
(2003) 07 RAJ CK 0086

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2857 of 2003

Usha Joshi (Smt.)

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-07-2003

Acts Referred:

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 13, 17

Citation : (2004) 4 RLW 2089 : (2004) 1 WLC 113

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : J.P. Joshi, for the Appellant; S.M. Mehta, General and Sandeep Bhandawat, for the Respondent

Final Decision : Dismissed

Judgement

Garg, J.—Both the abovementioned writ petitions are being decided by this common order as in both of them, the parties are the same and common questions of law and facts are involved.

S.B. Civil Writ Petition No. 2857/2003

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner on 18.6.2003 against the respondents with the prayer that by an appropriate writ, order or direction, the suspension order dated 12.6.2003 passed by the State Government (respondent No. 1) by which the petitioner was put under suspension and the order dated 16.6.2003 (Annex. 14) passed by the District Collector, Jodhpur by which he directed the Sub Divisional Officer, Osian to take over the charge of the post of Child Development Project Officer from the petitioner, be quashed and set aside and the petitioner may be allowed to work as Child Development Project Officer, Osian and further, the charge-sheet dated 18.12.2002 (Annex.8) issued under Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as "the CCA Rules") be quashed and set aside etc. etc.

3. The case of the petitioner as put forward by her in this writ petition is as follows:-

The petitioner was appointed on compassionate ground to the post of Child Development Project Officer (for short "CDPO") vide order dated 29.9.1989, a copy of which is marked as Annex. 1.

Thereafter, the petitioner was put under suspension vide order dated 21.9.1993 and that suspension order was challenged by the petitioner before this Court by filing writ petition being S.B. Civil Writ Petition No. 754/1998 and that writ petition was allowed by this Court vide order dated 25.9.2000 and the suspension order dated 21.9.1993 was quashed and set aside with a direction to the respondents to complete the enquiry within a period of six months and the petitioner was ordered to be reinstated in service.

The further case of the petitioner is that since she was appointed on compassionate ground on substantive basis, therefore, on completion of five years service, she became eligible for promotion to the post of Dy. Director, ICDS and since no steps were taken by the State Government for promoting the petitioner and other persons appointed on compassionate ground to the post of Dy. Director, ICDS, therefore, a writ petition was filed before this Court being S.B. Civil Writ Petition No. 2116/2002 and the same is pending before this Court.

The further case of the petitioner is that during the pendency of the above writ petition, the petitioner was confirmed on the post of CDPO with effect from 16.7.1998 through order Annex.2 dated 8.4.2003.

The further case of the petitioner is that later on, a fresh writ petition being S.B. Civil Writ Petition No. 2655/2002 was filed by the petitioner alongwith other CDPOs challenging the action of the State Government in appointing the Project Directors, DWDA on the post of Dy. Director, ICDS on the ground that post of Dy. Director was a State Service post and only such persons could be appointed on the post of Dy. Director, ICDS, who had fulfilled 5 years service on the post of CDPO and the Project Directors did not hold the State Service post and were not entitled to be appointed as Dy. Director, ICDS. However, that writ petition was dismissed by this Court, but on special appeal, the Division Bench of this Court through interim order dated 21.11.2002 directed that if the respondents No. 3 to 10 were allowed to function as Dy. Directors during the pendency of the appeal, they would not write the ACRs of the appellants of that case and a copy of that interim order dated 21.12.2002 passed by the Division Bench of this Court is marked as Annex.3.

The further case of the petitioner is that she was transferred to Osian vide order Annex.4 dated 7.9.2002 and while she was working at Osian, she received a communication dated 17.12.2002 from the Dy. Director (Admn.) (respondent No. 3) stating therein that Dy. Director, ICDS had forwarded various complaints against her through letters dated 16.10.2002 and 7.12.2002 and the petitioner was called upon to furnish explanation to those complaints. A copy of the

communication dated 17.12.2002 is marked as Annex.5 and copies of the complaints forwarded alongwith the letters dated 16.10.2002 and 7.12.2002 are marked as Annex.6 and Annex.7 respectively.

The further case of the petitioner is that she submitted explanation before the respondent No. 3 Dy. Director (Admn.), but ignoring the explanation of the petitioner and also ignoring the interim order of the Division Bench of this Court dated 21.11.2002 (Annex.3), a charge-sheet under Rule 17 of the CCA Rules was issued against the petitioner on 18.12.2002 by the respondent No. 2 Director, Women & Child Development Department, Rajasthan, Jaipur. A copy of the said charge-sheet dated 18.12.2002 is marked as Annex.8.

A reply to the said charge-sheet dated 18.12.2002 (Annex.8) was filed by the petitioner on 25.1.2003, a copy of which is marked as Annex.9.

The further case of the petitioner is that the respondents were acting in colourable exercise of power and were out to harass the petitioner and at the instance of respondent No. 5 Smt. Kamla Jawahar, Project Director, DWDA, the petitioner was transferred from Osian to Makrana through order dated 24.1.2003, a copy of which is marked as Annex. 10.

The further case of the petitioner is that she challenged the said transfer order Annex.10 dated 24.1.2003 before this Court by filing writ petition being S.B. Civil Writ Petition No. 404/2003 (writ petition No. 2) and this Court through interim order Annex. 11 dated 3.2.2003 stayed the operation of the transfer order dated 24.1.2003.

The further case of the petitioner is that after the transfer order dated 24.1.2003 was stayed by this Court through order Annex. 11 dated 3.2.2003, the petitioner was threatened by the respondents that she should withdraw the special appeal otherwise she would face serious consequences.

The further case of the petitioner is that the transfer order dated 24.1.2003 (Annex. 10) was cancelled through order dated 10.6.2003, a copy of which is marked as Annex. 12.

The further case of the petitioner is that after the cancellation of transfer order Annex. 10 dated 24.1.2003, the petitioner was placed under suspension through order dated 12.6.2003, a copy of which is marked as Annex. 13 and through order Annex. 14 dated 10.6.2003, the District Collector, Jodhpur directed the Sub Divisional Officer, Osian to take over the charge of the post of CDPO from the petitioner.

In this writ petition, the suspension order Annex. 13 dated 12.6.2003 as well as the order Annex. 14 dated 10.6.2003 have been challenged by the petitioner on various grounds and the main grounds are as follows:-

(i) That the power under Rule 13 of the CCA Rules to place the petitioner under suspension has been exercised by the respondents with malafide as the only

enquiry pending against the petitioner was under Rule 17 of the CCA Rules and to that effect, a charge-sheet Annex.8 dated 18.12.2002 was also served on the petitioner and since that enquiry pending against the petitioner under Rule 17 of the CCA Rules was for imposing minor penalty, therefore, for that enquiry, the petitioner could not have been suspended.

(ii) That furthermore, in the suspension order Annex. 13 dated 12.6.2003, the respondents have deliberately not made any reference to the pending enquiry against the petitioner under Rule 17 of the CCA Rules for which charge-sheet dated 18.12.2002 Annex.8 was issued against her and furthermore, suspension order can be passed only when there is a gross misconduct on the part of the delinquent official which warrants suspension from service in public interest and in the present case, enquiry under Rule 17 of the CCA Rules was initiated against the petitioner and that enquiry was for minor penalty and thus, for that enquiry under Rule 17 of the CCA Rules, the suspension order could not have been passed at late stage. Hence, the impugned suspension order Annex.13 dated 12.6.2003 is illegal and bad in law and liable to be quashed and set aside.

Hence, this writ petition with the prayers as stated above.

A reply to the writ petition was filed by the respondents No. 1 to 4 and their case is that the impugned suspension order Annex. 13 was not passed in colourable or malafide exercise of power and it is also wrong to say that the impugned suspension order Annex. 13 was passed only on the ground that departmental enquiry was pending consideration against the petitioner.

The further case of the respondents No. 1 to 4 is that there had been serious complaints against the petitioner of gross financial irregularities, disobedience in compliance of the order of the seniors and various other complaints by the subordinate of harassment and colourable exercise of the powers and even the honorarium amount of lacs of rupees received from the Government was transferred to the personal account of the petitioner, which goes to show gross financial irregularities and copy of the complaints alongwith bank statement is marked as Annex.R/3. According to the respondents No. 1 to 4, a bare perusal of complaints would reveal how the gross financial irregularities were committed by the petitioner.

The further case of the respondents No. 1 to 4 is that Dy. Director (World Food Programme) was sent to look into the entire state of affairs and he submitted a detailed report against the petitioner on 6.6.2003 and a copy of that report is marked as Annex.R/4.

The further case of the respondents No. 1 to 4 is that subsequent to the above complaints, a further complaint was made to the Hon"ble Chief Minister against the petitioner and a copy of that complaint dated 8.6.2003 is marked as Annex.R/5 and on that complaint Annex.R/5, enquiry was got conducted through Tehsildar, Jodhpur and Dy. Director, ICDS, Jodhpur and they also confirmed the fact that gross irregularities were committed by the petitioner and copies of the

reports submitted by the Dy. Director and Tehsildar to the District Collector, Jodhpur are marked as Annex.R/6.

The further case of the respondents No. 1 to 4 is that thereafter, the District Collector, Jodhpur wrote a letter dated 11.6.2003 (Annex.R/7) to Director, Women and Child Development Department, Rajasthan, Jaipur (respondent No. 2) and in that letter Annex.R/7, the District Collector stated that since many serious irregularities had been committed by the petitioner, therefore, she should be put under suspension and strict action be taken against her.

The further case of the respondents No. 1 to 4 is that in the above background, the impugned suspension order Annex.13 dated 12.6.2003 was passed against the petitioner and thus, to say that it was passed keeping in mind the earlier charge-sheet Annex.8 dated 18.12.2002 issued against the petitioner is wrong.

Hence, it was prayed that the writ petition filed by the petitioner be dismissed.

A separate reply to the writ petition was also filed by the respondent No. 5.

A rejoinder to the reply filed by the respondents No. 1 to 4 was filed by the petitioner and it has been submitted by the petitioner that power under Rule 13 of the CCA Rules can be exercised only in two contingencies (i) where a disciplinary proceedings against him is contemplated or is pending and (ii) where a case against him in respect of any criminal offence is under investigation or trial. A perusal of impugned suspension order Annex. 13 would reveal that it was passed on the ground that a departmental enquiry was pending against the petitioner and no other ground was mentioned in it and, therefore, the basis of passing the impugned suspension order was nothing, but it was passed only on the basis of charge sheet Annex.8 issued against the petitioner under Rule 17 of the CCA Rules.

Furthermore, the report of the Tehsildar, on the basis of which, it was said that District Collector, Jodhpur proceeded further, is dated 13 June, 2003 and, therefore, it is wrong to say that the District Collector proceeded on the basis of report of the Tehsildar as the District Collector submitted his report on 11 June, 2003 through Annex.R/7 and, therefore, every thing was done by the respondents in colourable exercise of power.

4. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and gone through the materials available on record.

5. For convenience, the impugned suspension order Annex.13 dated 12.6.2003 passed against the petitioner is quoted here:-

vkns''k

pwafd Jherh m''kk tks''kh] cky fodkl ifj;kstuk vf/kdkjh] vksfl;ka] tks/kiqj ds fo:) foHkkxh; tkWp izdj.k fopkjk/khu gS A

vr% jktLFkku flfoy lsok;sa ?oxhZdj.k fu;a=.k ,oa vihy? fu;e 1958 ds fu;e 13 esa iznRr "kfDr;ksa dk iz;ksx djrs gq, jkT; ljdkj Jherh m"kk tks"kh] cky fodkl ifj;kstuk vf/kdkjh] vksfl;k] tk/kiqj dks rqjUr izHkko ls ,rn }kjk fuyfEcr djus ds vkns"k iznku djrh gS A

Jherh m"kk tks"kh dk fuyEcu vof/k esa eq[;ky; izeq[k "kklu lfpo] efgyk ,oa cky fodkl foHkkx] "kklu lfpo; ds dk;kZy; esa jgsxk A

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6. A bare perusal of the impugned suspension order Annex.13 shows that a departmental enquiry was pending consideration against the petitioner and in exercise of the power under Rule 13 of the CCA Rules, the petitioner was put under suspension.

7. The case of the petitioner is that the word "departmental enquiry" appearing in the impugned suspension order Annex. 13 means enquiry under Rule 17 of the CCA Rules pending against the petitioner for which charge-sheet (Annex.8) was issued against her, but on the contrary, the case of the respondents is that it reflects other materials, which were collected later on by several complaints made against the petitioner and, thereafter, through Annex.R/7 dated 11th June, 2003, the District Collector sent a report that the petitioner had committed serious irregularities and, therefore, she should be suspended and strict action be taken against her and, therefore, in these circumstances, impugned suspension order Annex.13 dated 12.6.2003 has no bearing or relevancy with the previous charge sheet dated 18.12.2002 (Annex.8) issued against the petitioner.

8. The relevant portion of Rule 13 of the CCA Rules is quoted here:-

"Rule 13. suspension

(i) The Appointing Authority or any authority to which it is subordinate or any other authority empowered by the government in that behalf may place a Government servant under suspension.

(a) where a disciplinary proceedings against him is contemplated or is pending, or

(b) Where a case against him in respect of any criminal offence is under investigation or trial.

Provided that where the order of suspension is made by an authority lower than the Appointing Authority, such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.

2. A Government servant who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty eight hours shall be deemed to

have been suspended with effect from the date of detention, by an order of the Appointing Authority and shall remain under suspension until further orders.

3.....

4.

5....."

9. Since there was no criminal case pending against the petitioner when the impugned suspension order Annex. 13 was passed, therefore, the case of the petitioner would be covered under Clause (a) of Sub-rule (1) of Rule 13 of the CCA Rules.

10. The word "contemplation" as used in this Rule implies that the appointing authority has given thought and consideration to the allegations brought against a Government servant and material bearing on the same and come to the conclusion that a prima facie case of misconduct exists against such Govt. servant which calls for a regular enquiry.

11. Before proceeding further, the meaning and object of the word "suspension" has to be understood and for that, the decision of the Hon'ble Supreme Court in V.P. Gidroniya Vs. The State of Madhya Pradesh and Another, may be referred to where the Hon'ble Supreme Court observed as follows:-

"Three kinds of suspension are known to law. A public servant may be suspended as a mode of punishment or he may be suspended during the pendency of an enquiry against him if the order appointing him or statutory provisions governing his service provide for such suspensions. Lastly he may merely be forbidden from discharging his duties during the pendency of an enquiry against him which act is also called suspension. The right to suspend as a measure of punishment as well as the right to suspend the contract of service during the pendency of an enquiry are both regulated by the contract of employment or the provisions regulating the conditions of service. But the last category of suspension referred to earlier is the right of the master to forbid his servant from doing the work which he had to do under the terms of the contract of service or the provisions governing his conditions of service at the same time keeping in force the master's obligations under the contract. In other words, the master may ask his servant to refrain from rendering his service but he must fulfil his part of the contract."

12. Thus, it may be summarised that law recognised three kinds of suspension viz.-

(i) Suspension as a punishment.

(ii) Suspension during or in contemplation of disciplinary proceedings or an enquiry.

(iii) suspension in the sense that the employee may merely be forbidden from discharging his duties during the pendency of an enquiry against him.

13. It may be stated here that the observations made by the Hon''ble Supreme Court in the above case are the same as is found in Clause (a) of Sub-rule (1) of Rule 13 of the CCA Rules as suspension can take place during or in contemplation of disciplinary proceedings or an enquiry.

14. A bare perusal of the complaint Annex.R/3 and report Annex.R/4 reveals that serious allegations were made against the petitioner. In the letter Annex.R/5 dated 8.6.2003 addressed to Hon''ble Chief Minister, serious complaints were made against the petitioner. The report of the Dy. Director dated 9.6.2003 (Annex.R/6) also reveals that prima facie allegations of committing serious irregularities were found against the petitioner. The most important document against the petitioner is letter of the District Collector, Jodhpur dated 11.6.2003 (Annex.R/7) and a perusal of that letter Annex.R/7 reveals that an enquiry in respect of conduct of the petitioner was made when the complaint was made to Hon''ble Chief Minister through letter Annex.R/5 dated 8.6.2003 and after enquiry, it was found prima facie that the petitioner has committed various irregularities and she intentionally and wilfully harassed the workers of Anganwadi and her behaviour was also not found proper and thus, the District Collector recommended that the petitioner should be placed under suspension and strict action be taken against her.

15. During the course of arguments, the learned counsel appearing for the respondents was directed to show the record by which further developments can be perused by this Court after the letter Annex.R/7 dated 11.6.2003 written by the District Collector, Jodhpur to the Director, Women and Child Development Department, Jaipur (respondent No. 2).

16. In compliance of the above, a copy of the note-sheet was produced before this Court and a perusal of that note sheet reveals that in it there is a mention of the letter Annex.R/7 dated 11.6.2003 written by the District Collector, Jodhpur and there is also mention of the complaints made to Hon''ble Chief Minister through letter Annex.R/5 dated 8.6.2003. It further reveals that all facts were brought to the notice of the Hon''ble Chief Minister and the Hon''ble Chief Minister took the matter seriously against the petitioner and he instructed the concerned authorities to place the petitioner under suspension with immediate effect and in the above back ground, the impugned suspension order Annex. 13 dated 12.6.2003 was passed against the petitioner.

17. When this being the position, the case of the respondents that the impugned suspension order Annex. 13 dated 12.6.2003 has no relevancy with the previous charge-sheet Annex.8 issued against the petitioner appears to be correct one and the case of the petitioner that the impugned suspension order Annex. 13 dated 12.6.2003 was passed in pursuance of the enquiry pending against the petitioner under Rule 17 of the CCA Rules for which charge sheet Annex.8 was served on her, cannot be accepted.

18. Thus, it is held that the impugned suspension order Annex.13 dated

12.6.2003 is an independent order and it has got no relevancy or bearing with the earlier charge-sheet dated 18.12.2002 (Annex.8) issued against the petitioner.

19. The next question which arises for consideration is whether in the above background, the impugned suspension order Annex.13 dated 12.6.2003 passed against the petitioner can be justified or not.

20. It may be stated here that the note-sheet produced by the respondents further shows that for taking disciplinary action against the petitioner, OOP had already been approached meaning thereby on the date when the impugned suspension order Annex. 13 was passed, a preliminary enquiry report was there against the petitioner and no regular charge-sheet was served on her.

21. A suspension order can be passed during contemplation of disciplinary proceedings and on the date when the impugned suspension order Annex. 13 was passed, an enquiry was under contemplation against the petitioner meaning thereby on the basis of material collected, the concerned authority draw a conclusion that a prima facie case of misconduct existed against the petitioner and that conduct certainly would call for regular enquiry and therefore, no illegality or irregularity has been committed by the respondents in passing the impugned suspension order Annex. 13 against the petitioner.

22. Hence, no interference is called for with the impugned suspension order Annex. 13 dated 12.6.2003.

23. So far as the argument that whatever was done, that was done at the instance of respondent No. 5 is concerned, the same cannot be accepted because of the simple reason that the District Collector through letter Annex.R/7 dated 11.6.2003 himself recommended that since the petitioner had committed serious irregularities, therefore, she should be put under suspension and strict action be taken against her. Since the impugned suspension order Annex. 13 was passed on the basis of the recommendations made by the Collector through Annex.R/7 and Annex.R/7 was based on the joint report of the Dy. Director as well as Tehsildar dated 9.6.2003 (Annex.R/6), therefore, in these circumstances, it cannot be said that the impugned suspension order Annex. 13 was passed in colourable exercise of power or in connivance with the respondent No. 5.

24. The argument that Tehsildar's report is dated 13.6.2003 while the report of the Collector is dated 11.6.2003 (Annex.R/7) and, therefore, report of the Collector cannot be said to have been based on Tehsildar's report dated 13.6.2003, stands rejected because of the simple reason that in the report of the Dy. Director dated 9.6.2003 (Annex. R/6), it has been stated that a joint enquiry was conducted by Dy. Director alongwith Tehsildar on 9.6.2003 and in the report of the Tehsildar dated 13.6.2003 also it has been mentioned that on 9.6.2003, a joint enquiry was conducted by him alongwith Dy. Director and therefore, it appears that Tehsildar had submitted report separately on 13.6.2003 and in the report of the Collector dated 11.6.2003 (Annex.R/7), there is a mention of the

fact that enquiry was got conducted through Tehsildar and Dy. Director jointly and they submitted the report and thus, the reference found in the Collector's report dated 11.6.2003 (Annex.R/7) is of the report Annex.R/6 dated 9.6.2003, which was submitted by Dy. Director.

25. Since it has been held above that the impugned suspension order Annex. 13 dated 12.6.2003 has got no relevancy with the earlier charge-sheet Annex.8 dated 18.12.2002 issued against the petitioner, therefore, the authorities submitted by the petitioner stand distinguished and they are not being discussed here. Had the impugned suspension order Annex. 13 would have been passed taking into consideration the earlier charge-sheet Annex.8 issued against the petitioner, the impugned suspension order Annex. 13 would have been had in law. But, this is not the position in this case.

26. The submission of the learned counsel for the petitioner that the words [^]foHkkxh; tkap izdj.k fopkjk/khu gS** contained in the impugned suspension order Annex. 13 relate to an enquiry already pending under Rule 17 of the CCA Rules for which charge sheet Annex.8 was issued against the petitioner, cannot be accepted and on the contrary, these words reflect that a fresh enquiry was under contemplation.

27. So far as the prayer that enquiry proceedings under Rule 17 of the CCA Rules pending against the petitioner be quashed is concerned, looking to the entire facts and circumstances of the case, it would not be proper to quash that enquiry proceedings and at the most, the respondents can be given direction to expedite that enquiry.

28. It may be stated here that in cases of passing suspension order, principles of natural justice are not applicable and therefore, if before passing the impugned suspension order Annex. 13, the petitioner was not given any notice or opportunity of hearing, that impugned suspension order Annex. 13 does not become invalid on that ground as she would get chance in the disciplinary proceedings.

29. For the reasons stated above, there is no merit in this writ petition and the same is liable to be dismissed.

S.B. Civil Writ Petition No. 404/2003

30. In this writ petition, the petitioner, has challenged the transfer order 24.1.2003 (Annex.15) and from the pleadings of the above writ petition No. 2857/2003, it clearly reveals that the said transfer order dated 24.1.2003 (Annex. 15) was cancelled by the respondents through order dated 10.6.2003 (Annex. 12 of writ petition No. 2857/2003) and therefore, this writ petition has become infructuous.

31. Furthermore, after the petitioner was placed under suspension, another order dated 1st July, 2003 was passed by the respondents by which her headquarter was made at Jodhpur during the suspension period. From this point of view also,

this writ petition has become infructuous and therefore, it is liable to be dismissed as such.

In the result, both the aforementioned writ petitions filed by the petitioner are dismissed. However, the respondents are directed to expedite the enquiry pending against the petitioner under Rule 17 of the CCA Rules.

No order as to costs.