

(1987) 02 RAJ CK 0089

Rajasthan High Court (Jaipur Bench)

Case No: Civil Special No. 132 of 1982

Ashok Gaur

APPELLANT

Vs

State of Rajasthan and
Another

RESPONDENT

Date of Decision: Feb. 11, 1987

Acts Referred:

- Constitution of India, 1950 - Article 14, 226
- Penal Code, 1860 (IPC) - Section 306

Citation: (1987) WLN 646

Hon'ble Judges: Surendra Nath Bhargava, J; Panna Chand Jain, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Panna Chand Jain, J.

This appeal u/s 18 of the Rajasthan High Court Ordinance, 1949 is directed against the judgment dated 16th December, 1981, passed by a learned Single Judge of this Court in S.B. Civil Writ Petition No. 916/80, whereby he dismissed the writ petition.

2. Briefly stated the facts of the case are that the petitioner was appointed as Excise Inspector Gr. II on the basis of selection by the Rajasthan Public Service Commission, on probation. While working as Excise Inspector the appellant had applied for selection to subordinate service through the Excise Department and appeared in the competitive examination held by the Rajasthan Public Service Commission in the year 1978. The appellant was declared successful at this examination on 25th September, 1979 and, on that basis, by an order dated 21st February, 1980, of the Board of Revenue for Rajasthan, Ajmer the appellant was appointed as Naib Tehsilder, in the Rajasthan Tehsildar Service, on probation for a period of two years, under Rule 34 of the Rajasthan Tehsildar Service Rules, 1956 from 3rd March, 1980, or from the date of joining Revenue Training at Tonk.

3. On 5th December, 1979, it is said that the appellant's wife committed suicide. On 19th December, 1979, appellant's father-in-law lodged an FIR against the appellant, his parents and sister. Thereupon on 31st January, 1980, the police registered a case u/s 306, IPC. On 25th February, 1980, appellant's parents were arrested. However, they were released on bail on 26th February, 1980. The appellant applied for anticipatory bail but his application was rejected. On 31st March, 1980, the appellant surrendered himself to the police and he was arrested by the police on 1st April, 1980. The appellant was remanded to police custody and on 2nd April, 1980, he was sent to judicial custody. It was on 10th April, 1980, that he was bailed out by the order of the learned Sessions Judge, Jaipur. The appellant remained on leave since 25th March, 1980 and he returned on duty on 14th April 1980.

4. As the appellant was facing investigation in the aforesaid criminal case, he could not join the training on 15th March, 1980. On 21st April, 1980 the appellant applied to the Board of Revenue for seeking permission to join even though he was required to join latest by 15th March, 1980. The Board of Revenue, however, considered his case and allowed the appellant to join the training. A copy of the letter of the Board of Revenue, dated 21st April, 1980 was sent to the Excise Commissioner by the Board of Revenue. After getting the aforesaid order from the Board of Revenue, the appellant approached the Excise Commissioner to relieve him from his duty for joining the training at Tonk. An application to this effect was also moved on 26th April, 1980. A telegram was sent on 27th April, 1980, but the Excise Commissioner did not pass any order. Contrary to it, on 21st April, 1980, the Excise Commissioner passed an order placing him under suspension. In pursuance to the order of suspension, the District Excise Officer asked the appellant to hand over the charge. The charge was accordingly handed over on 6th May, 1980. Once again on 9th May, 1980, the appellant requested the Excise Commissioner to relieve him for joining the Rajasthan Tehsildar Service Training; but the appellant was not relieved. Faced with this difficulty, the appellant filed a writ petition before this Court on 12 May, 1980. On 14th July, 1980, a show cause notice was issued to the respondents. Respondent No. 2, on 14th-15th July, 1980, by an order cancelled the appellant's appointment to Rajasthan Tehsildar Service. In short, he cancelled the order dated 21st February 1980, by which he was appointed to the Rajasthan Tehsildar Service, on the ground that the appellant had failed to join the training. Again, faced with the new problem, the appellant moved an application seeking an amendment in the writ petition and the writ petition was allowed to be amended by an order of this Court passed on 5th September, 1980. On October 4, 1980, appellant's writ petition was admitted and after three days of the writ petition having been admitted the appellant was discharged from service from the post of Excise Inspector, by an order dated 7th October 1980. It may be stated here that the order of discharge from service, dated 7th October, 1980, is a subject-matter of appeal before the Rajasthan Civil Services Appellate Tribunal.

5. The main contention of the petitioner-appellant in the writ petition was that his suspension on account of pendency of the criminal case had nothing to do with any

charge of misconduct relating to discharge of his duty and, it had nothing to do with the petitioner's right to join the appointment in the Rajasthan Tehsildar Service and the training for that purpose. The submission of the appellant in the writ petition was that his appointment to the Rajasthan Tehsildar Service was quite independent of any matter relating to his appointment as Excise Inspector, or the pendency of any criminal case. It was further the case of the appellant before the learned Single Judge that simply because an investigation was pending, the appellant could not be deprived of his appointment to the Rajasthan Tehsildar Service. The case of the respondent before the learned Single Judge was that it was on the receipt of the report from the police officer investigating the case against the appellant that the Excise Commissioner passed an order of suspension against the petitioner, on 21st April, 1980. It was contended by the respondents that the action of the Excise Commissioner was based on the provisions of Rule 13(2) of the Raj. Civil Services (Classification, Control & Appeal) Rules, 1980. It was also contended that during the period of suspension the petitioner could not be relieved by the Excise Commissioner to join his appointment on the post of Naib Tehsildar. The learned Single Judge was of the opinion that the Board of Revenue had actually waited for considerable time for the petitioner to come and report on duty; but the appellant himself could not do so because of his involvement in the criminal case and because of the fact that the Excise Commissioner did not relieve him. In the circumstances, it cannot be said that there was any infringement of legal or fundamental right of the appellant. The learned Single Judge, however, observed that with the material on record it was not possible for the Court to justify invocation of extraordinary jurisdiction of the Court, under Article 226 of the Constitution of India. The writ petition was accordingly disposed of by the learned Single Judge. Being aggrieved by the order of dismissal of the writ petition, this special appeal u/s 18 of the Rajasthan High Court Ordinance, 1949 has been filed by the appellant.

6. Shri M.R. Calla, learned Counsel for the appellant, challenging the order of the learned Single Judge, dated 16th December, 1980, submitted as follows:

(a) That mere pendency of investigation against an employee cannot be a fact accomplished for suspension in each and every case, particularly when the case under investigation has nothing to do with any misconduct relating to employment. His submission is that in case Rule 13 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 is construed to mean that the suspension has to follow as a consequence in each and every case of proposed disciplinary inquiry or the pendency of investigation in a criminal case without making any distinction with regard to the facts and circumstances of each case, Rule 13 is bound to be rendered ultra vires Article 14 of the Constitution of India.

(b) That even if Rule 13 of the said Rules is assumed to be valid, it is ex facie clear from the facts and circumstances of the case that power under Rule 13 was exercised by the Excise Commissioner in a most arbitrary and unreasonable manner in as much as the FIR itself relating to the incident of 15th December, 1979, was filed on 19th December,

1979 and by the time the suspension order was passed; even challan had not been filed, and further the allegations in the case against the appellant did not have any remotest relationship with discharge of duties by the appellant. Thus the suspension was wholly uncalled for;

(c) That the suspension in pursuance to Rule 13 cannot be taken to be by way of punishment. But, in the instant case, it was because of suspension order that the appellant was not allowed to join the training, as stated above. Thus, the suspension had the effect of adverse civil consequences;

(d) That, even if the petitioner was under suspension there was nothing wrong in allowing the petitioner to join the training at Tonk as Naib Tehsildar;

(e) That, it was because of the suspension that the petitioner lost a valuable right to join the Rajasthan Tehsildar Service and, even if the criminal case results in acquittal, he would not now be in position to join the said service again as he would become age barred.

7. On behalf of the respondents, Shri N.L. Pareek, learned Addl. Government Advocate, almost raised the same grounds which were canvassed before the learned Single Judge.

8. We have given our thoughtful consideration to the respective submissions made by the parties.

9. In order to appreciate the contentions made by the learned Counsel for the parties, it is better to reproduce Rule 13 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958, as follows:

13. Suspension:--(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 is 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) 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 or by any authority to which that authority is subordinate.

10. In view of Rule 13, it is clear that 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 Government Servant may be placed under suspension where a disciplinary proceeding against him is contemplated or is pending, or where a case against him in respect of any criminal offence is under investigation, or trial, or a Government Servant 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. A careful study of Rule 13 would also reveal that it is not obligatory on the part of the Appointing Authority to place a Government Servant under suspension under the contingencies referred to above. It is discretionary with the Appointing Authority to place a Government Servant under suspension or not. Rule 16 provides procedure for imposing major penalties. Rule 17 provides procedure for imposition of minor penalties and the penalties which may be imposed on a Government Servant have been enumerated in Rule 14. In a case, where in any disciplinary proceeding it is contemplated to impose a minor penalty, generally suspension order is not passed. Even there is no provision which gives a mandate to the disciplinary authority to place a Government Servant under suspension during disciplinary proceeding. When a Government Servant who is detained in custody, whether on a criminal charge or otherwise, and the period of detention continues exceeding 48 hours, there is a deeming clause that the Government Servant shall be deemed to have been suspended with effect from the date of detention and, this suspension shall remain until further order. Sub-Rule (5) of Rule 13 provides that an order of suspension made or

deemed to have been made under Rule 13 may at any time be revoked by the Authority which makes or is deemed to have been made, the order by the Authority to which that authority is subordinate. From the above discussions, it is apparent that an order of suspension should not be passed by invoking powers under Rule 13 simply because a disciplinary proceeding is contemplated, or criminal case is under investigation or trial against a Government Servant. The Appointing Authority has to exercise his discretion in this regard. A Government Servant may be put under suspension in the contingencies referred to above. If there are reasons to believe, on the basis of the material available at the time of initiation of proceeding, that he may be guilty of gross misconduct or corruption which, if approved, will lead to dismissal or removal, he may be suspended even if the suspension is likely to continue for a longer period, or where there are reasons to believe that a Government Servant if allowed to continue in active service, might tamper with the evidence, he may be suspended or, in case a Government Servant is facing trial in a criminal court he should be suspended, if he has been refused bail and committed to prison. But simply because a criminal case is under investigation, or trial against a Government Servant though, he may be put under suspension but (the question arises what should be the nature of the offence? If an interpretation is put that in each and every criminal offence which is under investigation or trial, a Government Servant should be put under suspension, then such a power may be termed as arbitrary power. A Government servant may be facing trial of a minor offence under the Motor Vehicles Act. Would it mean that he should be placed under suspension because he is facing trial? Thus it leads us to infer that Government servant could be placed under suspension with regard to a case which involves a misconduct for which a criminal proceeding may be lodged, or which may also become a subject-matter of disciplinary proceeding. A rational meaning will have to be given to Sub-clause (b) of Rule 13. Sub-rule (2) of Rule 13 is quite specific which says that in case a person remains under custody exceeding 48 hours he may be suspended with effect from the date of detention and such suspension shall continue till further orders. It is enacted for the simple purpose that while under detention a Government servant may not earn his wages. Sub-Rules (2) and (5) of Rule 13 make it clear that the Appointing Authority which has exercised the power of suspension under Rule 13, has a duty to see that the order of suspension may be revoked, if the same is not needed at any time subsequently.

11. There may be other circumstances also and the power to suspend a Government employee will remain unimpaired if there are special circumstances warranting such action. Although, suspension during the pendency of an inquiry or during the continuation of the investigation, or trial is not a punishment, there is always a stigma attached to it, which is not wholly removed even if the officer is later on exonerated. In such circumstances, an order of suspension should, therefore, be passed only after very careful consideration. It is also expected that the period of suspension is not unduly prolonged.

12. Coming to the instant case, it can be said that the case, which has been registered against the appellant, has nothing to do with his employment i.e. it has nothing to do with the employee's misconduct. The FIR was lodged in the case on 19th December, 1979. The police had registered the case on 31st January, 1980. The appellant surrendered to the police on 31st March, 1980, and he was bailed out by the order of the learned Sessions Judge, Jaipur on 10th April, 1980. He was put under suspension by the order of the Excise Commissioner dated 21st April, 1980. It is thus clear that the appellant was not put under suspension immediately after the FIR was lodged or even thereafter when the case was registered on 31st January, 1980 and, he was not put under suspension while he remained under custody of the police, or in judicial custody and was put under suspension when he had already been bailed out by the Sessions Court. The order of suspension was communicated to the appellant through the District Excise Officer, Bharatpur who called upon the appellant to hand over the charge. These facts are relevant and it would appear that on 21st April, 1980, the appellant applied to the Board of Revenue for permitting him to join the training and the Board immediately came into action and passed the order dated 21st April, 1980, permitting the appellant to join the training. A copy of the order of the Board was also sent to the Excise Commissioner.

13. The Supreme Court had the occasion to consider the right of the Government in the matter of suspension of a Government servant in a large number of cases namely, [The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union, T. Cajee Vs. U. Jormanik Siem and Another](#), and [V.P. Gidroniya Vs. The State of Madhya Pradesh and Another](#). It was observed by the Supreme Court that under the ordinary law of master and servant, the power to suspend the servant without pay could not be implied as term in an ordinary contract of service between the master and the servant, but must arise either from the express term in the contract itself or statutory provision governing such contract. It was further held that an order of interim suspension could be passed against an employee while inquiry was pending into his conduct, even though there was no specific provision to that effect in his terms of appointment or in the rules, but in such a case he would be entitled to his remuneration for the period of his interim suspension. In case, there is a provision for payment of subsistence allowance during the period of suspension it will be in accordance with the rules. When a Government servant is put under suspension during the pendency of departmental proceeding or pending criminal proceeding, it means that the Government merely issued a direction that he must not do anything in discharge of the duties of his office and the employee is bound by the said order.

14. The effect of misconduct relating to employment has been stated by Lopes, L.J. in *Pearce v. Foster* (1885) 17 QBD 536 in the following words:

If a servant conducts himself in a way inconsistent with the faithful discharge of his duties in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service or the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to

the interests or to the reputation of the master and the master will be justified, not only if he discovers it at the time but also if he discovers it afterwards, in dismissing that servant.

15. This view has been cited with approval by the Supreme Court in *Govind Menon v. Union of India* (1967) 2 LLJ 245.

16. Misconduct may be broadly dealt with under three different heads: (a) misconduct relating to duty; (b) misconduct relating to discipline; and (c) misconduct relating to morality. In the instant case, there is no case against the appellant so far as misconduct relating to duty, or misconduct relating to discipline is concerned. No case has been made out against the appellant for misconduct relating to morality also, as no charge-sheet has been served upon him in this regard. It may further be observed that the act for which the appellant was placed under suspension has no rational connection or bearing on the contract of employment between the State as employer and the Government servant as an employee. The Supreme Court in the case of *Aganani (W.M.) v. Badridas* 1963 1 LLJ 684 clearly laid down by observing that it would be imprudent and unreasonable on the part of the employer to attempt to improve the moral or ethical tone of the employees' conduct in relation to stranger not employed in his concern by use of coercive process of disciplinary jurisdiction. From the observations made by the Hon'ble Supreme Court it is clear that the act complained of must have some rational connection or bearing on the contract of employment between employer and employee. The Government has issued circulars from time to time relating to suspension of its employees and expeditious conduct of the departmental inquiries. From the circulars and various recommendations of the Government it is clear that suspension should be recommended only when it is fully warranted.

17. Reverting back again to Rule 13, it is clear that Sub-rule (a) of Rule 13(1) gives power to the Appointing Authority to place a Government servant under suspension where disciplinary proceeding against him is contemplated or is pending. Sub-rule (b) of Rule 13 provides that a Government servant may be placed under suspension where a case against him in respect of any criminal offence is under investigation or trial. It means that criminal case referred to in Sub-rule must have some co-relation with the employment or with the morality, for which some action is required to be taken by Appointing Authority. This rule cannot be taken to confer arbitrary powers upon the Appointing Authority to place a Government servant under suspension simply because a petty case of no importance is pending investigation or trial against a Government servant. While exercising power under Rule 13, in our opinion, the Appointing Authority must apply its mind and see whether it would be in the interest of the Government or in the interest of public at large to place the Government servant under suspension and the circumstances so warrant to place the Government servant under suspension. In every case, there should be proper application of mind before an action is taken against the Government servant for placing him under suspension. Further when an order of suspension is passed, it is again a duty of the Appointing Authority to pass an order of suspension to see whether it should be revoked or not. In this case, the appellant was put under suspension

by an order of the Excise Commissioner dated 21st April, 1980. By that time, the appellant was already bailed out. The police registered the case on the complaint lodged by the father-in law of the appellant. It was lodged against the appellant, his parents and sister. The offence was u/s 306, IPC. In such circumstances, there appears to be no reasonable ground as to why the petitioner was put under suspension. Even in their reply, no valid reasons have been mentioned by the respondents. There appears to be no reasonable ground as to why the appellant was not relieved and sent for training as per his request for his new assignment to the Rajasthan Tehsildar Service. The Excise Commissioner in the garb of the suspension order did not pass an appropriate order to enable the appellant to avail the benefits of his selection to the Rajasthan Tehsildar Service and, thus, deprived the appellant of his right relating to employment when there was nothing objectionable in relieving the appellant despite suspension. It is a case where the order of suspension had its adverse civil consequences on the petitioner in as much as he lost his right to avail the benefit of his selection to the RTS. In the facts and circumstances of the case, we do not agree with the observations made by the learned Single Judge that the petitioner failed to place sufficient material before the Court to justify invocation of extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Rather, we are of the view that it is a fit case where this Court should invoke its extraordinary jurisdiction under Article 226 of the Constitution and to do justice by directing the respondents to allow the appellant to join the training for the RTS in the next training course.

18. In the result, the appeal of the appellant is accepted. The order of suspension dated 21st April, 1980, is set aside. The order passed by respondent No. 2 dated 14th-15th July, 1980, cancelling the appellant's appointment to RTS dated 21st February, 1980 is quashed. The order passed by the learned Single Judge dated 16th December, 1981 in S.B. Civil Writ Petition No. 916/1980 is also quashed and set aside.

19. The respondents are directed to allow the appellant to join the appointment and training for the Rajasthan Tehsildar Service in the next training course.

20. As the appellant has challenged the order of his termination from the post of Excise Inspector before the Rajasthan Civil Services Appellate Tribunal, Jaipur, hence, the question of consequential benefits, if any, is left open for the Tribunal to decide.

21. The parties are left to bear their own costs.