/8). Admittedly, the petitioner was placed under suspension because the State Economic Offence Bureau filed challan against the

petitioner under various provisions of Indian Penal Code and Prevention of Corruption Act, 1988. The petitioner filed the first petition W.P. No.6322/2010 challenging the suspension order. This writ petition was disposed of on 25.10.2010 (Annexure-P/9). This Court directed the respondents to examine the entire issue and review the order of suspension keeping in view the provisions of Rule 9 of M.P. Civil Services (Classification, Control & Appeal) Rules, 1966 (hereinafter referred to as "the Rules of 1966"). The petitioner accordingly preferred a detailed representation dated 18.11.2010 (Annexure-P/10). This representation was considered as per the order passed in W.P. No.6322/2010.

The representation was rejected by the order dated 16.12.2010.?

3. Shri Sanjay K. Agrawal, learned counsel for the petitioner contends that only reason assigned for rejecting the representation is that the criminal case based on the challan is still pending before the Court of competent jurisdiction. University is a sensitive work place where officers of suspicious background cannot be posted. If petitioner is reinstated, it may create instability in the University. Keeping in view the serious consequences of reinstatement, the prayer for revocation of suspension is rejected.

4. The petitioner filed second petition W.P.

No.20686/2012 against the suspension order. This writ petition was disposed of on 10.12.2012. This Court opined that the petitioner has sought revocation of suspension only on the ground of delay in conclusion of criminal case. Hence, this aspect needs to be looked into by the competent authority in view of the circulars issued by the State Government. This Court observed that the competent authority shall take note of ground of delay in conclusion of criminal case and in addition, shall examine whether any benefit can be granted to the petitioner on the ground that suspension has been revoked in cases of similarly situated employees. The petitioner preferred a detailed representation in this regard (Annexure-P/17). This representation submitted through Counsel was rejected on 01.04.2013 (Annexure-P/18). It is pointed out that the reasons for rejection are : (i) criminal case is still pending against the petitioner; (ii) the petitioner is unable to make out a case for revocation of suspension order. This rejection was came to be challenged in third Writ Petition No.19326/2013. This writ petition was decided on 12.12.2014. By taking this Court to this order, Shri Sanjay K. Agrawal, learned counsel for the petitioner urged that this Court has given specific finding that the petitioner is not responsible for protracting the trial. It is further demonstrated that the impugned order was interfered with

because no reason was assigned for the conclusion that revocation is not possible/justifiable. By this order, this Court directed the respondents to reconsider the application for revocation of suspension by taking into account the circular dated 06.11.2002 as well as the ground referred to by the petitioner in the application for revocation of suspension. Thereafter, by order dated 27.02.2015 (Annexure-P/21), the respondents rejected the representation on the ground that after framing of charges, the period of three years is still not over and hence as per Clause 5 of Circular dated 06.11.2002, it will not be proper to revoke the suspension order. This rejection order is called in question in the fourth round in Writ Petition No.4005/2015, which was disposed of in admission stage on 08.03.2016. The petitioner was directed to file a fresh representation relating to his grievance and in turn, the competent authority was directed to consider and decide the said representation by speaking order within stipulated time. In turn, the petitioner filed representation dated 11.03.2015 (Annexure-P/23) which was rejected by respondents on 26.10.2016 (Annexure-P/25). It is pointed out that the rejection order contains following reasons:

(i) The petitioner is placed under suspension under Rule 9(1) of the Rules of 1966, and as per Rule 9 of the Rules of 1966, because of delay in criminal case, there is no provision of revocation of

suspension. (ii) The Government Circular dated 06.11.2002 may not be examined/seen in the light of the binding Rule 9(1) of the Rules of 1966, particularly, when the suspension is made under proviso to Rule 9(1) of the the Rules of 1966.

(iii) The petitioner has not established that he is not responsible for delay in conclusion of the trial and in absence thereto, the benefit of circular dated 06.11.2002 cannot be granted to the petitioner.

5. This rejection order dated 28.01.2013 (Annexure-P/24) is assailed in the present round of litigation. Criticizing this order, Shri Sanjay K. Agrawal advanced three fold contentions viz. (i) The protracting trial violates Article 14 & 21 of the Constitution. Such prolonged suspension are deprecated by Supreme Court in the case reported in 1987 (4) SCC 328 (O.P. Gupta Vs. Union of India) and 2015 (7) SCC 291 (Ajay Kumar Choudhary vs. Union of India). (ii) As per the findings given by this Court in W.P. No.19326/2013, it can be safely concluded that the petitioner is not responsible for delaying the proceedings of the criminal case. Hence the burden which was shifted on the petitioner's shoulder cannot be said to be justifiable. (iii) The petitioner is subjected to hostile discrimination. Along with petitioner, four other persons were made accused. In para 5.27, petitioner has given details of such persons. It is urged that the respondents have not rebutted

the said averments in their reply. Thus, uncontroverted averments make it clear that the petitioner was singled out for the purpose of placing him under suspension which amounts to giving him treatment of hostile discrimination. On the strength of Para 5.44 of writ petition, it is submitted that in obedience of Court's order passed in W.P. No.19326/2013, the petitioner's case was considered by the competent Committee. The Committee opined that the petitioner's order of suspension should be revoked. The said decision of the Committee was approved by the Minister Incharge of the Department but before formal order of revocation could be issued, an administrative reshuffle took place and another person joined as Principal Secretary of the respondent Department. In view of the change of the Officer, no order was passed for revoking the suspension. Shri Agrawal has taken pains to contend that this para of petition was also not replied by the respondents. On the strength of aforesaid contentions, it is submitted that the action of the respondents in keeping the petitioner under suspension is wholly impermissible. The respondents are paying Rs.77,539/- as subsistence allowance to the petitioner every month. The petitioner's service can be utilized in any other University. In case he is posted at a different place, he will not be in a position to influence the material or witnesses. There is no

justification at all in not revoking the suspension order.

6. Per contra, Shri Pushpendra Yadav, learned Government Advocate submits that proviso to Rule 9(1)(b) makes it clear that whenever a challan is filed in relation to a criminal case relating to corruption or moral turpitude, the employee has to be placed under suspension invariably. Reliance is placed on 2012 (3) MPLJ 567 (A.P. Singh Gaharwar Vs. State of M.P. and others), wherein a Division Bench of this Court has examined the words used in Rule 9(1), namely, 'shall invariably be placed under suspension'. As per this judgment, Shri Yadav submits that no fault can be found in the action of the respondents in placing the petitioner under suspension.

7. So far the revocation is concerned, Shri Yadav contends that when Writ Petition No.19326/2013 was decided, three years period from the date of framing of charges was not over. Thus, any finding given about protracting of trial is not of much consequence. Shri Yadav submits that after rejection of representations, the last Writ Petition No.4005/2015 was decided on 08.03.2016. The petitioner was directed to file a 'fresh representation'. It was obligatory for the petitioner to take all possible objections/grounds in this representation. By taking this Court to the representation (Annexure-P/23), Shri Yadav submits

that it does not contain any factual foundation and grounds relating to discrimination in placing the petitioner under suspension. Learned Government Advocate further submits that the suspension cannot be revoked automatically after completion of three years of time. It can be revoked only when a conscious decision is taken by the competent authority as per Rule 9(5) of the Rules of 1966.

8. Learned counsel for the State submits that the last rejection order does not contain any ground about alleged decision taken by the Committee and the concerned Minister for revocation of suspension. In absence thereto, no fault can be found in the impugned rejection order.

9. Shri Yadav lastly submits that in view of serious allegations against the petitioner, it will not be in the interest of justice to revoke the suspension order.

10. No other point is pressed by learned counsel for the petitioner.

11. I have heard learned counsel for the parties and perused the record.

12. In view of rival contentions advanced, following questions emerged for consideration viz. (i) Whether in the facts and circumstances of this case, a writ of mandamus can be issued

directing the authorities to revoke the order of suspension; (ii) Whether suspension order can be assailed on the ground of discrimination; (iii) Whether suspension order can be called in question on the basis that the petitioner is not responsible for delay in the proceedings of criminal case; and (iv) Whether rejection order dated 28-01-2013 is in accordance with law. As to Question No. 1

13. This is trite law that purpose of suspension is to keep delinquent out of mischief range and complete the proceedings unhindered. When the criminal trial or enquiry is taking a longtime, whether it is open to the Court to interfere with the suspension order came for consideration before the Supreme Court in the case of Union of India and Anr. vs. Ashok Kumar Aggrawal (2013) 16 SCC 147. After considering 64 judgments on the point, it was held that even if criminal trial or enquiry is taking a longtime, it is ordinarily not open to the court to interfere with suspension order as it is within exclusive domain of competent authority, who can review its suspension order and revoke it if it is satisfied that criminal case pending would only be concluded after unusual delay for no fault of employee concerned. It is further held that mere delay in conclusion of trial or enquiry cannot be a ground for quashing suspension order, if the charges are grave in

nature. The court cannot act as appellate forum de hors powers of judicial review.

14. This judgment delivered in Ashok Kumar Aggrawal (supra) was not considered by subsequent Division Bench in the case of Ajay Kumar Choudhary (supra) . However, it is relevant to note that the Apex Court emphasized the need of speedy trial and deprecate the practice of keeping the employees under suspension for a long period. The Apex Court opined that government is free to transfer the employee to any other department or to a different office so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation/trial against him. The Apex Court emphasized the need of upholding human dignity and expected that employee should not be kept under suspension for indefinite period.

15. In view of aforesaid legal position, it is not a fit case for issuing a writ of mandamus by directing the respondents to revoke the suspension. The allegations against the petitioner are very grave and in that situation merely because the petitioner remained under suspension for a considerable longtime, mechanically suspension order cannot be directed to be revoked. The department is required to examine the need to keep the

petitioner under suspension. No doubt, as per Rule 9 (i) of CCA Rules, an employee against whom challan has been filed for the offences involving moral turpitude/corruption is required to be placed under suspension invariably, the said rule does not require that such employee should be kept under suspension till completion of trial. As per General Clauses Act, the authority who has placed the employee under suspension can revoke his suspension. Thus, the department is required to undertake following exercise- (i) the department shall examine whether the petitioner is still required to be kept under suspension; (ii) Whether the petitioner is responsible for the delay in the proceedings of criminal case; (iii) Whether the petitioner can be posted elsewhere so that he is not able to influence the material/evidence etc. As to Question No.2

16. This is trite law that discrimination in placing the employees under suspension selectively can be a ground for interference with the suspension order. In (1999) 6 SCC 257 K. (Sukhendar Reddy vs. State of A.P. & Anr.) , the Apex Court held that certain officers were found involved but the appellant therein alone was placed under suspension. It is laid down that the government cannot be permitted to resort to selective suspension. It cannot be permitted to place an officer under suspension just to

exhibit and feign that action against the officers, irrespective of their high status in the service hierarchy, would be taken. Thus, discrimination can very well be a reason for interference/judicial review. However, it is seen that in the representation which was decided by impugned order dated 28-01-2013 the petitioner has not pleaded about discrimination. In absence of factual foundation and pleadings about discrimination in the last representation, the competent authority had no occasion to consider this point. As to Question No.4

17. The impugned order dated 26-10-2016 is passed on the ground that the petitioner has not filed any proof alongwith the representation showing that he is not responsible for delay. In addition, it is submitted that as per rule 9 of CCA Rules, the petitioner's suspension is based on filing of challan.

18. As analyzed above, even if the petitioner is placed under suspension because of filing of challan, such suspension order passed under Rule 9 (1) of CCA Rules will not preclude the competent authority to revoke it. The competent authority as per the principles laid down in Ashok Kumar Aggrawal and Ajay Kumar Choudhary (supra) can recall its order and revoke the suspension order. The competent authority is required to apply its mind on this aspect. The impugned order is passed without taking

into account the relevant factors based on the principles of law laid down in said two cases referred in this para.

19. In this view of the matter I deem it proper to dispose of this petition with following directions:-

- (I) the impugned order dated 26-10-2016 (Annexure P/25) is set aside.
- (ii) the department shall examine whether the petitioner is still required to be kept under suspension.
- (iii) Whether the petitioner is responsible for the delay in the proceedings of criminal case.
- (iv) Whether the petitioner can be posted elsewhere so that his services can be utilized and he is not able to influence the material/evidence etc.
- (v) Whether petitioner is subjected to discrimination ?
- (vi) The petitioner may file a comprehensive representation containing specific grounds in support of his contentions and submit it before the respondent No.1.

It will be lawful for the petitioner to file order sheets of the criminal trial before the respondent No.1 in order to show that he is not responsible for the delay caused in the criminal trial.

(vii) In turn, the respondent No.1 shall pass a fresh and reasoned order by taking into account the directions given hereinabove. The

respondent No.1 is also required to examine the aspect of discrimination (if raised) by the petitioner. The entire exercise of reconsideration shall be completed within 60 days from the date of communication of this order.

20. This petition is disposed of. No cost.