

## **U.P. Rajya Krishi Utpadan Mandi ... vs Sanjiv Rajan on 29 March, 1993**

**Equivalent citations: JT1993(2)SC550, (1993)IILLJ958SC, (1993)2MLJ110(SC), 1993(2)SCALE330, 1993SUPP(3)SCC483, 1994(1)SLJ28(SC), (1993)3UPLBEC1569, AIRONLINE 1993 SC 249, AIRONLINE 1993 SC 145, (1993) 3 UPLBEC 1569, (1993) 2 LAB LJ 66, (1993) 66 FAC LR 1058, (1993) 2 MAD LJ 110, (1993) 2 SCT 732, (1993) 3 ALL WC 1703, (1993) 4 SERV LR 543, (1993) 22 ALL LR 138, (1994) 1 CUR LR 315, (1993) 2 LAB LN 11, (1993) 25 ATC 764, (1993) 2 JT 550, 1993 LAB LR 417, 1993 SCC (SUPP) 3 483, 1993 UJ(SC) 47, (1993) 2 JT 550 (SC)**

**Bench: P.B. Sawant, N.M. Kasliwal**

### **ORDER**

1. Leave granted.

C.A. NO. of 1993 [@ SLP No. 3171/1993.]

2. The appeal is directed against the interlocutory order dated 21.5.1992 passed by the High Court. Normally, this Court does not interfere with the interlocutory orders. But the case in hand impels us to do so.

3. The respondent was employed at the relevant time as Cashier of the Agricultural Market Committee [the 'Market Committee'] at Rampur. The allegation against the respondent is that during his tenure as such Cashier, lakhs of rupees credited in the accounts of the Market Committee were not deposited in its bank account. On leasing of the said misfeasance, the appellant - Market Committee suspended him from service with effect from 22nd March, 1991. He challenged his suspension in the High Court on the ground that some other suspended officers had been allowed to join service. The High Court quashed the suspension order on the said ground.

4. The investigation into the defalcation was, however, in progress. In April, 1991, special auditors were appointed to audit the accounts of the Market Committee. They submitted their -report in May, 1991 in which it was stated that several lakhs of rupees had been embezzled from the funds of the Market Committee. On 4th May, 1991, an order was passed appointing an inquiry officer to inquire into the conduct of various officers of the Market Committee. Upon preliminary inquiry, it was found that the defalcation was done either with the active involvement of the respondent or at his connivance and in any case he was guilty of dereliction of duty for not scrutinising the accounts of the Market Committee, properly. With this prima facie "case against the respondent made out in the auditors' report, a fresh order of suspension along with a charge-sheet was served upon the respondent on 26th March, 1992. The respondent again approached the High Court and the High

Court by the impugned order, stayed the order of suspension on the ground that it was not competent for the appellants to pass the order of suspension second time in the same matter. The High Court, however, directed the appellant to complete the inquiry expeditiously.

5. The ground given by the High Court to stay the operation of the suspension order, is patently wrong. There is no restriction on the authority to pass a suspension order second time. The first order might be withdrawn by the authority on the ground that at that stage, the evidence appearing against the delinquent employee is not sufficient or for some reason, which is not connected with the merits of the case. As happened in the present case, the earlier order of suspension dated 22nd March, 1991 was quashed by the High Court on the ground that some other suspended officer had been allowed to join duties. That order had nothing to do with the merits of the case. Ordinarily, when there is an accusation of defalcation of the monies, the delinquent employees have to be kept away from the establishment till the charges are finally disposed of. Whether the charges are baseless, malicious or vindictive and are framed only to keep the individual concerned out of the employment is a different matter. But even in such a case, no conclusion can be arrived at without examining the entire record in question-and hence it is always advisable to allow the disciplinary proceedings to continue unhindered. It is possible that in some cases, the authorities do not proceed with the matter as expeditiously as they ought to, which results in prolongation of the sufferings of the delinquent employee. But the remedy in such cases is either to call for an explanation from the authorities in the matter, and if it is found unsatisfactory, to direct them to complete the inquiry within a stipulated period and to increase the suspension allowance adequately. It is true that in the present case, the charge-sheet was filed after almost a year of the order of suspension. However, the facts pleaded by the appellants show that the defalcations were over a long period from 1986 to 1991 and they involved some lakhs, of rupees. It also appears that the authorities have approached the police and in the police investigation, the amount of defalcation is found to be still more. Since the matter is of taking accounts which are spread over from 1986 to 1991 and of correlating the entries with the relevant documents, and several individuals are involved, the framing of charges was bound to take some time. The Court has to examine each case on its own facts and decide whether the delay in serving the charge-sheet and completing the inquiry is justified or not. However, in the present case the High Court has not quashed the order of suspension on the ground of delay in framing of the charges. As stated earlier, it has set aside the order of suspension on the ground that the authority had no power to pass the second order of suspension in the same case. We are afraid that the High Court has misconstrued the nature and purpose of the power of suspension vested in the management. It is not disputed that at present all officers concerned are served with the charge-sheets and have been suspended. There is no discrimination between the officers on that account. The charges are also grave and the authorities have come to the conclusion that during the disciplinary proceedings, the officers should not continue in employment to enable them to conduct the proceedings unhindered. Hence, we are satisfied that the order in appeal was not justified.

6. We, therefore, allow the appeal and set aside the impugned order of the High Court. The effect of this order will be that the order of suspension dated 26th March, 1992 would stand revived.

7. The appellants should, however, complete the disciplinary proceedings expeditiously.

8. There will be no order as to costs.

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9. The 1st respondent was employed as the Secretary of the Market Committee at Rampur from 6th January, 1990 to 2nd May, 1991 and one Sanjiv Rajan was the Cashier under him. In February, 1991, it was discovered that there was a large scale embezzlement of funds of the Market Committee. This was reported by the 1st respondent to the higher authorities whereupon a special audit inquiry was directed to be conducted. The special auditors conducted the inquiry from 4th April, 1991 to 22nd April, 1991 and submitted their report in May, 1991. During the course of the inquiry it was revealed that the 1st respondent was guilty of dereliction of duty and it was also possible that he was himself involved in the act of embezzlement. Hence an order of suspension was passed on 3rd May, 1991. The 1st respondent requested the Director of the Market Board that since it was at his instance that the embezzlement was found out, the order of suspension against him be revoked. Thereupon, the Director passed an order on 9th May, 1991, staying the order of suspension. However, thereafter, the audit report was received on the basis of which a preliminary inquiry was ordered. The Deputy Director [Market] who was appointed to conduct the inquiry gave his preliminary report in which he indicated that if the 1st respondent had been alert in his duty as Secretary of the Market Committee, he could, have avoided the embezzlement. Hence, a charge-sheet was served upon the 1st respondent on 10th March, 1992 along with the suspension order of the same date. Against the order, the respondent approached the High Court and the learned Single Judge by his order of 2nd April, 1992 revoked the order of suspension. Against the said order, the appellants preferred an appeal before the Division Bench. By its order dated 8th May, 1992, the Division Bench upheld the revocation of the order of suspension but directed the appellants to complete the inquiry within a period of three months. Since, it was not possible for the appellants to complete the inquiry within three months, they have preferred the present appeal against the order revoking the suspension as well as the direction to complete the inquiry within three months.

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.

11. The appeal is, therefore, allowed and the order of the High Court revoking the suspension of the 1st respondent is hereby set aside. This will result in revival of the order of suspension dated 10th March, 1992. The appellants should, however, conclude the inquiry expeditiously.

12. There will be no order as to costs.