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HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2226 of 2015

- Yogendra Nath Tiwari Aged About 52 years S/o Rajendra Nath Tiwari
R/o Program Inspector, Near Mouvali Bandh, Namnakala, Ambikapur,
District Surguja Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through : Secretary, Tribal Welfare Department,
Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District
Raipur (Chhattisgarh)
2. Commissioner, Tribal Welfare, Raipur District Raipur Chhattisgarh
3. Commissioner Surguja Division Ambikapur District Surguja
Chhattisgarh
4. Collector Tribal Welfare Surguja Ambikapur, District Surguja
Chhattisgarh
5. Assistant Commissioner Tribal Welfare Surguja District Surguja
Chhattisgarh
6. District Treasury Officer Ambikapur, Surguja District Surguja
Chhattisgarh
7. Smt. Ritu Sain Collector Ambikapur District Surguja Chhattisgarh
8. State of Chhattisgarh through Secretary, Law and Legislative Affairs
Department, Mahanadi Bhawan, Mantralaya, Capital Complex Naya
Raipur, District Raipur (CG)

---- Respondents

And

WPS No. 2350 Of 2015

- Khuman Singh Verma S/o Late Nohar Singh Verma Aged About 61
years Posted As Development Extension Officer Cum Additional Chief
Executive Officer Janpad Panchayat Bhatapara, District Baloda Bajar-
Bhatapara (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Panchayat & Rural Development Department, Mahanadi Bhawan, New Raipur, Raipur Chhattisgarh.
2. The Collector, Baloda Bajar- Bhatapara District Baloda Bajar- Bhatapara Chhattisgarh.
3. The Chief Executive Officer, Zila Panchayat Baloda Bajar- Bhatapara Chhattisgarh.

---- Respondents

And

WPS No. 2412 Of 2015

- Gopal Prasad Dubey S/o Late Rasik Lal Dubey Aged About 56 years R/o Daroga Para Near Laxman Sangeet Mahavidyalay Raigarh Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh, Joint Director Urban Administration & Development Department, Regional Office Bilaspur Chhattisgarh
2. Director Urban Administration & Development, Naya Raipur Chhattisgarh

---- Respondents

For Petitioners : Shri Manoj Paranjpe, Shri Rakesh Pandey & Shri Vinod
Deshmukh, Advocates.

For Respondents/State : Shri PK Bhaduri, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

Passed on :10.8.2015

1. In these 3 writ petitions, the petitioners have challenged the order of suspension passed against them under Rule 9 of the Chhattisgarh Civil

Services (Classification, Control & Appeal) Rules, 1966 (henceforth 'the Rules, 1966'). The petitioners are working in different establishments and the impugned orders are separate with respect to each one of them, however, since one common ground has been raised in all the writ petitions that in the absence of any mention in the transfer order of the fact that any departmental enquiry is in 'contemplation', therefore, suspension order does not satisfy the requirement of Rule 9(1) of the Rules, 1966, hence the writ petitions have been heard analogously and are being disposed of by this common order.

2. After dealing with the above said seminal issue, this Court will subsequently deal with facts of each writ petition separately.
3. Shri Manoj Paranjpe, Shri Rakesh Pandey and Shri Vinod Deshmukh, learned counsel for the petitioners would urge that under Rule 9 of the Rules, 1966, a Government servant can be placed under suspension in three eventualities; (i) when a departmental enquiry is pending against him, (ii) when a departmental enquiry is contemplated against him and (iii) when investigation or trial in a criminal case is pending against him. In all the cases, neither departmental enquiry is pending nor any crime is registered against them, but they have been suspended by mentioning some irregularity or misconduct committed by them, however, when there being no mention of the fact that any departmental enquiry is contemplated against them, the requirement of Rule 9 of the Rules, 1966 is not satisfied, therefore, the impugned orders are ex facie illegal.
4. Learned counsel for the petitioners would refer to the order passed by the Single Judge of this Court in the matter of **V.K. Kesharwani Vs. State** {WP No.2918/2006} to buttress their submission that their cases are squarely covered by the said order wherein this Court has stayed the order of suspension on the ground that the said order had not mentioned

contemplation of any departmental enquiry against the Government servant.

5. Per contra, Shri PK Bhaduri, learned Govt. Advocate would argue that the order passed in the case of **V.K. Kesharwani** (Supra) on 22.6.2006 was an interim order, therefore, it does not have any binding precedent. He would submit that the said writ petition was eventually dismissed for want of prosecution, therefore, there is no verdict on the issue. The interim order having merged in the final order, the ultimate effect is that there is no judgment on the issue by this Court. He would also submit that otherwise the issue concerning requirement of mentioning of contemplation of departmental enquiry in the suspension order is no longer *res integra* in view of the judgment rendered by the Division Bench of the Madhya Pradesh High Court in **N.R. Dhangar Vs. State of Madhya Pradesh and another**¹ and the judgment of the Supreme Court in **State of M.P. Vs. L.P. Tiwari**².
6. Before proceeding further to dwell on the issue, it would be apt to reproduce the relevant provisions of Rule 9 of the Rules, 1966.

9. (1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor, by general or special order, 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, inquiry or trial :

Provided that a Government servant shall invariably be placed under suspension when a challan for a criminal offence involving corruption or other moral turpitude is filed against him :

1 1989 M.P.L.J. 212

2 AIR 1994 SC 2175

Provided further 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 shall be deemed to have been placed under suspension by an order of appointing authority -

(a) with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise, for a period exceeding forty-eight hours :

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation : The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(2-a) Where a Government servant is placed under suspension under clause (a) of sub-rule (1), the order of suspension shall contain the reasons for making such order and where it is purposed to hold an inquiry against such Government servant under rule 14, a copy of the articles of charges, the statement of imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained shall be issued or caused to be issued by the disciplinary authority to such Government servant as required by sub-rule (4) of rule 14, within a period of forty-five days from the date of order of suspension:

Provided that where the disciplinary authority is the State Government or the High Court, the copy of the charges and other documents mentioned above shall be issued or caused to be issued to such Government servant within a period of ninety days from the date of

order of suspension.

(2-b) Where by the disciplinary authority fails to issue to the Government servant, a copy of the charges and other documents referred to in sub-rule (2-a) within the period of 45 days, the disciplinary authority shall, before expiry of the said period, obtain orders in writing of the State Government for extension of the said period of suspension :

Provided that the period of suspension shall in no case be enhanced beyond a period of ninety days from the date of the order of suspension.

xxx xxx xxx	xxx xxx xxx	xxx xxx xxx
xxx xxx xxx	xxx xxx xxx	xxx xxx xxx

7. Whether contemplation of departmental enquiry is necessarily to be mentioned in the suspension order and if it is not so mentioned, the effect thereof has been dealt with by the Division Bench of the Madhya Pradesh High Court in the matter of **N.R. Dhangar** (Supra). In the said matter, the following has been held in paras- 3 & 4:-

“3. Secondly, counsel contends, Rule 9(1)(a) expressly uses the word “contemplated” and that word must also appear in impugned order of suspension. Indeed, the contention of the learned counsel is that if resort to this provision is taken, the authority must mention in the order that a “disciplinary proceeding is contemplated or is pending” against the person suspended. That no disciplinary proceeding is pending against the petitioner is clear, but it cannot be said that no disciplinary proceeding is contemplated against him. The mere non-mention of the word “contemplated”, in our opinion, would not vitiate the order, because the facts mentioned in the order show that such a proceeding was in contemplation of the disciplinary authority. There was a serious charge against the petitioner of which mention was made in the very order of suspension. The purpose of mentioning in the order the charge in categorical terms indicated the contemplation of the disciplinary authority; it indicated that a disciplinary proceeding against the petitioner on the charge mentioned was in

contemplation of the authority.

4. We have no doubt that a reasonable interpretation must be placed on the provisions pressed in service in this case; it has to be read meaningfully and not pedantically. The relevant rule is in several parts, and the intent of clause (a) of sub-rule (1) of Rule 9 has to be gathered from other parts of the Rule. When a disciplinary proceeding is contemplated, as per sub-rule (2-a) it is expressly provided, in relation to clause (a) of sub-rule (1) of Rule 9, that a copy of the charges and imputations of misconduct or misbehaviour as also a list of documents and witnesses supporting the charges shall be served within a period of 45 days from the date of the order of suspension, on the delinquent Government servant. According to sub-rule (2-b) the suspension automatically terminates if the provisions of sub-rule (2-a) are not complied with. This in-built safeguard in the Rule against possible abuse of the power makes it clear as to what has to be recorded in the order passed under Rule 9(1)(a) : there should be some charge mentioned in the order about which appropriate proceeding could be taken in accordance with Rule 2-A. In the instant case, that requirement is fully satisfied."

(Emphasis supplied)

8. After observing in paras-3 & 4, as above, it is further held that it is the language of the order to which primacy has to be accorded, and when the language of the order excludes the possibility of any disciplinary action being taken, then only there could be a valid grievance; and not otherwise.
9. In **L.P. Tiwari** (Supra), it is held that the order of suspension shall contain the reasons for making such order and where it proposes to hold an enquiry against him under Rule 14, a copy of articles of the charges, statement of imputation of misconduct or misbehaviour and a list of documents and witnesses by which charges are proposed to be sustained shall be issued or caused to be issued by the disciplinary authority to such Govt. servant within a period of 45 days from the date of order of

suspension. By operation of the proviso to sub-rule (2-a) where the disciplinary authority is the State Govt., the copy of charges and other documents mentioned above shall be issued or caused to be issued to such Govt. servant within a period of 90 days from the date of order of suspension. The object appears to be that the competent authority having placed a delinquent officer under suspension, cannot sit over the case without prompt follow-up action of conducting an inquiry into the alleged misconduct. The dereliction thereof entails the authority with denuding the power to continue the officer under suspension, though the power of enquiry subsists, it would be clear from proviso to Rule 9(2-b) which says that “the period of suspension shall in no case be continued beyond the period of 90 days from the date of the order of suspension.”

10. The legal position is thus settled that it is not necessary for the competent authority to mention that a departmental enquiry is in contemplation against the Government servant. If the order mentions in specific terms, in short, about the nature of charges or misconduct alleged against the Government servant, contemplation of an enquiry is implicit in it. The condition that if the charge sheet is not issued against the Government servant within a period of 45 days or 90 days, as the case may be, the order of suspension would be deemed to have been revoked, is the safeguard for the employee to seek revocation of the order of suspension and after expiry of this period, it can always be treated that period of contemplation is over. Thus, if prima facie satisfaction of the authority about the nature of charges is mentioned in the suspension order, contemplation of an enquiry is always available and mere non mention of the word , in express terms, would not render the order of suspension invalid.
11. This Court shall now proceed to deal with other arguments raised by learned counsel for the petitioners in each of the writ petitions.

WPS No.2226/2015 (Yogendra Nath Tiwari Vs. State of Chhattisgarh & others)

12. Shri Paranjpe, learned counsel appearing for the petitioner in this writ petition has argued that the petitioner had earlier preferred Writ Petition No.854/2006 seeking his absorption on the post of Programme Inspector on the basis of order passed by the erstwhile M.P. State Administrative Tribunal. In the said writ petition, an interim order was passed in the petitioner's favour on 1.3.2006 allowing the petitioner to continue on the post of Programme Inspector. When this interim order was violated by the Collector by passing the order on 22.5.2009, the petitioner preferred Contempt Case No.210/2009. Thereafter the State Government created one supernumerary post of Programme Inspector thereby rendering the contempt petition infructuous. When the Collector again passed an order on 12.2.2015 relieving the petitioner to work as Assistant Teacher, the petitioner again moved the Contempt Case No.113/2015, which was disposed of on 22.4.2015. However, once again the order giving rise to the contempt petition was withdrawn on 15.4.2014. He would submit that immediately thereafter the present impugned suspension order was issued on 15.6.2015, therefore, the said order has been issued in malafide exercise of power, just to circumvent the interim order passed in Writ Petition No.854/2006.

13. Per contra, Shri Bhaduri, learned State counsel would submit that immediately after issuance of the order of suspension, the petitioner has been served with the charge sheet on 27.6.2015 and the departmental enquiry against him is pending, therefore, it is not a case where the petitioner has been suspended only to keep him out of the office. He would submit that whether or not the charges would ultimately be proved against the petitioner is neither an issue in this writ petition nor the same can be pre-judged. The charges against the petitioner are of serious nature, therefore, the suspension order is definitely based on cogent reasons and grounds.

14. Having perused the documents, in the considered opinion of this Court, whether charges will ultimately be proved or not is not an issue in this petition. Therefore, at this stage, it cannot be said that the order of suspension was issued in malafide exercise of power. Had it been a case that the respondents failed to issue any charge sheet against the petitioner for a considerable length of time after placing him under suspension, it might have been a debatable question but once the charge sheet is issued, it cannot be gainsaid that the order of suspension was only with a view to keep the petitioner out of office.

15. True it is that this Court under Article 226 of the Constitution of India has powers to quash the order of suspension if it is per se malafide and arbitrary, however, it is equally true that the competent authority is entitled to place a Government servant under suspension if there is prima facie material to substantiate the charges of misconduct committed by the employee.

16. In **Union of India and another Vs. Ashok Kumar Aggarwal**³, it has been held thus:-

“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**⁴, **P.V. Srinivasa Sastry v. Comptroller & Auditor General**⁵, **ESI v. T. Abdul Razak**⁶, **Kusheshwar Dubey v. Bharat Coking Coal Ltd.**⁷, **Delhi Cloth & General Mills Ltd. v. Kushal Bhan**⁸, **U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan**⁹, **State of Rajasthan v. B.K. Meena**¹⁰, **Prohibition and Excise Deptt. v. L. Srinivasan**¹¹ and

3 (2013) 16 SCC 147

4 (1970) 1 SCC 108

5 (1993) 1 SCC 419

6 (1996) 4 SCC 708

7 (1988) 4 SCC 319

8 AIR 1960 SC 806

9 1993 Supp (3) SCC 483

10 (1996) 6 SCC 417

11 (1996) 3 SCC 157

Allahabad Bank v. Deepak Kumar Bhola¹², 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.”

17. For the foregoing, this Court does not find any substance in the argument raised by learned counsel for the petitioner. The writ petition therefore deserves to be and is hereby dismissed.

WPS No.2350/2015 (Khuman Singh Verma Vs. State of CG & Ors.)

18. Shri Pandey, learned counsel for the petitioner would submit that at the relevant time the petitioner was working as Development Extension Officer and was handed over the charge of office of the Additional Chief Executive Officer, Janpad Panchayat, Bhatapara. He would further submit that the petitioner has lodged FIR against the previous Chief Executive Officer, who had embezzled Rs.93 lakhs, therefore, the petitioner has been suspended in an illegal manner.
19. Perusal of the documents would reveal that the petitioner issued statement to the Press that in the said misappropriation of public fund, the Collector of the district and the CEO of Zila Panchayat are also involved. Rule 9(2) of the Civil Services (Conduct) Rules, 1965, provides that no Government servant shall, except with the previous sanction of the Government or the prescribed authority, or in the *bona fide* discharge of his duties, participate in a radio broadcast or contribute any article or write any letter either in his own name or anonymously pseudonymously or in the name of any other person to any newspaper or periodical, provided that no such sanction shall be required if such broadcast or such contribution is of a purely literary, artistic or scientific character. The petitioner has not denied that he has made statement to the press reporter. His only denial is that during his meeting with the media persons he did not make allegation against the Collector and the CEO of Zila Panchayat. Thus, there is satisfaction of the authority that the petitioner appears to have prima facie violated Rule 9(2) of the Conduct Rules which is neither perverse nor based on non-existent material, therefore, it cannot be said that the order of suspension is without any basis.
20. For the foregoing, the writ petition being devoid of any merit deserves to be and is hereby dismissed.

21. Shri Deshmukh, learned counsel for the petitioner has argued that at the relevant time the petitioner was posted as In-charge Chief Municipal Officer and his original post is of Health Officer, which is a State cadre post, therefore, the provisions of Chhattisgarh Municipal Services (Executive) Rules, 1973 (for short 'the Rules of 1973') are not applicable to him and as such, the petitioner's suspension under Rule 36 of the said rules is illegal. He would submit that the provisions of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 would apply to the petitioner.
22. On a reading of the order of suspension, it would clearly appear that allegation against the petitioner is of being negligent in performance of duties by not responding to the show cause notice issued by the Directorate of Urban Administration and Development, as also by not attending the video conferencing organized by the district Collector.
23. Even if it is taken to be correct that the Rules of 1973 do not apply to the petitioner, the fact remains that the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 would apply to him. Admittedly, Rule 9 of the said Rules confers powers on the appointing authority or disciplinary authority or any other officer authorized in this behalf by the State Government to place Government servant under suspension. If the authority has power to pass any order under any statutory provision, mentioning of wrong provision would not render the exercise of powers invalid. The petitioner has not raised any ground that the order of the Collector is without jurisdiction, therefore, if the power is available with the authority under a different statute, the source of exercise of power can be traced back to the said statute and the order would not become without jurisdiction or authority.
24. The Supreme Court in **P.K. Palanisamy v. N. Arumugham and**

Another¹³, held thus :

28. In *Ram Sunder Ram v. Union of India* it was held: (SCC pp. 260-61, para 19)

“19. ... It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act.

‘9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.’ (See *N. Mani v. Sangeetha Theatre*, SCC p. 280, para 9.)

Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the learned counsel for the appellant.”

29. In *N. Mani v. Sangeetha Theatre* it is stated: (SCC p. 280, para 9)

“9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.”

25. For the foregoing, there is no substance in the writ petition, which fails and is hereby dismissed.

26. *Ex Consequenti* all the writ petitions are dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve