

(2009) 09 RAJ CK 0024

Rajasthan High Court

Case No: None

Samrath Singh

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision: Sept. 30, 2009

Acts Referred:

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

Citation: (2010) 2 RLW 1670

Hon'ble Judges: Govind Mathur, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Govind Mathur, J.

The petitioner, an Additional Block Primary Education Officer, was trapped for alleged involvement in corrupt practices and, therefore, a criminal case was registered against him for the offences punishable under different provisions of the Prevention of Corruption Act, 1988. He was also arrested and was kept in judicial custody for a period of more than 48 hours. The incident of trap occurred in the month of April, 2007.

2. The Commissioner, Secondary Education, Government of Rajasthan, Bikaner, while exercising powers under Rule 13 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (hereinafter referred to as "the Rules of 1958") passed the order dated 11.10.2007 placing the petitioner under suspension w.e.f. 3.4.2007. To question validity of the order aforesaid, this petition for writ is preferred on following grounds:

(1) the order impugned is bad being passed in mechanical exercise of powers; and

(2) the order placing the petitioner under suspension is bad being essentially an administrative order, that could have not been passed with retrospective effect.

3. As per counsel for the petitioner, the order impugned placing the petitioner under suspension was passed without examining the need to do so. It is asserted that the suspension though is not a punishment but is required to be effected with due caution and vigilance and a civil servant could not be placed under suspension without due application of mind and without examining the need to do so. Reliance is placed by counsel for the petitioner upon a judgment of this Court in the case of *Ashutosh Dashora v. State of Rajasthan and Ors.* SB Civil Writ Petition No. 473/2007, decided on 29.4.2008, holding therein that "in every case, where the government servant is facing trial for criminal charges, including the charges relating to the Prevention of Corruption Act, suspension is not must. The competent authority, before placing an incumbent under suspension, must consider its necessity. The unwarranted suspension of a government servant not only deprives the employer from utilizing his services but also put a burden on public fund in the form of payment of subsistence allowance. The Government must review the suspension of the government servant time to time, and if it is found that the suspension is not required, it should be revoked."

4. The argument is also substantiated by the law laid down by this Court at Jaipur Bench, Jaipur in *Vishnu Kumar Gupta v. State of Rajasthan and Ors.* SB Civil Writ Petition No. 5350/2006, decided on 23.1.2009, laying down therein that "when there is no allegation against petitioners that they had in any manner at all delayed the progress in criminal case or their continuance under suspension is requisite for a fair trial of criminal case pending against them and more-so there is no departmental proceeding initiated against them while at the same time, the authority has failed to exercise its powers Under Rule 13(5) of the CCA Rules to review its decision for sufficient long time of 4 & half years having elapsed by now and petitioners are continuously attending criminal proceedings in court concerned where they have been requesting not to adjourn the case for one or the other reason but where after challan being filed long back on 06/05/06, charges have not yet been framed, there appears to be no reasonable justification from any angle which may considerably require to continue their suspension any further."

5. By placing reliance upon the judgment of this Court in *Chandan Mal Nawal v. State of Rajasthan and Anr.* reported in RLR 1987(1) 47 it is also argued that the order of suspension is an administrative order and no effect to that could have been given retrospectively.

6. In reply, the stand of the respondents is that as per Rule 13(2) of the Rules of 1958 a government servant who is detained in custody whether on a criminal charge or otherwise, for a period of exceeding 48 hours, shall be deemed to have been suspended with effect from the date of detention, by an order of the authority competent to place a government servant under suspension and shall remain under

suspension until further orders. In view of the provision aforesaid the petitioner as a matter of fact was facing suspension since remaining under judicial custody for a term beyond 48 hours. It is also stated that the Government of Rajasthan vide its circular dated 11.10.2007 instructed that if a civil servant is caught red-handed while taking bribe by the anti corruption bureau, he should be placed under suspension without any exception and the petitioner was placed under suspension as per the thrust of the circular aforesaid.

7. I have considered rival submissions.

8. Precisely the issue deserves consideration in the instant matter is that whether the competent authority under Rule 13 of the Rules of 1958 is mandatorily required to place a government servant under suspension on lodging a case for the offences punishable under Prevention of Corruption Act or the competent authority is required to apply its mind objectively before taking any such action?

9. In general sense suspension means, a temporary deprivation of the employee's functions or right to discharge his duties, but that does not amount to lower down or reduction of his rank or status. Such employee, though continuous to be in employment but he is not permitted to work and is paid only a subsistence allowance which is less than salary and other admissible allowances for which he would have been entitled in normal course. The suspension is an interlocutory disciplinary measure to ensure free and fair conduct of the inquiry or the prosecution, as the case may be. It would be appropriate to place a person under suspension if, (i) his continuance to the office is likely to prejudice inquiry, investigation or trial; or (ii) where his continuance in office is likely to seriously subvert discipline in the office concerned; (iii) where his continuance in the office will be against the wider public interest; (iv) where a prima facie case is found to initiate criminal/ departmental proceedings which are likely to lead to his conviction and/or dismissal, removal or compulsory retirement from service; or (v) where he is suspected to have engaged himself in activities prejudicial to the interest of the security of the State.

10. Beside the above general eventualities, a public servant may also be suspended for misdemeanor like; (i) an offence or conduct involving moral turpitude; (ii) corruption, embezzlement or misappropriation of the government funds, possession of disproportionate assets, misuse of official powers; (iii) serious negligence in discharging duty resulting in considerable loss to the government or public at large; (iv) desertion from duty; or (v) refusal or deliberate failure to carry out return or other just orders of the superior officers.

11. The concept of suspension during the inquiry or trial is an important and larger objective of ensuring free and fair conduct of proceedings. Where serious allegations of misconduct are imputed or the employee is undergoing trial for the grave charges, it may be undesirable in the interest of service to continue him on

the post. In such circumstances, suspension is a mode for fair and free inquiry as otherwise it would be difficult to facilitate free investigation. However, in every case of suspension its desirability is required to be examined by the competent authority by taking into consideration existing facts. Although the suspension is not a punishment specified, an order of suspension is not required to be passed lightly or mandatorily in every case of the circumstances referred above. Suspension is not required to be resorted unless the allegations against government servant are so serious that those shakes public confidence in governance, if such employee is permitted to continue in office till establishment of his innocence. Before placing an incumbent under suspension, various eventualities are required to be taken into consideration by the competent authority.

12. With the conceptual philosophy of suspension as discussed above its application under Rule 13 of the Rules of 1958 is required to be examined. As per Rule 13-

1. 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 proceeding 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. [Government of Rajasthan's Decision-In exercise of the powers conferred by sub-rule(1) of Rule 13 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 the State Government hereby empowers the authority competent to impose any one of the minor penalties specified in Rule 14 of the said rules to place a Government Servant under suspension.

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 Authority competent to place a Government Servant under suspension under sub? rule(1) and shall remain under suspension until further orders.

3. Where a penalty of dismissal, removal or compulsory retirement from Service imposed upon a government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

4. Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in

consequence or by a decision of a Court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations in which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

5. An order of suspension made or deemed to have been made under this rule may at any time be revoked by the authority which made or is deemed to have made the order by any authority to which that authority is subordinate.

13. Sub-rule (1) of Rule 13 empowers competent authority with a broad discretion to place a government servant under suspension in the event of contemplation of pendency of disciplinary proceedings or where a case against him in respect of criminal offences under investigation or trial. The Government of Rajasthan by circular dated 10.8.2001 provided certain instructions to the competent authorities to exercise powers under Rule 13 referred above. As per circular dated 10.8.2001, it is clarified that if a public servant is caught red-handed accepting bribe by the Anti Corruption Bureau, then he should be placed under suspension without any exception and the suspension of such public servant should not be revoked till his exoneration by the competent court. The circular further provides that in any case where sanction is granted for prosecution of a public servant in a case relating to corruption, such public servant should be placed under suspension compulsorily and that should not be revoked till pendency of criminal case before the court concerned. According to circular dated 10.8.2001 a public servant should be mandatorily placed under suspension, if a challan has been filed before the competent court by the prosecution against him relating to the offences of murder, dowry, dowry death, rape and other offences involving moral turpitude and the public servant placed under suspension for the reasons aforesaid should be continued as such till his exoneration.

14. It is pertinent to note here that the circular in question at the one hand restricts discretion of the competent authority as given under Rule 13 to place an incumbent under suspension and at the same time also snatches away the power of the competent authority to revoke such suspension as prescribed under Rule 13(5) of the Rules of 1958. True it is, suspension of a civil servant is an administrative action and the government is having ample power to provide necessary guidelines to the competent authorities for exercising powers as per Rule 13, but at the same time it is also well settled that the administrative instructions can always be given to fill up the unoccupied field, however, such instructions in no way encroach the space already under occupation of an statute. In the present case the circular dated 10.8.2001 nowhere provides instructions to the competent authority as to how powers under Rule 13 are required to be exercised, but it imposes mandate upon

the discretion of the competent authority. Such imposition of a mandate over statutory discretion is not permissible under administrative jurisprudence. The State Government would have been right in providing guidelines or a mode to exercise discretion under Rule 13 of the Rules of 1958. The State Government could have given instances and instructions to the competent authority to exercise its discretion to place an incumbent under suspension in particular circumstances but not an order to place government servant under suspension mandatorily in specific cases. It is for the competent authority to examine facts of each and every case and to settle desirability to place an incumbent under suspension by applying objective discretion. The suspension of an employee, looking to the facts and circumstances of the case may be desired urgently or on emergent basis but in those circumstances also the competent authority must record its satisfaction for exercising powers under Rule 13. If such satisfaction is not recorded and suspension is made merely on basis of the instructions given in circulars or merely by a word of mouth or by slip of pen, then that is nothing but colourable exercise of power. In the present case it is nowhere said by the respondents that before placing the petitioner under suspension the desirability to do so was objectively considered. It is specific case of the competent authority that he placed the petitioner under suspension as per instructions of the Government of Rajasthan.

15. From the averments made in reply to the writ petition it also appears that the respondents simply acted upon the circular dated 11.10.2007 and placed the petitioner under suspension. It also appears that the order impugned was passed with retrospective effect by treating the petitioner under suspension from the date he was arrested by the Anti Corruption Bureau. As a matter of fact the deeming provision under Rule 13(2) of the Rules of 1958 is having no role in present case as the petitioner after getting released from judicial custody was permitted to resume the duties. The work done by the petitioner while holding the post could not be undone by giving retrospective effect to the suspension. Beside that, no order placing the petitioner under suspension was passed by the competent authority when the petitioner was in judicial custody or immediately after his release and before resuming the duties. In such circumstances, the deeming provision as relied upon by the respondents is having no consequence.

16. In view of whatever discussed above, it appears that the order impugned has been passed without proper application of mind. Consequently, this petition for writ succeeds and further continuation of the petitioner under suspension in pursuant to the order dated 11.10.2007 is declared unwarranted. The respondents are directed to revoke suspension of the petitioner forthwith. It shall be open for the competent authority to examine all the existing circumstances and to place the petitioner under suspension by proper exercise of the powers as per Rule 13 of the Rules of 1958, if so is desirable and required in interest of service.

17. No order to costs.