

**(2010) 11 RAJ CK 0135**

**In the Rajasthan High Court**

**Case No :** Civil Special Appeal (Writ) No. 328 of 2010 in Civil Writ Petition No. 4125 of 2010

Ummedi Lal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision :** 22-11-2010

**Acts Referred:**

Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 7

**Citation :** (2010) 11 RAJ CK 0135

**Hon'ble Judges :** Arun Mishra, Acting C.J.; Dalip Singh, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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**Judgement**

1. This intra court appeal has been preferred by the Appellant questioning the legality of the order dt. 19th April, 2010 passed by the learned Single Bench in SB Civil Writ Petition No. 4125/2010 dismissing the writ application assailing the order dt. 08/03/2010 passed by the Superintendent of Police, Alwar removing the Appellant from service on the ground that he has been convicted for commission of offence u/s 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 & sentenced for two years rigorous imprisonment with fine of Rs. 5000/-.

2. The factual matrix indicates that the Appellant was working as a Head Constable. He was trapped on 07/10/1997. He was suspended vide order dt. 20/10/1997. However, he was reinstated on 16/08/1999. He was again suspended on 15/09/1999. Thereafter he was convicted by the trial court in the aforesaid case.

3. The Criminal Appeal against the same is pending in this Court. Sentence has been suspended in the Criminal Appeal No. 240/2001. However, in-spite of the fact that he was convicted, his suspension continued till 03/12/2008 when he was reinstated again. After fews days, he was again suspended vide order dt. 15/12/2008. On 01/05/2009 he was reinstated and thereafter on 22/05/2009 he

was again suspended.

4. It is submitted that his pension papers were ordered to be prepared. However, all of a sudden, termination order was passed against the Appellant on 08/03/2010 on the ground of conviction in the aforesaid offence under the Prevention of Corruption Act. The order had been unsuccessfully assailed before the Single Bench. Consequently, the instant intra court appeal has been preferred.

5. Dr. PC Jain, learned Counsel appearing on behalf of the Appellant has submitted that appeal is pending against the conviction in this Court and once the Respondents have awaited for several years after conviction, the services of the Appellant could not have been removed. Thus, the order of removal, being bad in law, deserves to be quashed.

6. Similar question arose for consideration before the Full Bench of the Madhya Pradesh High Court in the case of Laxmi Narayan Hayaran Vs. State of Madhya Pradesh and Another, where the delinquent was caught in a bribery trap case and charge-sheeted for commission of the offence under Sections 7 & 13(1)(d) of the Prevention of Corruption Act, 1988. He was convicted and sentenced to three-years rigorous imprisonment with a fine of Rs. 2000/- and in default of payment of fine to further undergo one month imprisonment.

7. The Full Bench of the Madhya Pradesh High Court after noticing the various judgments of the Hon"ble Supreme Court and dealing with the question of gravity of the penalty of removal from service imposed as a result of conviction and the power of judicial review of the High Court in Para 12 of the report held as follows:

The second premise in the Sheetal Kumar Bandi (supra) that in exercise of the power of judicial review, the Court can examine whether there was consideration of the relevant facts and circumstances by the disciplinary authority in imposing the penalty and correct the penalty if it is excessive, is in consonance with the decisions of the Supreme Court in Challappan, Shankar Dass, Tulsiram Patel and Sunil Kumar Sarkar (supra). If the conviction is for any minor offence which does not involve any moral turpitude, a punishment of removal or dismissal from service will certainly be excessive. But where the conviction is on the ground of corruption, as in this case, there can be no two views that imposition of punishment by way of dismissal is just and proper and not excessive.

(Emphasis supplied).

8. In our opinion, no case for interference is made out in the instant case. It is not in dispute that the Appellant has been convicted in the aforesaid offence u/s 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 & sentenced for two years rigorous imprisonment with fine of Rs. 5000/-. The conviction in such a case renders the Appellant totally unfit to continue in service. Merely pendency of the Criminal Appeal is of no avail to the Appellant.

9. The conviction has not been stayed in that Criminal Appeal. In fact, the Appellant was lucky to have continued in service under suspension for a long period even after the conviction. It was not necessary to afford opportunity of hearing as it would have been an empty formality.

10. We find that ultimate action which has been taken is appropriate and is in accordance with law. No case for interference is made out.

11. The Special Appeal is hereby dismissed.