
Chandu Kanwar Vs The State of Rajasthan

Civil Writ(CW) No. 10106 of 2016

Court: RAJASTHAN HIGH COURT

Date of Decision: Sept. 22, 2016

Acts Referred:

Constitution of India, 1950 - Article 226, Article 309#Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 - Rule 13

Citation: (2017) LIC 375

Hon'ble Judges: Miss. Jaishree Thakur, J.

Bench: Single Bench

Advocate: Mr. Khet Singh, Advocate, for the Petitioner; Mr. Manish Patel, Additional Government Counsel, for the Respondents

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Miss Jaishree Thakur, J. - The instant writ petition has been filed to challenge the impugned order dated 26.08.2016, by which, the petitioner

has been placed under suspension.

2. In brief, facts of the case are that the petitioner was working as Lower Division Clerk cum Gram Sevak and Secretary, Gram Panchayat

Janunda, Panchayat Samiti Marwar Junction, District Pali. It is contended that petitioner was discharging duties satisfactorily, however, the

Sarpanch of the Gram Panchayat Janunda was not amicable towards her. On 26.08.2016 a public hearing of the M.L.A of the area was to be

held along with Sub-Divisional Officer, Marwar Junction and the petitioner was informed to remain present at the meeting. The petitioner attended

the meeting but due to her illness, could not remain present right through the entire meeting and submitted an application before the Sub-Divisional

Officer requesting him to allow her to leave head-quarters. However, on the same day i.e 26.08.2016 the petitioner was served with an office

order whereby she was placed under suspension by the Chief Executive Officer, Zila Parishad, Pali while exercising powers conferred upon him

under Rule 13 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (hereinafter referred to as "the Rules of 1958") on

the ground that during the public hearing of the M.L.As., the petitioner misbehaved with the Sub-Divisional Officer, Marwar Junction and further

on the ground that she used to keep official record at her residence instead of keeping the same in the office. By the impugned order dated

26.08.2016, the petitioner was directed to hand over charge to the nearest Gram Sevak and to submit a compliance report. Aggrieved against the

suspension order, the present writ petition has been filed.

3. Mr. Khet Singh, learned counsel appearing on behalf of petitioner submits that the suspension order has been passed without any disciplinary

proceedings pending against the petitioner and as such there is no compliance of Rule 13 of the Rules of 1958. It is further argued that the

impugned suspension order has been passed at the behest of the Sarpanch and as such, the same is vitiated on account of malafide. It is also

submitted that ground for suspension is for retaining office record at her residence and the said reason is without any basis since the authorities

themselves have put a lock upon the room of the office of the Gram Panchayat Janunda where the record is lying. To substantiate the fact the

petitioner is being harassed, the details of various litigation pending has been given. Even a charge sheet came to be served upon the petitioner

under Rule 17 of the Rules of 1958.

4. Per contra, Mr. Manish Patel learned Additional Government Counsel appearing on behalf of respondents has raised a preliminary objection

regarding the maintainability of present writ petition. It is argued that the suspension order has been passed on account of misbehavior of the

petitioner and she had retained the official record at her residence. It is argued that the suspension order is appealable under Rule 22 of the CCA

Rules of 1958, therefore the writ per se is not maintainable. It is also argued that the suspension order is not punishment and as such, the Court

should not interfere in the order so passed. It is also submitted that the suspension order can be passed in contemplation of initiation of inquiry and

it is not necessary for the department to pass the order of suspension only after disciplinary proceedings have been initiated. Reliance has been

placed upon [1] Ramji Upadhyay v. State of Rajasthan [2007] 3 WLN 421, 2. S.A. Khan v. State of Haryana AIR 1993 SC 1152, [3]

Laxman Singh Verma v. State of Rajasthan & Ors. in D.B. Civil Special Appeal No.1176/1999 decided on 05.11.1999, [4] Municipal

Board, Mt. Abu & Anr. v. Hajari Vishnu & Ors. in D.B. Civil Special Appeal [Writ] No. 609/2008 decided on 04.03.2009, [5] State

Bank Of India & Ors. v. Harbans Lal AIR 2000 SC 2219, [6] Sharwan Kumar v. The State of Raj. & Ors. 2010(3) WLC 30 & [7]

State Of Orrisa v. Bimal Kumar Mohanty AIR 1994 SC 2296.

5. I have heard the learned counsel for the parties and have perused the record of the case.

6. The issues raised in the present writ petition arise out of a suspension order passed on 26.08.2016. The preliminary objection argued needs to

be addressed as to whether the writ petition is maintainable in the light of the statutory remedy available to the petitioner under Rule 22 of the Rules

of 1958 read with Rule 301 of the Rajasthan Panchayati Raj Rules, 1996 (hereinafter referred as "the Rules of 1996").

7. Counsel for the respondent has laid great stress on the maintainability of writ petition in view of statutory remedy available. By relying on

several judgments, it is submitted that in Ramji Upadhyay v. State of Rajasthan reported in [2007] 3 WLN 421 (Raj.) while taking into

account several judgments of the Hon"ble Apex Court this High Court came to hold that the impugned order of suspension is appealable under

Rule 22 of the Rules of 1958 and dismissed the writ petition giving liberty to the petitioner to file an appeal. Similarly, in a judgment rendered in

S.A. Khan v. State of Haryana & Ors. reported in AIR 1993 SC 1152 where a writ petition under Article 32 of the Constitution of India was

filed by the petitioner challenging his suspension order on the ground that the suspension order had been passed in mala fide exercise of disciplinary

powers, the Hon"ble Apex Court declined to set aside the order of suspension on the ground that statutory remedy is available. Similarly, a

Division Bench of this Court in Laxman Singh Verma v. State of Rajasthan & Ors. in D.B. Civil Spl. Appeal No.1176/1999 decided on

05.11.1999 also held that when there is an alternate remedy and efficacious remedy under a statute, the High Court should not invoke its extra

ordinary jurisdiction except in a case where the order complained of is wholly without jurisdiction or passed in total breach of principles of natural

justice.

8. Similarly, Harbans Lal (Surpa), Bimal Kumar Mohanty (Supra) have been cited to contend that when there are serious allegations of misconduct

the order of suspension should not be interfered with.

9. Per contra it is argued by counsel for the petitioner that the writ court can entertain the present writ by relying on [1] Hajari Vishnu v. State of

Rajasthan & Ors. 2008 (6) WLC 558; [2] Banwari Lal Paliwal v. State of Rajasthan & Ors. 2001 [1] WLN 452; [3] Ram and Shyam

Company v. State of Haryana & Ors. AIR 1985 SC 1147; [4] Deepak Kumar Khivsara v. Oil India Limited & Ors 1996 (2) RLW

188; [5] Harbans Lal Sahnia & Anr. v. Indian Oil Corpn. Ltd. & Ors. (2003) 2 SCC 107; [6] State of U.P. & Ors. v. M/s Indian Hume

Pipe Co. Ltd. (1977) 2 SCC 724.

10. The cases as relied upon by the counsel for the petitioner namely in Bhanwar Lal Paliwal v. State of Raj. & Ors., Ram & Shyam Co. v.

State of Haryana, Deepak Kumar Khivsara v. Oil India Limited & Ors., & Harbanslal Sahnia & Anr. v. Indian Oil Corpn. Ltd. &

Ors. and State of U.P. & Ors. v. M/s Indian Hume Pipe Co. Ltd., have clearly held that there is no bar to a writ court entertaining a matter

merely on account of an alternative remedy being made available or rejecting a petition filed under Article 226 of the Constitution of India on the

ground that an appeal lies to the higher office or the State Government. It has been held that an appeal may not always be an efficacious remedy.

In *Ram & Shyam Co. (Supra)*, the Hon^{ble} Supreme Court held that ordinarily a Court has to impose a restraint in its own wisdom on exercise of

jurisdiction under Article 226 of the Constitution of India where the party invoking the jurisdiction has an effective, adequate alternative remedy,

but the same would not oust the jurisdiction of the Court. Further held that an appeal in all cases cannot be said to provide in all situations an

alternative remedy. A Division bench of the Rajasthan High Court in *Laxman Singh Verma (supra)* while holding that the existence of an alternative

remedy is a bar to entertain a petition under Article 226 of the Constitution of India is a general rule, but there are exceptions where the High Court

can exercise its discretion to interfere in specified cases when there is a complete lack of jurisdiction in the officer or authority to take action and

where the order has been passed in violation of principles of natural justice.

11. In *Harbans Lal (Supra)*, the Hon^{ble} Supreme Court has laid down the principle as to when the High Court may exercise its writ jurisdiction. It

has been held that the rule of exclusion of writ jurisdiction on account of availability of an alternative remedy is a rule of discretion and not one of

compulsion. Three contingencies have been specified in which the High Court may exercise its writ jurisdiction namely (i) where the writ petition

seeks enforcement of any of the fundamental rights, (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings

are wholly without jurisdiction or vires of an Act is challenged.

12. What can be culled out from the judgments relied upon by both the parties is that even though there is a remedy of statutory appeal available to

an employee, such statutory remedy/alternative remedy would not be a bar to the High Court to exercise writ jurisdiction under Article 226 of the

Constitution Of India. The ratio laid down is that in case the impugned orders are wholly without jurisdiction or are violative of principles of natural

justice or likewise the rules, the High Court can exercise its writ jurisdiction to entertain the petition. Even in the case relied upon by the respondent

in the judgment of *Laxman Singh Verma (Supra)*, the Division Bench while deprecating the tendency to bypass alternative remedy and holding that

it must be discouraged has noted exceptions where the High Court could interfere by exercising its extra ordinary jurisdiction under Article 226 of

the Constitution of India. Therefore each case has to be examined to see whether the impugned order requires interference under writ jurisdiction

or not and on account of violation of rules or an order passed without jurisdiction can be interfered with.

13. In the instant case, an argument has been raised that Rule 13 of the Rules of 1958 can be invoked only under circumstances as provided under

Rules 13 (1) & 13 (2) i.e. when the appointing authority or a disciplinary authority seeks to suspend an employee pending inquiry or contemplated

inquiry or where a case against him in respect of criminal offence is under investigation or under trial. It is argued that no charge sheet has been

issued against the petitioner to date and no misconduct can be attributed to her since she left the venue after seeking permission of the Sub-

Divisional Officer. Reliance has been placed upon a judgment rendered in Hazari Vishnu & Ors. (Supra), where the Single Bench of this Court

held that the order of suspension deserves to be quashed because on the date of passing of the suspension order, no inquiry was pending or

contemplated or proposed and so also no criminal proceedings were pending against the petitioner at that relevant time.

14. Per contra counsel for the respondent"s urges that the judgment rendered in Sharwan Kumar (Supra) has held that non-mentioning of the fact

that the petitioner is suspended in contemplation of any inquiry is irrelevant and thus, the impugned order of suspension is sustainable.

15. Rule 13 of the Rules of 1958 reads as:

13. Suspension.~ Â¿Â½

(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 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~ Â¿Â½eight 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~ Â¿Â½rule (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 continue 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 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 dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5) Any 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.

16. Undoubtedly, Rule 13 (1) (a) of the Rules of 1958 clearly provides that suspension order may be passed in contemplation of initiation of

disciplinary proceedings or where they are pending. Admittedly on the date the suspension order was issued no disciplinary proceedings were

pending. Supreme Court in the case of State of Orissa v. Bimal Kumar Mohanty, (1994) 4 SCC 126 has held as under:

13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or

contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission,

the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and

the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or

disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending

aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the

gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each

case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling

an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the

alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee

could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or

investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or

inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible

impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It

would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate

result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office

while facing departmental inquiry or trial of a criminal charge.

In other words the suspension order cannot be used as a tool to harass an employee and must be used with great circumspection. Appointing

authority or disciplinary authority should consider the gravity of the misconduct sought to be inquired into or investigated into with the nature of the

evidence placed before it before deciding whether it is expedient to keep an employee under suspension. Such consideration will rule out the

possibility of an authority to act whimsically. Meaning thereby such an order should not be passed in routine. In the instant case no such

consideration seems to have been taken before the suspension order was issued. The judgment relied upon by the petitioner in Hazari Vishnu &

Ors.(Supra) is wholly applicable to the facts of the present case since there was no inquiry pending or even contemplated nor was the petitioner

facing a criminal trial at the time of issuance of suspension order. Contention that the said judgment cannot be relied upon since D.B. Special

Appeal [Writ] No.609/2008 Municipal Board Mt. Abu & Anr. v. Hazari Vishnu & Ors. decided on 04.03.2009 was preferred is not

sustainable since the appeal was disposed of by giving a direction to conclude the inquiry expeditiously as the petitioner had retired.

17. The case of Sharwan Kumar (Supra) as cited by the counsel for respondents is distinguishable on facts, in so far as an inquiry had been

initiated against the delinquent employee, which was not in the knowledge of the writ petitioner therein. On this basis, the High Court held that even

though the petitioner may not have been served with the charge sheet yet that would not mean ""that there is no contemplation of inquiry against the

petitioner.

18. The other ground as mentioned in the suspension order that the record has been retained by the petitioner stands belied since under orders of

the Court, the record room which had been sealed, has been since opened and the record has been taken over by the respondents concerned

without informing the petitioner of any shortfall.

19. Having perused the various litigations i.e. pending between the parties and taking note of the fact that to date the record has been handed over,

I am of the opinion that this Court has jurisdiction to entertain the writ petition since there is no inquiry pending or contemplated as on the date the

suspension order was issued which makes the order liable to be set aside. The petitioner has been suspended on two counts. (i) on account of

misbehavior with the Sub-Divisional Officer and (ii) on account of retaining the record. Nothing has been brought on the record by way of

pleadings as to what was the alleged misbehaviour. The record was in the record room, which is now in the possession of the respondents and

despite an order of the court to inform the petitioner of any shortfall no such information was given to the petitioner, as such this ground is also

without any foundation. In such a situation to relegate the petitioner to avail statutory remedy by filing an appeal under Rule 22 of the Rules of 1958

would not serve the ends of justice.

20. In view of the above, the writ petition is allowed. The impugned suspension order dated 26.08.2016 passed by the Chief Executive Officer,

Zila Parishad, Pali is hereby quashed and set aside. However, the respondents would be at liberty to pass fresh orders in accordance with law.