

(2000) 11 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 842 of 2000

Upendra Mishra

APPELLANT

Vs

The Principal Chief Conservator of Forest And Another

RESPONDENT

Date of Decision : 06-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes (Central) Rules, 1957 — Rule 58
Industrial Disputes Act, 1947 — Section 18(1)
Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 13, 16, 17

Citation : (2001) 1 RLW 473 : (2001) 1 WLC 54 : (2001) 1 WLN 161

Hon'ble Judges : A.R. Lakshmanan, C.J;G.L. Gupta, J

Bench : Division Bench

Advocate : Mahesh Kishore Sharma, for the Appellant;

Judgement

Lakshmanan, CJ.

(1). The unsuccessful petitioner to the Writ Petition is the appellant in this appeal. The Writ Petition was filed to quash the order of suspension, Annex. 10, and also to issue the direction to the respondent No. 2 to decide the inquiry in view of the reply submitted by the appellant- petitioner, Annex. 3, 6 and 9.

(2). The respondent No. 2 issued three notices and statement of allegations under Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958, on 10th March 2000. The first notice is (Annex. 1). The statement of allegations is Annex. 2. The appellant submitted reply to Annex. 1 and 2 in under Annex. 3. The second notice is Annex. 4 and the statement of allegations is annex. 5; the reply was submitted under Annex. 6. The third notice is Annex. 7 and the statement of allegations is in Annex. 8. Reply by the appellant is in Annex. 9. The above three notices were issued for taking action under Rule 17 of the CCA Rules. According to the appellant, the disciplinary authority has to take a decision in the matter, but however, the respondent No. 2 has not taken any

action. Hence, the prayer to issue direction to respondent No. 2 to decide the inquiry and pass orders.

(3). The subject matter of challenge in the writ petition is Annex. 10, which is the suspension order. It is stated in Annex. 10 that the appellant is placed under suspension as per Rule 13 of the Rules of 1958. The order of suspension was issued in exercise of powers conferred by sub-rule (1) of Rule 13 of the said Rules against the appellant herein, who is a Government servant and against whom a disciplinary proceeding is contemplated. According to the appellant, the departmental enquiry under Rule 17 is pending against him; the Dy. Conservator of Forest is not competent to issue Annex. 10 which is totally arbitrary. According to the learned counsel, Shri Mahesh Kishore Sharma, the suspension order is issued only when a departmental enquiry under Rule 16 of the CCA Rules for award of major penalty is made and that the suspension is not made in case of departmental enquiry under Rule 17 and since the enquiry had already been ordered under Rule 17, there was no occasion for the respondents to place the appellant under suspension. It is further submitted that the suspension order has been issued at the instance of the Minister for Forest.

(4). The order of the learned Single Judge reads as follows:

"A Departmental enquiry under Rule 17 of the CCA Rules is pending and during pendency of the departmental enquiry, the petitioner has been suspended by the competent authority. I do not find any reason to interfere with the order of suspension passed by the Government. The Writ Petition is dismissed."

(5). It is seen from the above order that the learned Single Judge held that the departmental enquiry under Rule 17 was pending decision of the Government and therefore, the Government has correctly passed the order of suspension. This observation as pointed out by the learned counsel for the appellant is factually incorrect as the suspension order Annex. 10 was not passed in connection with and under Rule 17 of the CCA Rules. It is stated in Annex. 10 that an enquiry was contemplated. However, as the Appellate Court, this Court can correct the inadvertent error committed by the learned single Judge and clarify the said order in this appeal as the appeal is a continuation of the writ proceedings. In so far as the three notices issued earlier under Rule 17 are concerned, we are of the opinion that the same cannot be subject matter of the order of suspension under Annex. 10. The suspension order was not passed in connection with the enquiry under Rule 17 of the Rules. As already noticed, the suspension order clearly states that the appellant is placed under suspension and a disciplinary proceedings against him is contemplated. The suspension can be ordered only under certain circumstances enumerated in the rules or instructions. A competent authority may issue orders of suspension of a Government Servant under Rule 13 sub-clause (1) where a disciplinary proceedings under sub-rule -1(a) is contemplated or is pending. The said authority may also issue order of suspension where a criminal case under sub-rule 1(b) is under investigation or is under trial. The case on hand comes under

sub-rule 1 (a) of Rule 13 of the CCA Rules where a disciplinary proceeding is contemplated against the appellant. It is well settled law that the suspension does not cast any stigma on the delinquent employee since it is neither dismissal nor removal from service. The appellant had been placed under suspension pending enquiry. The suspension pending enquiry under the Rules can be ordered at any stage prior to or after the framing of charges. The word "contemplation" as used in this rule implies that the appointing authority has given thought and consideration to the allegations brought against the Government employee and material bearing on the same and comes to the conclusion that a prima-facie case of misconduct exists against such a Government employee which calls for a regular enquiry. It is also not essential that the departmental enquiry must either be initiated or actually be pending at the time when the order of suspension is made. Likewise, under the rules, suspension can be ordered at any stage prior to or after framing of charges. In the present case, the order of suspension of the appellant in contemplation of an enquiry has been challenged by the appellant-petitioner. Courts have held that suspension of a government employee in contemplation of an enquiry cannot, at all, be challenged except on the limited ground of malafide or malice in a given case. It is not expected to pass a speaking order of suspension because all that the suspension order should indicate is that either some enquiry is pending or under contemplation. Though, the malafide has been alleged against the Minister for Forest, he has not been made a party-respondent in the writ petition or in the appeal. A vague and bald statement has been made that the suspension order has been made at the instance of the Minister for Forest. The learned counsel for the appellant cited two decisions in support of his contention; they are reported in R.C. Sood vs. High Court of Rajasthan (1) and Satya Prakash Trivedi vs. R.S.E.B., Jaipur and others (2). In the first case, the writ petition was filed by one R.C. Sood, member of the Rajasthan Higher Judicial Service in the State of Rajasthan for quashing the order of suspension and the entire disciplinary proceedings on which it is based. The said officer was suspended on the basis of the tentative view of the Committee that the then Registrar was responsible for the forgery committed in the record and, therefore, they recommended for regular enquiry to be made in the matter in accordance with the rules. The Committee was further of the view that the said R.C. Sood may be placed under suspension in contemplation of an enquiry. This report was considered by the Full Court in the full court meeting and a resolution was passed resolving a departmental enquiry under Rule 16 of the Rules to be initiated against R.C. Sood and pending enquiry he be placed under suspension. Acting on the said resolution of the Full Court, the Chief Justice directed that R.C. Sood be placed under suspension. At no stage, he was even asked about the matter even though the said officer was available at Jaipur itself being posted as District Judge. This is how the impugned action had been taken against Shri R.C. Sood. The petitioner, in his rejoinder had expressly denied making any correction in the draft advertisement placed before him. The Supreme Court, after seeing the entire relevant record which was the only material available to the Committee of

the High Court as well as the Full Court to act on while taking decision in the Full Court was of the view that the validity and legality of the impugned action taken by the Court has to be judged on this basis alone. After examining the entire record, the Supreme Court came to the conclusion that the view taken by the High Court and the subsequent action against the petitioner, was wholly arbitrary, unwarranted and unsustainable.

(6). In our opinion, the above case has no application to the facts and circumstances of this case. In the present case, in exercise of the powers conferred under Rule 13 of the Rules, the appellant was placed under suspension in contemplation of an enquiry. In the above cited Supreme Court case, the petitioner therein was suspended after a decision was taken by the Committee and later by the Full Court and that the said Full Court decision was challenged on the ground that the action was arbitrary and illegal. In the case on hand, the appellant was suspended in contemplation of an enquiry and therefore, the principle of *audi alteram partem* is held not applicable before issuing a suspension order. Hence, the above decision will be of no assistance to the appellant.

(7). The second case cited by the petitioner-appellant will also be of no assistance to decide the question at issue raised in the present writ petition. In that case, the petitioner was suspended from service in view of the contemplated disciplinary proceedings. It was alleged that the order of suspension is unwarranted, arbitrary and therefore, unsustainable in law. Several other grounds have been given as grounds of challenge as made in the writ petition. A reply was filed by the respondents defending the action of suspension. Refuting the objection of maintainability of the petition, the judgment of the Supreme Court in *R.C. Sood* was relied on by the petitioner. The learned Single Judge. (V.G. Palshikar, J.), on a perusal of the judgment referred to before him, was of the view that it is well within the jurisdiction of this Court under Article 226 of the Constitution to examine in a situation, as an exceptional case, after scrutinising the record to see that order of suspension is wholly arbitrary and unwarranted. After analysing the facts as averred in the pleadings of the parties, the learned Single Judge came to the conclusion that the suspension order is wholly arbitrary and unwarranted. Yet, another reason which prompted the learned Judge to quash the order of suspension was that if all the facts, which according to the respondent Board, gave rise to the misconduct are admitted and in such circumstances, the order of suspension appeared to be a mechanical exercise of powers. The learned Judge has also given his reasons for quashing the order of suspension in Para 16 of his order. The above judgment, in our opinion, has also no application to the facts and circumstances of the case and is distinguishable on facts. Since the whole case proceeded on the basis that for an admitted position, no further investigation is required, therefore, the suspension of an employee on the ground of misconduct is not warranted and that the said action was without application of mind.

(8). The law is well settled by catena of decision. In *U.P. Rajya Krishi Utpadan Mandi Parishad & Ors. vs. Sanjiv Rajan* (3), the Supreme Court held that the Court should not interfere with the orders of suspension unless they are passed mala fide and without there being a prima facie evidence and record connecting the employee to misconduct. The Supreme Court held in the above case that the High Court should not have interfered with the order of suspension passed by the authorities and in matters of this kind it is advisable that the concerned employees are kept out of the mischief range and if they are exonerated, they would be entitled to all their benefits from the date of the order of suspension. The Supreme Court has also held that it is for the concerned authority to consider as to whether the employees should or should not continue in their service during the period of enquiry and that it is matter to be assessed by the concerned authority and the Court should not interfere with the order of suspension unless they are passed mala fide.

(9). A very recent judgment of the Supreme Court reported in *State Bank of India and others vs. Harbanslal* (4), can be usefully referred to in the present context. In the above case, the respondent was an employee of the State Bank of India; he was suspended pending contemplated enquiry. He filed petition under Article 226 of the Constitution of India before the High Court challenging the order of suspension and for a direction for payment of salary for the period when he was placed under suspension. The writ petition was dismissed. However, a direction was issued to the Bank to complete the disciplinary enquiry before 31st August 1996. Accordingly, the enquiry was concluded and an order was passed by the disciplinary authority stopping three increments and also disallowing salary during the period of suspension. The employee, therefore, preferred an appeal, which was partly allowed to the extent that instead of three increments, two increments were allowed to be stopped. The employee, thereafter, filed second petition under Article, 226 of the Constitution. The prayer in the writ petition was two fold; (a) to issue a direction to the Bank to pay full salary for suspended period and (b) to issue further direction to the Bank for pay revision, allowance etc. However, in the writ petition there was no prayer for quashing the order of punishment as well as the appellate order to the extent relief was refused to the employee. The High Court took the view that in view of the Sastri Award as adopted by the appellant Bank, no order of suspension could have been issued before issuing the charge-sheet. The High Court found that the order placing the petitioner under suspension was illegal and void. On this premise, the Bank preferred appeal before the Supreme Court. The Supreme Court while answering the short question that arose for consideration namely, whether the appellant Bank could have suspended the employee before issuing a charge-sheet as per Sastri Award, held as follows:

"Pending such inquiry he may be suspended, but if on the conclusion of the enquiry it is decided to take no action against him he shall be deemed to have been on duty and shall be entitled to the full wages and allowances and to all the other privileges for the period of suspension; and if some punishment other than

dismissal is inflicted the whole or part of the period of suspension, may at the discretion of the management, be treated as on duty with the right to a correspondent portion of the wages, allowances etc.

(3) Subsequently, para 521 (10) (b) was clarified/modified by a bipartite settlement/agreement dated 17 September 1984, between State Bank of India and All India SBI Staff Federation under Sec. 2(P) and Sec. 18(1) of the Industrial Disputes Act 1947, read with Rule 58 of Industrial Disputes (Central Rules), Clause 12 (iii) of the aforesaid settlement reads as under:

"Paragraph 521(10)(b) of the Sastry Award has been partially modified. The words "pending such enquiry" were creating confusion as to whether an employee can be suspended before a charge sheet is served. Inclusion of the words, or initiation of disciplinary action is proposed or contemplated, can be suspended. However, it is advisable to minimise the time lag between the date of suspension and the date of issue of charge-sheet.

(4) By the aforesaid cl. 12 (iii), the expression "pending such enquiry" in para 521 (10) (b) was clarified and further modified to the effect that where the disciplinary action is proposed or contemplated, an employee can be suspended and there is no need for issue of an charge-sheet. This being the legal position, the appellant-bank was within its rights and power to suspend the respondent when a departmental enquiry was contemplated against him.

(5) We, therefore, find that the view taken by the High Court was not sustainable in law. The order and judgment under appeal is set aside. The appeal is accordingly allowed. No costs."

(10). Thus, it is crystal clear from the above judgment that an employee can be suspended pending disciplinary action or the same is contemplated. There is not need for issue of any charge-sheet where the disciplinary action is contemplated or proposed. Thus, in our opinion, the second respondent was well within his rights, power and jurisdiction to suspend the appellant-petitioner when a departmental enquiry was contemplated against him.

(11). Consequently, the Special Appeal falls and is hereby dismissed. The respondents are now at liberty to keep the petitioner-appellant under suspension and proceed further as per the Rules.