

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

1	Case No.	WA No.593/2020 & WA No.580/2020
2	Parties Name	Neerja Shrivastava Vs. State of MP & Ors. State of MP & Ors. Vs. Jagdish Rathi
3	Date of Judgment	25/6/2020
4	Bench constituted of	Hon'ble Shri Justice Prakash Shrivastava & Hon.Mr.Justice Vivek Rusia
5	Judgment delivered by	Hon'ble Shri Justice Prakash Shrivastava
6	Whether approved for reporting	Yes
7	Name of counsels for parties.	Shri.Harshwardhan Sharma, counsel for the appellant in WA No.593/2020 & Shri Amol Shrivastava, counsel for appellants in WA No.580/2020. Shri Amol Shrivastava, learned counsel for respondents/State in WA No.593/2020. Shri Amit Seth, learned counsel for respondent No.4 in WA No.593/2020 & for respondent in WA No.580/2020.
8	Law laid down	The order of suspension should not be ordinarily interfered by the Court unless it has been passed mala-fide and without there being even a prima facie evidence connecting the delinquent with the misconduct (Para No.7 & 8) Permitting a delinquent employee to continue at the same place where the Departmental Enquiry is held and misconduct is committed may not be in the interest of administration or in the public interest, therefore, even if the employee concerned is not placed under suspension, then ordinarily it is in the public interest and interest of the administration and also in the interest of fair and transparent enquiry that the employee concerned is transferred from that place. Even otherwise decision relating to transfer is to be taken by the authority as per administrative exigency. (Para No.12 to 16)
9	Significant paragraph numbers	Paragraphs 7,8, 12 to 16

(PRAKASH SHRIVASTAVA)
J u d g e

(VIVEK RUSIA)
J u d g e

HIGH COURT OF MADHYA PRADESH

WA No.593/2020

Neerja Shrivastava Vs. State of MP &Ors.

WA No.580/2020

State of MP & Ors. Vs. Jagdish Rathi

Indore, Dated:25.06.2020

Shri Harshwardhan Sharma, learned counsel for appellant in WA No.593/2020 and Shri Amol Shrivastava, learned counsel for appellants in WA No.580/2020.

Shri.Amol Shrivastava, learned counsel for respondents/State in WA No.593/2020.

Shri Amit Seth, learned counsel for respondent No.4 in WA No.593/2020 and for respondent in WA No.580/2020.

ORDER

As per Prakash Shrivastava, J:-

This order will govern the disposal of WA No.593/2020 and WA No.580/2020 as both these Writ Appeals have been filed against the order of learned Single Judge dated 3/6/2020 passed in WP No.7476/2020.

[2] The respondent No.4 (in WA No.593/2020) namely Jagdish Rathi was working as Assistant Commissioner, Excise, District Ratlam. He was placed under suspension by order dated 6/5/2020 and aggrieved with the same he had filed WP No.7476/2020. Meanwhile the appellant in WA No.593/2020 by order dated 13/5/2020 was transferred to the post which had become vacant on account of the suspension of the writ petitioner. Learned Single Judge by the order dated 26/5/2020 had stayed the operation of the order of suspension. The State government had filed the reply dated

30th May, 2020. The appellant in WA 593/2020 had filed the intervention application along with the application for vacating of stay. Learned Single Judge by order under challenge has allowed the writ petition and set aside the suspension order passed against the Respondent No. 4 holding it to be a stigmatic order and also observing that the order does not mention that any departmental enquiry is contemplated against him and also making certain observations on the merits of the charge in favour of the Respondent No. 4.

[3] Learned counsel for appellant in WA No.590/2020 has submitted that the appellant has been transferred on the post which fell vacant due to the suspension of the Respondent No.4, therefore, the learned Single Judge is not justified in directing transfer of the appellant to some other place. He further submits that the appellant was not even impleaded in the writ petition, therefore, intervention application was required to be filed. He submits that the appellant is presently working on the post in question.

[4] Learned counsel for appellants in WA No.580/2020 which is an appeal preferred by the State has vehemently contended that learned Single Judge is not justified in making observation on the merits of the alleged misconduct in favour of the Respondent No. 4. He further submits that the learned Single Judge has failed to take note of the chargesheet which was already on record while observing that no departmental enquiry was contemplated. He also submits that there is limited scope of judicial review in such matter and Respondent No. 4 cannot be allowed to continue in the present place of posting as there is every possibility of him

tampering with the evidence. He has also submitted that the State's power to transfer cannot be curtailed.

[5] Learned counsel for respondent No.4 (writ petitioner) has contended that the Respondent No. 4 was wrongly placed under suspension, therefore, learned Single Judge has not committed any error in quashing the order of suspension and that the respondent No.4 could not have been placed under suspension for such a charge. He has further submitted that by virtue of the interim order he is continuing in the present place therefore he has right to continue in the present place of posting.

[6] We have heard the learned counsel for parties and perused the record.

[7] Before entering the merits of the controversy, we think it appropriate to take note of the scope of judicial review in the matter of suspension. The Supreme Court in the matter of **U.P. Rajya Krishi Utpadan Mandi Parishad and others Vs. Sanjiv Rajan(1993) Supplement 3 SCC 483** has held that the order of suspension should not ordinarily be interfered with unless it has been passed mala-fide and without there being even a prima facie evidence connecting the delinquent with the misconduct in question. The Supreme Court has also held that in such matters it is advisable that the concerned employee is kept out of the mischief's range. The Supreme Court in this regard has expressed that:-

“10. We find from the charge-sheet that the allegations against the 1st respondent are grave in as much as they indicate that the amounts mentioned there in are not deposited in the bank and forged entries have been made in the pass book of the relevant accounts and the amounts are

shown as having been deposited. In the circumstances, the High Court should not have interfered with the order of suspension passed by the authorities. The Division Bench has given no reason for upholding the learned Single Judge's order revoking the suspension order. In matters of this kind, it is advisable that the concerned employees are kept out of the mischief's range. If they are exonerated, they would be entitled to all their benefits from the date of the order of suspension. Whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the concerned authority ordinarily, the Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question. In the present case, before the preliminary report was received, the Director was impressed by the 1st respondent-employee's representation. However after the report, it was noticed that the employee could not be innocent. Since this is the conclusion arrived at by the management on the basis of the material in their possession, no Conclusions to the contrary could be drawn by the Court at the interlocutory stage and without going through the entire evidence on record. In the circumstances, there was no justification for the High Court to revoke the order of suspension."

[8] In the matter of **Union of India & another Vs. Ashok Kumar Aggarwal (2013) 16 SCC 147**, Hon'ble Supreme Court considering the scope of judicial review in interference of the suspension order has held that it is not ordinarily open to Court to interfere with the suspension order as it is within exclusive domain of competent authority who can review its suspension order and revoke it. Making the scope of interference clear it has been held that where charges are baseless, mala-fide or vindictive and are framed only to keep delinquent employee out of the job, a case for judicial review

is made out. The Supreme Court in this regard has held that:-

“**22.**In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the *gravity of the alleged misconduct* i.e. serious act of omission or commission and the *nature of evidence* available. It cannot be actuated by *mala fide*, *arbitrariness*, or for *ulterior purpose*. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong *prima facie* case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank, etc.

23. In *Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai Patel* [(2006) 8 SCC 200] this Court explained: (SCC p. 209, para 18)

“18. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the court to intervene. It is

nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision.”

24. Long period of suspension does not make the order of suspension invalid. However, in *State of H.P. v. B.C. Thakur* [1994 SCC (L&S) 835 : (1994) 27 ATC 567] , this Court held that where for any reason it is not possible to proceed with the domestic enquiry the delinquent may not be kept under suspension.

25. There cannot be any doubt that the 1965 Rules are a self-contained code and the order of suspension can be examined in the light of the statutory provisions to determine as to whether the suspension order was justified. Undoubtedly, the delinquent cannot be considered to be any better off after the charge-sheet has been filed against him in the court on conclusion of the investigation than his position during the investigation of the case itself. (Vide *Union of India v. Udai Narain* [(1998) 5 SCC 535 : 1998 SCC (L&S) 1418] .)

26. The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, particularly in *State of M.P. v. Shardul Singh*[(1970) 1 SCC 108], *P.V. Srinivasa Sastry v. Comptroller & Auditor General* [(1993) 1 SCC 419 : 1993 SCC (L&S) 206 : (1993) 23 ATC 645], *ESI v.T. Abdul Razak* [(1996) 4 SCC 708 : 1996 SCC (L&S) 1061], *Kusheshwar Dubey v. Bharat Coking Coal Ltd.* [(1988) 4 SCC 319 : 1988 SCC (L&S) 950], *Delhi Cloth & General Mills Ltd. v. Kushal Bhan* [AIR 1960 SC 806] , *U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan* [1993 Supp (3) SCC 483 : 1994 SCC (L&S) 67: (1993) 25 ATC 764], *State of Rajasthan v. B.K. Meena* [(1996) 6 SCC 417: 1996 SCC (L&S) 1455], *Prohibition and Excise Deptt. v. L. Srinivasan* [(1996) 3 SCC 157: 1996 SCC (L&S) 686 : (1996) 33 ATC 745] and *Allahabad Bank v. Deepak Kumar Bhola* [(1997) 4 SCC 1 : 1997 SCC (L&S) 897], wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is *ordinarily* not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21 of the General Clauses Act, 1897 and

while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay *for no fault of the employee concerned*. Where the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without examining the entire record in question and in order that the disciplinary proceedings may continue unhindered the court may not interfere. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial cannot be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question.”

[9] Having examined the present case in the light of the limited scope of judicial review, it is noticed that during the lockdown period due to Covid 19 effect, four persons had died by consuming poisonous liquor at Ratlam and the Respondent No. 4 being the in charge of the district has been prima-facie found to be careless in controlling the sale of illicit liquor in the district, therefore, he has been placed under suspension by the order dated 6th May, 2020 passed in the name of the Governor exercising the power under Rule

9 of M.P. Civil Services (Classification, Control and Appeal) Rules, 1965.

[10] On examining of the record, we have noticed before the learned Single Judge State government had already filed the reply on 30th May, 2020 disclosing that the departmental enquiry was contemplated against the Respondent No. 4 and the Commissioner, Excise vide note sheet dated 6/5/2020 had recommended suspension of the Respondent No. 4 with immediate effect and had also recommended disciplinary proceedings against him. The reply further reflects that a similar departmental enquiry has also been initiated against Shri Mohanlal Mandare, Assistant District Excise Officer, Ratlam and Shri Surendra Singh Dureyya, Excise Sub Inspector Ratlam. Along with the reply the State government had also filed a copy of the charge sheet dated 10/6/2020 which was issued to the Respondent No. 4 for holding departmental enquiry. A perusal of the charge sheet reveals that there are as many as three charges and only one charge relates to the death of four persons due to the poisonous liquor consumption. Other two charges relate to the other dereliction of duties by the Respondent No. 4. Learned Single Judge appears to have lost sight of the said charge sheet while passing the order under challenge and observing that no departmental enquiry was contemplated against the writ petitioner.

[11] During the course of arguments before this court learned counsel for the appellants though have submitted that respondent no. 4 was rightly suspended but in changed circumstances they have not seriously questioned the direction of the learned single judge quashing the suspension

order. Even otherwise we are of the view that having regard to the nature of charge and the role of respondent No.4, suspension was not justified. Therefore, we are not inclined to interfere in that direction.

[12] The next issue is that if the Respondent No. 4 is entitled to continue at the same place where he was posted at the time of passing the suspension order and committing the alleged misconduct.

[13] In the matter of **Ajay Kumar Choudhary Vs. Union of India and another** reported in **(2015) 7 SCC 291** the Supreme Court in a case where there was prolonged suspension has observed that the government can transfer the person concerned to any department in any of its office within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. In this regard it has been held that:-

“21.We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the

imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

[14] Similarly in the matter of **UP Rajya Krishi Utpadan Mandi (supra)** it has been held that in such a matter a departmental enquiry it is advisable that the concerned employee is kept out of mischief's range and that whether the employee should or should not continue in their office during the period of enquiry is a matter to be assessed by the authority concerned.

[15] The Supreme Court in the matter of **Ashok Kumar Agrawal** (supra) has already expressed that :-

“27. Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in the aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, it is not desirable that the court may find out as to which version is true when there are claims and counterclaims on factual issues. The court cannot act as if it is an appellate forum de hors the powers of judicial review.”

[16] From the aforesaid pronouncements it is clear that permitting a delinquent employee to continue at the same place where the Departmental enquiry is held and misconduct is committed, may not be in the interest of the administration or in public interest, therefore, even if the employee concerned is not placed under suspension, then ordinarily it is in the public interest and interest of the administration and also in the interest of fair and transparent

enquiry that the employee concerned is transferred from that place. Even otherwise it lies exclusively within the domain of the administration to decide as per the administrative exigency to post or transfer a particular person at a particular place. Hence, we are of the view that the direction of the learned Single Judge to post the Respondent No. 4 at the same place where he was posted prior to suspension and transfer the appellant in WA 593/2020 to some other place cannot be sustained.

[17] The third issue is if learned Single Judge is justified in making observation on merits of the charge which is levelled against the Respondent No. 4.

[18] The findings given by learned Single Judge on merits of the charge in favour of the Respondent No. 4 were not warranted because the finding in respect of the charge will be recorded by the enquiry officer/competent authority on conclusion of departmental enquiry, therefore, at this stage the Respondent No. 4 cannot be given a clean chit especially when the entire material is not before the court.

[19] Having regard to the aforesaid, we allow the writ appeals partially by affirming the direction of the learned Single Judge to the extent it relates to quashing the order of suspension but we are unable to sustain the direction of the learned Single Judge permitting the delinquent Respondent No. 4 to continue at the present place of posting and to transfer or give posting to the appellant in WA No.593/2020 to some other place, hence it is set aside. We also set aside the observation made by learned Single Judge on merits of the charge levelled against Respondent No. 4. We further make it clear that the departmental enquiry as against the

Respondent No. 4 will be conducted without being influenced by any observation made by the learned Single Judge.

[20] The appeals are **partly allowed** to the extent indicated above.

[21] Original order be kept in WA No.593/2020 and a copy of the order be placed in the record of WA No.580/2020.

(Prakash Shrivastava)
Judge

(Vivek Rusia)
Judge

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