
(2015) 04 MAD CK 0292

In the Madras High Court

Case No : Writ Petition (MD) No. 7513 of 2015 and M.P.(MD) No. 2 of 2015

T. Thiruselvan

APPELLANT

Vs

The Joint Director of School Education (Personal) and Others

RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 294(b), 323, 506(ii)

Citation : (2015) 04 MAD CK 0292

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Advocate : N. Dilip Kumar, for the Appellant; V. Muruganandam, Addl. Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Vaidyanathan, J—The prayer in the Writ Petition is a Writ of Certiorari to call for the records relating to impugned order passed by the first respondent in R.C. No. 081751/C3/S3/2014, dated 26.11.2014 and quash the same.

2. Mr. V. Muruganandam, learned Additional Government Pleader takes notice for the respondents and by consent of both parties, the writ petition itself is taken up for final disposal.

3. The case of the petitioner is that he was placed under suspension by an order dated 26.11.2014, under Rule 17(e)(1) of the Tamil Nadu Civil Services (Discipline and Appeal Rules) on the basis of a criminal case registered against him in Crime No. 785 of 2014 under Sections 294(b), 323, 506(ii) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. He further submits that there is a long pending family dispute between the petitioner and his wife, due to which a petition in H.M.O.P. No. 80 of 2012 against the petitioner is pending before the Principal Subordinate Judge, praying for decree of divorce. During the pendency of the said H.M.O.P., his wife lodged a complaint alleging dowry demand and cruelty before the All Women Police

Station, Kanyakumari. He further submits that his wife also sent a representation on 22.09.2014, along with a copy of F.I.R. to the Headmaster, requesting for departmental action against him. On the basis of the same, the first respondent has passed the impugned order of suspension on 26.11.2014. Aggrieved by it, the petitioner made a representation to the first respondent, but the same is still pending without any response. Hence, the petitioner is before this Court.

4. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

5. It is seen that the order of suspension is not by way of punishment and the relationship between the employer and the employee subsists even in the said period. Therefore, the same cannot be questioned except on certain grounds like competency of the authority issuing the order, want of jurisdiction etc. Moreover, the person suspended is also entitled to subsistence allowance as per the terms of the law applicable to the department concerned.

6. The Apex Court in the case of Union of India (UOI) and Another Vs. Ashok Kumar Aggarwal, (2014) 140 FLR 737 : (2013) 15 JT 200 : (2013) 14 SCALE 323 : (2014) 1 SCJ 115 : (2014) 2 SCT 70 : (2014) 1 SLJ 408 has relied on a number decisions and considered the issue relating to the order of suspension. The relevant paragraphs of the judgment (supra) are extracted hereunder:

"7. During suspension, relationship of master and servant continues between the employer and the employee. However, the employee is forbidden to perform his official duties. Thus, suspension order does not put an end to the service. Suspension means the action of debarring for the time being from a function or privilege or temporary" deprivation of working in the office. In certain cases, suspension may cause stigma even after exoneration in the departmental proceedings or acquittal by the Criminal Court, but it cannot be treated as a punishment even by any stretch of imagination in strict legal sense.(Vide: O.P. Gupta Vs. Union of India (UOI) and Others, AIR 1987 SC 2257 : (1987) 3 JT 532 : (1988) 1 LLJ 453 : (1987) 2 SCALE 457 : (1987) 4 SCC 328 : (1988) 1 SCR 27 : (1988) 1 SLJ 121 ; and Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, AIR 1999 SC 1416 : (1999) 2 CTC 579 : (1999) 82 FLR 627 : (1999) 2 JT 456 : (1999) 1 LLJ 1094 : (1999) 2 SCALE 363 : (1999) 3 SCC 679 : (1999) SCC(L&S) 810 : (1999) 2 SCR 257 : (1999) AIRSCW 1098 : (1999) 3 Supreme 376).

8. In State of Orissa Vs. Bimal Kumar Mohanty, AIR 1994 SC 2296 : (1994) 68 FLR 970 : (1994) 2 JT 51 : (1995) 1 LLJ 568 : (1994) 1 SCALE 685 : (1994) 4 SCC 126 : (1994) 2 SCR 51 : (1994) 2 SLJ 72 : (1994) 1 UJ 665 , this Court observed as under:

"... the order of suspension would be passed taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of evidence placed before the appointing authority and on application of the mind by the disciplinary authority. Appointing authority or disciplinary authority should

consider and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law should be laid down in that behalf. In other words, it is to refrain him to avail further opportunity to perpetuate the alleged misconduct or to remove the impression among the members of service that dereliction of duty will pay fruits and the offending employee may get away even pending inquiry without any impediment or to provide an opportunity to the delinquent officer to scuttle the inquiry or investigation to win over the other witnesses or the delinquent having had an opportunity in office to impede the progress of the investigation or inquiry etc. It would be another thing if the action is actuated by mala fide, arbitrarily or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The Authority also should keep in mind public interest of the impact of the delinquent's continuation in office while facing departmental inquiry or a trial of a criminal charge.

(Emphasis added)

(See also: R.P. Kapur Vs. Union of India (UOI) and Another, AIR 1964 SC 787 : (1966) 2 LLJ 164 : (1964) 5 SCR 431 ; and Balvantray Ratilal Patel Vs. The State of Maharashtra, AIR 1968 SC 800 : (1968) 17 FLR 445 : (1968) LabIC 984 : (1968) 2 LLJ 700 : (1968) 2 SCR 577)."

9. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

10. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and

if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc.

11. In *Jayrajibhai Jayantibhai Patel Vs. Anilbhai Jayantibhai Patel and Others*, (2006) 12 JT 34 : (2006) 9 SCALE 147 : (2006) 5 SCR 884 Supp : (2006) 2 UJ 1262 , this Court explained:

"18. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material may be struck down. In other words, when a court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision."

12. Long period of suspension does not make the order of suspension invalid. However, in *State of H.P. v. B.C. Thakur* (1994) SCC (L and S) 835, this Court held that where for any reason it is not possible to proceed with the domestic enquiry the delinquent may not be kept under suspension.

13. There cannot be any doubt that the Rules 1965 are a self contained code and the order of suspension can be examined in the light of the statutory provisions to determine as to whether the suspension order was justified. Undoubtedly, the delinquent cannot be considered to be any better off after the charge sheet has been filed against him in the court on conclusion of the investigation than his position during the investigation of the case itself. (*Vide: Union of India (UOI) and Others Vs. Udai Narain*, (1998) 5 SCC 535 : (1998) SCC(L&S) 1418).

14. The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, particularly in *State of Madhya Pradesh and Others Vs. Shardul Singh*, (1970) 20 FLR 81 : (1970) 1 SCC 108 : (1970) 3 SCR 302 ; *P.V. Srinivasa Sastry and others Vs. Comptroller and Auditor General and others*, AIR 1993 SC 1321 : (1993) 1 LLJ 824 : (1992) 3 SCALE 469 : (1993) 1 SCC 419 : (1992) 3 SCR 503 Supp ; *Director General, E.S.I. and another Vs. T. Abdul Razak, etc.*, (1996) 5 AD 486 : AIR 1996 SC 2292 : (1996) 6 JT 502 : (1996) LabIC 2037 : (1996) 2 LLJ 765 : (1996) 5 SCALE 113 : (1996) 4 SCC 708 : (1996) 3 SCR 80 Supp : (1996) 3 SLJ 71 ; *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, AIR 1988 SC 2118 :

(1988) 3 JT 576 : (1988) 2 LLJ 470 : (1988) 2 SCALE 641 : (1988) 4 SCC 319 : (1988) 2 SCR 821 Supp : (1989) 1 UJ 17 ; The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, AIR 1960 SC 806 : (1960) 1 LLJ 520 : (1960) 3 SCR 227 ; U.P. Rajya Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan, (1993) 2 JT 550 : (1993) 2 LLJ 958 : (1993) 2 SCALE 330 : (1993) 3 SCC 483 Supp : (1994) 1 SLJ 28 ; State of Rajasthan Vs. B.K. Meena and others, (1996) 7 AD 321 : AIR 1997 SC 13 : (1996) 74 FLR 2550 : (1996) 8 JT 684 : (1996) LabIC 2750 : (1997) 1 LLJ 746 : (1996) 7 SCALE 363 : (1996) 6 SCC 417 : (1996) 7 SCR 68 Supp : (1997) 1 SLJ 86 : (1996) 2 UJ 739 : (1996) AIRSCW 4160 : (1996) 7 Supreme 432 ; Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan, (1996) 2 AD 433 : (1996) 73 FLR 1247 : (1996) 3 JT 202 : (1996) 2 LLJ 245 : (1996) 2 SCALE 411 : (1996) 3 SCC 157 : (1996) 2 SCR 737 ; and Allahabad Bank and Another Vs. Deepak Kumar Bhola, (1997) 3 JT 539 : (1997) 1 LLJ 854 : (1997) 2 SCALE 623 : (1997) 4 SCC 1 : (1997) 2 SCR 1055 : (1997) 1 UJ 761 , wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21 of the General Clauses Act, 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned. Where the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without examining the entire record in question and in order that the disciplinary proceedings may continue unhindered the court may not interfere. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial can not be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question.

Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, it is not desirable that the court may find out as which version is true

when there are claims and counter claims on factual issues. The court cannot act as if it an appellate forum de hors the powers of judicial review."

7. In view of the above, I find no reason to interfere with the order of suspension and the Writ Petition is dismissed.

8. However, it is open to the department to proceed against the petitioner departmentally for the misconduct committed by him and the respondents shall also review the suspension order periodically. It is also open to the respondents to issue charge sheet, if so advised and complete the enquiry as early as possible preferably within a period of one year from the date of receipt of a copy of this order. As far as the payment of subsistence allowance is concerned, it shall be considered and paid, if it is payable in terms of provisions applicable to the respondents. As per the settled proposition, there is no bar for the department to proceed with the enquiry even during the pendency of criminal case. In case the respondents feel that the prolonged suspension is not in the interest of the institution, the case of the petitioner can be considered for reinstatement without prejudice to the rights of the departmental proceedings against the petitioner. No costs. Consequently, the connected Miscellaneous petition is closed.