

(2015) 07 RAJ CK 0132

Rajasthan High Court

Case No: Civil Writ Petition No. 2297 of 2014

Shravan Kumar
Bidiyasar

APPELLANT

Vs

Ajmer Vidhyut Vitran
Nigam Ltd. and
Others

RESPONDENT

Date of Decision: July 16, 2015

Hon'ble Judges: Sandeep Mehta, J

Bench: Single Bench

Advocate: Rajesh Shah, for the Appellant; Ravi Bhansali, Advocates for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Sandeep Mehta, J

Heard learned counsel for the parties and perused the material available on record.

2. By way of the instant writ petition, the petitioner Shravan Kumar Bidiyasar has approached this Court assailing the legality and validity of the order Annex. 3 dated 22.1.2014 whereby, he was placed under suspension. The language of the order Annex. 3 is relevant for the disposal of the writ petition and is being reproduced herein below:-

"Whereas a criminal proceeding is contemplated against Sh. Shravan Ram Bidiyasar, AEN Agn. XEN (DD-II), AVVNL, Udaipur.

Now, therefore, Sh. Shravan Ram Bidiyasar, AEN Agn. XEN is hereby placed under suspension with immediate effect. During the suspension period, his headquarter is hereby fixed at office of the Superintending Engineer (O&M), AVVNL, Chittorgarh, where he will mark his attendance daily.

During the suspension period he shall be entitled to draw subsistence allowance admissible under the rules."

3. It is the admitted case of the parties that an FIR No. 12/2014 came to be registered at A.C.B., Udaipur on 16.1.2014 wherein the petitioner was also named as an accused. However, undisputedly Laxman Lilani, Assistant Engineer in A.V.V.N.L. was apprehended red handed with the bribe money. The petitioner is arraigned as an accused in the F.I.R. as a conspirator. Be that as it may. It is further an admitted case of the parties that neither the petitioner has been arrested nor any sanction has been sought for the petitioner's prosecution in the said case till date. The competent authority passed the order Annex. 3 placing the petitioner under suspension in reference to Clause 9 of R.S.E.B. Employees (Classification, Control & Appeal) Regulations, 1962 (for short, herein after referred to as the CCA Regulations) which is reproduced herein below for sake of ready reference:-

"9. Suspension:

(1) The appointing authority or any authority to which it is subordinate or any other authority empowered by the Board in that behalf may place a Nigam employee under suspension:

(a) Where the 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. Decision under this regulation will be communicated to the employee by the disciplinary authority or the officer authorized. (Substituted vide order No. 591 dt. 25-07-07 (F & R-420).

(2) An employee of the Board who is detained in custody on a criminal charge or otherwise, for a period exceeding forty eight hours, shall be deemed to have been suspended w.e.f. the date of detention by an order of the Appointing Authority and shall remain under suspension until further orders.

(3) Where the penalty of dismissal, removal or compulsory retirement from service imposed upon a Board employee under suspension is set-aside in appeal or on review under these Regulations and the case is remitted for further enquiry 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 Board's employee 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 enquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Board's employee 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 Regulation 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."

4. Learned counsel for the petitioner contends that the impugned order clearly reflects that the petitioner was being placed under suspension in contemplation of a criminal proceeding. As per him, the employee cannot be placed under suspension merely in contemplation of criminal proceedings. He further submits that if Clause 9 of the C.C.A. Regulations is applied in its letter and spirit, then it is evident that the respondents have placed the petitioner under suspension in total contravention thereof. As per him, since the suspension order was not passed on the ground of pendency of investigation or trial of a criminal case, but rather was issued in contemplation of a criminal case, the order does not answer to the requirements of the Statutory provision and, therefore, cannot be sustained.

5. Per contra, learned counsel for the respondents vehemently tried to support and defend the impugned order on the strength of the aforequoted Clause 9 of the C.C.A. Regulations. However, he too was not in a position to dispute the fact that the order speaks of contemplated criminal proceedings against the petitioner. He admits that the Regulation does not permit suspension of an employee in contemplation of criminal proceedings.

6. I have heard the learned counsel for the parties and have perused the material available on record.

7. Upon going through the impugned order, it is evident that it suffers from factual incongruities. As per the C.C.A. Regulations applicable to the employees of the power company particularly, Regulation 9 thereof, an employee of the companies can be placed under suspension in contemplation of a disciplinary proceeding or where a criminal case is under investigation or trial against the employee. True it is that the petitioner was named in the F.I.R. mentioned above, but as on the date of order of suspension, it was not even known as to whether the A.C.B. proposed to proceed against the petitioner or not. Had it been the case that the petitioner was trapped red handed, the situation would have been different. Instances are not scarce where a person, despite being named in the FIR is exonerated during investigation.

8. Clause 9 of the Regulations which has been quoted above, gives a discretion to the authority to pass an order of suspension against an employee where a criminal case is under investigation or trial against such employee. Thus, the Statute is directory in nature. The very fact that the Regulations give a discretionary power to the authority leads to an inference that the power should be exercised objectively and with circumspection. Thus, the authority before exercising powers of

suspension against an employee on the ground of pendency of investigation or trial in a criminal case registered against an employee, should objectively take into consideration the facts of the criminal case and if thereafter it is thought fit to exercise the powers under the clause, then only an employee should be placed under suspension. A mere mechanical reference to the pendency of investigation or trial in a criminal case against the employee would not sub-serve the purpose of the Statute.

9. That apart, in the case at hand, the impugned order was passed with a total non-application of mind to Clause 9 of the Regulations as well. Clause 9 gives discretion to the appointing authority to place the employee under suspension on the ground of pendency of investigation or trial of a criminal case whereas the order in question was passed on the ground that a criminal proceeding was contemplated against the petitioner. Apparently, Clause 9 of the Regulations reproduced herein above, does not confer power of suspension upon the authority in contemplation of a criminal case. It appears that the competent authority under a misconception applied the provisions of Clause 9(1) of the Regulations which allow for suspension of an employee in contemplation of a departmental inquiry and passed impugned order in contemplation of a criminal case.

10. The impugned order thus, was passed with a total non-application of mind to the facts as well as to the Statute and as such, the same cannot be sustained as being grossly illegal.

11. The instant writ petition thus deserves to be and is hereby allowed. The impugned suspension order Annex. 3 dated 22.1.2014 is declared illegal and is hereby quashed and set aside. However, the respondents are given liberty to pass a fresh order in the event of prosecution sanction being accorded to prosecute the petitioner in the criminal case referred to supra.

12. No order as to costs.