State Of Orissa vs Bimal Kumar Mohanty on 21 February, 1994

Equivalent citations: 1994 AIR 2296, 1994 SCC (4) 126, AIR 1994 SUPREME COURT 2296, 1994 (4) SCC 126, 1994 AIR SCW 2220, 1994 (1) UJ (SC) 665, (1994) 2 SCR 51 (SC), 1994 (2) SCR 51, 1994 UJ(SC) 1 665, (1994) 2 JT 51 (SC), 1994 SCC (L&S) 875, (1994) 2 SCT 625, (1995) 1 LABLJ 568, (1994) 84 FJR 527, (1994) 68 FACLR 970, (1994) 1 LAB LN 889, (1994) 2 SERVLR 384, (1994) 27 ATC 530, (1995) 79 CUT LT 1, (1994) 1 CURLR 615

Author: K. Ramaswamy

Bench: K. Ramaswamy, B.L Hansaria

PETITIONER:
STATE OF ORISSA

Vs.

RESPONDENT:
BIMAL KUMAR MOHANTY

DATE OF JUDGMENT21/02/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1994 AIR 2296 1994 SCC (4) 126
JT 1994 (2) 51 1994 SCALE (1)685

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K. RAMASWAMY, J.- Delay of II 8 days is condoned.

2. Special leave granted.

3. While the respondent was working as Manager of Orissa State Guest House at Bhubneswar, the Government Audit Department audited the accounts for the periods from 1984-85 to 1990-91 and noted serious financial irregularities, fabrication of records and vouchers and misappropriation to the tune of Rs 163.59 lakhs. It suggested further probe into certain items of expenditure which according to the Audit Report are highly suspicious and dubious in nature. The respondent was transferred on January 14, 1993 to the Secretariat and was kept in charge of Recovery Cell. Thereafter certain other financial irregularities relating to purchase of woollen carpets etc. apart from suppression of audit objections had come to light. There were audit reports for the years 1978-79 to 1980-81 also which appear to have pointed out similar objections. The appointing authority considered the record and found necessary to take disciplinary proceedings for those financial irregularities and misappropriation committed during that period and action was in contemplation against the respondent. On March 17, 1993 they passed an order directing an inquiry into the irregularities and also decided to keep him under suspension pending further action. Anticipating this action, the respondent attempted to pre-empt it and laid O.A. No. 396 of 1993 in the State Administrative Tribunal, Bhubneswar and prayed to quash Government memorandums dated January 14, 1993 and February 11, 1993 and also filed an application for ad interim injunction. Hardly the ink on the order of suspension dried on the paper, the Tribunal on the same day, namely March 17, 1993 directed not to suspend the respondent and also directed the standing counsel to obtain instructions of the need to suspend the respondent. Subsequently, the appellant received information that the respondent was in possession of disproportionate assets to the known lawful sources and directed the vigilance to conduct an investigation. On September 3, 1993, the vigilance conducted a raid on the house of the respondent and found him to be in possession of disproportionate assets to the tune of Rs 11.44 lakhs. Accordingly, the crime was registered in Crime No. 46 under Section 3(2) read with Section 13(1) of the Prevention of Corruption Act, 1947 and further investigation was on. On consideration of the material, the Government by order dated September 28, 1993 suspended the respondent from service. It was an independent cause of action which has nothing to do with the first order and there is no need to obtain any prior permission from the Tribunal and the rules do not require to obtain such a permission. It is the case of the appellant that yet it sought permission from the Tribunal but no order was made. It sought to serve the order of suspension on the respondent on September 28, 1993 and September 29, 1993; but the respondent avoided the receipt of it. So it was sent by registered post to the residential address, as well as personally served on the respondent by the Under Secretary at 4.00 p.m. on September 30, 1993.

immediately, the Tribunal suspended the order on the same day, namely, on September 30, 1993 in M.P. No. 2493 of 1993 (arising out of O.A. No. 1594 of 1993) and obviously after 4.00 p.m. In the first order though the Tribunal directed to obtain prior permission before passing any suspension order and despite filing of application for permission, without disposing of the same, the matter was being adjourned from time to time and ultimately the cases were posted for final disposal. Thus, these appeals by special leave.

4. The contention of Shri G.L. Sanghi, learned senior counsel for the appellant is that under Rule 12 of Orissa Civil Services (Classification, Control and Appeal) Rules (for short the Rules), the appointing authority specifically empowered to suspend an employee pending disciplinary

proceedings contemplated against him or pending or in respect of any criminal offence under investigation or trial. In this case, in view of the serious allegations found from the audit reports and the report of the vigilance authorities, the appointing authority, namely, the State Government found it expedient to suspend the respondent and the Tribunal was not justified in interfering with the orders when they had appraised the Tribunal of the seriousness of the allegations. Neither permission was granted nor matters were disposed of. On the other hand the Tribunal appears to have found fault with the action taken by the appellant. On the facts and circumstances, the appointing authority is justified in suspending the respondent pending contemplated disciplinary proceedings as well as investigation by the vigilance department. Shri R.K. Garg, learned senior counsel appearing for the respondent, has contended that the Tribunal has discretionary power to pass suspension of the suspension orders; when the Tribunal had entertained the application and directed the authorities not to take any action except with the leave of the Tribunal, which was not obtained before passing of the suspension order on September 28, 1993. The matters are pending consideration by the Tribunal. This Court would permit the Tribunal to exercise its discretionary powers and would not interdict the exercise of such discretionary powers while exercising the power under Article 136. On the given facts, it is not a fit case warranting interference of this Court.

5. We have given our anxious and serious consideration to the respective contentions. True, normally, this Court would not interdict the exercise of the power to pass interim orders by the courts or tribunals, obviously, with the expectation that they exercise the discretionary power with circumspection after weighing pros and cons to subserve the ultimate result of the pending adjudication. The question is whether this is a fit case where the Tribunal itself should have interdicted the orders of suspension when the appointing authority contemplated disciplinary proceedings or pending investigation into the crime.

6. Rule 12 of the Rules reads thus "12. Suspension : (1) The appointing authority or an authority to which it is subordinate or any authority empowered by the Governor or the appointing authority 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."

[Sub-rules (2) (6) are omitted as being not germane for the purpose].

7. A Constitution Bench of this Court three decades ago in R.P. Kapur v. Union of India' laid the law that:

> "The general principle therefore is that an employer can suspend an employee pending an inquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is

entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in this statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the Government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of Government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental inquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental inquiry against him."

8. This Court reiterated the above view in Balvantrai Ratilal Patel v. State of Maharashtra2 thus :

"The general principle is that an employer can suspend an employee pending an inquiry into his misconduct and the only question that can arise in such suspension will relate to payment during the period of such suspension. It is now well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the 1 (1964)5SCR431:AIR1964SC787 2 (1968) 2 SCR 577: AIR 1968 SC 800 period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay.

It is equally well settled that an order of interim suspension can be passed against the employee while an inquiry is pending into his conduct even though there is no such term in the contract of appointment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which it could be withheld. In this connection it is important to notice the distinction between suspending the contract of service of an officer and suspending an officer from performing the duties of his office on the basis that the contract is subsisting. The suspension in the latter sense is always an implied term in every contract of service. When an officer is suspended in this sense it means that the Government merely issues a direction to the officer that so long as the contract is subsisting and till the time the officer is legally dismissed he must not do anything in the discharge of the duties of his office. In other words, the employer is regarded as

> issuing an order to the employee which, because the contract is subsisting, the employee must obey."

9. In V.P. Gidroniya v. State of M.P3 another Constitution Bench of this Court held that :

> "The general principle is that if the master has a power to suspend his servant pending an inquiry into his misconduct, either in the contract of service or in the statute or the rules framed thereunder governing the service, an order of suspension passed by the master has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay any wages during the period of suspension. Such a power to suspend the contract of service cannot be implied and therefore, if in the absence of such a power in the contract, statute or rules, an order of suspension is passed by the master it only forbids the servant to work without affecting the relationship of master and servant, and the master will have to pay the servant's wages."

10. This Court in another case titled Government of India, Ministry of Home Affairs v. Tarak Nath Ghosh4 held :

> "Serious allegations of corruption and malpractices had been made against the respondent, a member of the Indian Police Service, serving in the State of Bihar. Inquiries made by the State Government revealed that there was a prima facie case made out against him. He was suspended by 3 (1970) 1 SCC 362: (1970) 3 SCR 448 4 (1971) 1 SCC 734: (1971) 3 SCR 715 an order which stated that discriplinary proceedings were contemplated against the respondent.
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> On the question whether the suspension of a member of the service can only be ordered after definite charges have been communicated to him in terms of Rule 5(2) of the All India Services (Discipline and Appeal) Rules, 1955, or whether the Government is entitled to place him under suspension even before that stage has been reached after apreliminaryinvestigation.
>
> Held:(1) The fact that in other rules of service there is specific provisionfor an order of suspension even when disciplinary proceedings were contemplated, does not mean that a member of the All India Service should be dealt with differently. It would not be proper to interpret the Rules, which form a self-contained Code, by reference to the provisions of other rules even if they were made by or under the authority of the President of India."

(Quoted from the SCR Headnote)

11. This Court in U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan5 held that:

(SCC pp. 483-84, headnote) "Ordinarily when there is an accusation of defalcation of 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 disciplinary proceedings to continue unhindered.

From the charge-sheet it is clear that the allegations against the first respondent are grave inasmuch as they indicate that the amounts mentioned therein are not deposited in the bank and forged entries have been made in the pass-book 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. 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."

12. That was also a case in which the High Court passed interlocutory order and this Court, while reiterating that this Court does not interfere with the interlocutory orders, held that the Court was constrained to do so when the court had overlooked the serious allegations of misconduct.

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 5 1993 Supp (3) SCC 483: 1994 SCC (L&S) 67: (1993) 25 ATC 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.

14. On the facts in this case, we are of the considered view that since serious allegations of misconduct have been alleged against the respondent, the Tribunal was quite unjustified in interfering with the orders of suspension of the respondent pending inquiry. The Tribunal appears to have proceeded in haste in passing the impugned orders even before the ink is dried on the orders passed by the appointing authority. The contention of the respondent, therefore, that the discretion exercised by the Tribunal should not be interferred with and this Court would be loath to interfere with the exercise of such discretionary power cannot be given acceptance.

15. In the light of the above, we are of the considered view that it is a fit case for interference. However, it is made clear that we have not expressed any opinion on merits. The entire matter has yet to be investigated into and proceeded on the legal evidence and according to law. The appeals are accordingly allowed and the orders of the Tribunal are set aside, but in the circumstances without costs.