

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Judgment Reserved on: 10/10/2018****Judgment Delivered on : 15/11/2018****Writ Petition (S) No. 7269 of 2017**

L.P. Saket S/o Shri Sadhua Saket, Aged about 54 years, Posted as Assistant in the office of Incharge, District Manager, Chhattisgarh State Civil Supplies Corporation, Sukma, District Sukma (Chhattisgarh) R/o Development Area, Gharaula Mohalla, Ward No. 19, Shahdol, Madhya Pradesh.

---- Petitioner**Versus**

1. Chhattisgarh State Civil Supplies Corporation Limited, Through the Managing Director, Hitvad Parisar, Avanti Vihar, Raipur, District Raipur, Chhattisgarh.
2. Chairman, Chhattisgarh State Civil Supplies Corporation Limited, Hitvad Parisar, Avanti Vihar, Raipur, District Raipur, Chhattisgarh.
3. Manager (Administration) Chhattisgarh State Civil Supplies Corporation Limited, Hitvad Parisar, Avanti Vihar, Raipur, Chhattisgarh.
4. District Manager, Chhattisgarh State Civil Supplies Corporation Limited, District Office Sukma, District Sukma, Chhattisgarh.

---- Respondents

For Petitioner	: Shri Ajay Kumrani, Advocate.
For Respondents	: Shri Animesh Tiwari, Advocate

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C.A.V. Order

Per Ajay Kumar Tripathi, Chief Justice

1. Vide order date 27.03.2018, the learned Single Judge, while dealing with the present writ petition on the question whether an employee placed under suspension on charges of omission and commission for which a departmental proceeding was initiated and is still subsisting, has a right to be posted back to the same place of posting after revocation of suspension or he can be given another place of posting.

2. It is evident from reading of the order dated 27.03.2018 that the learned Single Judge seems to be in disagreement with the view taken by yet another coordinate Bench that an employee had a right to be posted back to the same place once the order of suspension was withdrawn.

3. In the two writ applications *i.e.* Writ Petition (S) No. 3146 of 2015 decided on 08.09.2015 ***Khadanand Patanwar v. State of Chhattisgarh & Others*** as well as Writ Petition (S) No. 5039 of 2015, ***Khelendra Kumar Singh v. State of Chhattisgarh***, decided on 03.08.2016, an identical view was taken by another Single Bench that an employee had to be posted back in the same place or station.

4. However, keeping in mind the factual matrix as also the fact that a coordinate Bench had relied on the ratio of a judgment rendered by a Division Bench of Madhya Pradesh High Court, which was the case of ***Kendriya Vidyalay Sangathan & Others v. Dr. R.K. Shastri & Another***, reported in 2005 (4) MPHT 352, which may not be good law now in view of a subsequent

Full Bench decision of Madhya Pradesh High Court rendered in the case of ***Asif Mohd. Khan v. State of Madhya Pradesh & Others***, reported in 2015 (4) MPLJ 406, which has taken a view that an employee has no vested right to continue at the same place of posting at the time of suspension. The writ application has been referred to us *i.e.* Division Bench for resolving the two views.

5. Since the Full Bench of Madhya Pradesh High Court itself did not hold the judgment of the Division Bench rendered in the case of ***Kendriya Vidyalaya Sangathan*** (*supra*) to lay down the correct law, therefore, the learned Single Judge has rightly referred the matter to Hon'ble the Chief Justice for constitution of a Division Bench to settle the conflict between two coordinate Benches of Chhattisgarh High Court.

6. In the present writ application, the Petitioner was posted as an Assistant at District Office, Janjgir, where he came to be placed under suspension by order dated 08.09.2017. The Petitioner made repeated representations against the order of suspension which were taken into consideration and the suspension order was revoked on 12.10.2017 but it was decided by the said authority to post him at Sukma. A copy of the order is Annexure P/1 to the writ application and is under challenge.

7. Petitioner chose to assail the said order dated 12.10.2017 raising a question that he could not be posted to a new station after revocation of suspension and had a right to be posted back to the same place of posting from where he was suspended in the very first place. He claimed his right on the basis of the principle laid down by a Division Bench of Madhya Pradesh High Court in the case of ***Kendriya Vidyalaya Sangathan*** (*supra*). It may be noticed that the Respondents, while revoking the order of suspension and

posting the Petitioner at Sukma chose not to withdraw the departmental enquiry being conducted against him, meaning thereby that the departmental proceeding would not abate by mere order of revocation of suspension and posting or transfer to another station.

8. When the matter was taken up for argument, the Respondents/ Corporation resisted the writ application on the ground that the order of suspension and its revocation was issued by the same authority and the said authority also had the power to transfer the Petitioner. If after revocation of suspension, the Respondents-authority was of the considered opinion that continuance of the Petitioner at the same place of posting would be prejudicial to the departmental enquiry which was to continue, therefore, the said decision cannot be allowed to be assailed on a view taken by a coordinate Bench in the cases of ***Khadanand Patanwar (supra)*** and ***Khelendra Kumar Singh (supra)***.

9. It was also brought to the notice of the learned Single Judge that the same Madhya Pradesh High Court, while dealing with a similar issue has now rendered a decision by a Full Bench in the case of ***Asif Mohd. Khan (supra)***, and therefore, the view taken by a coordinate Bench of learned Single Judge in the cases of ***Khadanand Patanwar (supra)*** and ***Khelendra Kumar Singh (supra)*** relying on the decision of ***Kendriya Vidyalaya Sangathan (supra)*** may not be the correct legal view now.

10. The issue before the Full Bench of the Madhya Pradesh High Court was whether an employee had a substantive or statutory right to occupy a substantive post on revocation of his suspension and whether he had a legal or constitutional right to get reinstated at the same place where he was posted, when the order of suspension was passed.

11. The Full Bench of the Madhya Pradesh High Court, while answering the question, had this to say:

"18. Before we turn to the other decision, we may reproduce paragraphs 11 and 12 of the same reported decision in Dr. R.K. Shastri's case (supra), for answering the argument canvassed by the appellants/petitioners. The same reads thus:-

"11. It is well settled that when an employee is kept under suspension pending enquiry, he retains his lien over the post from which he is suspended. It is also a settled position that the station of posting immediately before suspension would be the headquarter vis-a-vis the suspended employee, unless the Competent Authority changes the headquarter of the suspended employee in public interest. It is also well settled that any vacancy caused on account of suspension pending enquiry, is to be filled by a reservist and where a reservist is not available by officiating appointment. Therefore on revocation of suspension, the employee becomes entitled to report back to his place of posting from where he was suspended. Once he reports back to duty, the employer may, in exercise of power of transfer, transfer him. Therefore, we agree with the finding of the Tribunal that the order of the Appellate Authority dated 6/8-7- 2002 to the extent it posts the first respondent to Karimganj and makes the revocation of suspension effective from the date of reporting at K.V., Karimganj, is invalid and liable to be quashed.

12. It follows therefore that the suspension stood revoked with effect from 8-7-2002 and the petitioners could not have been relieved him from Bhopal. As a consequence of revocation of suspension and as a consequence of the action of the petitioners in not permitting him to report back to duty at Kendriya Vidyalaya No. 2 Bhopal, the first respondent will be entitled to all consequential benefits. He will be deemed to be on duty at K.V. No. 2, Bhopal from 8-7-2002 will all monetary benefits. In so far as order dated 7-11-2003 passed during the pendency of this petition, it has no legal sanctity. As a consequence of upholding of the order of the Tribunal, the said order becomes ineffective." (emphasis supplied)

19. In our opinion, the observations in paragraph 11 cannot be divorced from the factual matrix considered by the Division Bench. These observations are obviously in the context of facts of that case and would be binding precedent only in that regard. No doubt, the Division Bench has observed that the

position stated in these paragraphs is well settled position. However, with due respect, we find that there is no express or even implied legal provision to reinforce the proposition that the employee has a right much less vested right to be reinstated at the same place where he was working when suspended, nor any binding precedent. None of that has been brought to our notice, much less an express provision in the Act or the Rules governing the services of the appellants/petitioners, which would preclude or prohibit the Appropriate (Competent) Authority from passing a composite order of revoking the suspension as well as transferring the employee to another place instead of reinstating him at the same place. If the Competent Authority is free to change the headquarter of the suspended employee in public interest, it is too much to suggest that it cannot do so whilst revoking the suspension.

20. No other legal precedent, besides the case of Dr. R.K. Shastri (supra), has been brought to our notice, which will reinforce the statement found in paragraph 11 of the reported decision - to the effect that after the revocation of suspension, the employee becomes entitled to report back to his place of posting from where he was suspended. In our view, there is marked difference between having lien on a "post" held substantively whilst under suspension, than the entitlement of being "posted" at an appropriate place after revocation of suspension. We may, however, agree with the observation that it is settled position that the station of posting immediately before suspension would be the headquarter vis-à-vis the suspended employee, unless the Competent Authority changes the headquarter of the suspended employee in public interest. Similarly, there is no difficulty in accepting the position mentioned in paragraph 11 that an employee placed under suspension pending enquiry retains his lien over the "post" from which he was suspended. But, it does not follow that he has a vested right to be reinstated at the same place or location and nowhere else, as a rule.

21. To put it differently, it is not possible to countenance the argument that the Appropriate Authority cannot exercise power to pass a composite order to revoke suspension and to simultaneously transfer the employee to another place in public interest. For, the Appropriate Authority has power to transfer the employee subordinate to him as per the governing service conditions, after revocation of his suspension. Indeed, whether such transfer is just and proper can be tested on well settled legal principles.

22. We may observe that in service jurisprudence the field regarding appointment or termination including the lien on the

"post" held substantively on which the person is appointed, is, one field. The other field is about the matters of disciplinary enquiry - to wit, suspension and including revocation of suspension. The third field is about the service conditions such as transfer, being incidence of service. The Authorities, for each of these fields, may be different or it is possible that in a given case, it can be the same Authority. It is also possible that the Authority who may place the employee under suspension may be different than the Authority empowered to transfer that employee. Absent explicit exclusion of power, composite order of revocation of suspension and transfer to another place can certainly be passed by the concerned Authority competent to pass order on those matters. Similarly, if the composite order were to be passed by the Superior Authority, to which that Authority (who has power to suspend and/or to revoke suspension and/or to transfer) is subordinate, there is no reason why a composite order cannot be passed by the Superior Authority.

23. A priori, the test for deciding whether the composite order is valid or otherwise, would depend on the fact as to whether the Authority, who has passed the order, was competent to exercise such power - on both the matters - relating to revocation of suspension and also of transfer of the concerned employee. It may be possible that the same Authority may be the Appellate Authority. While entertaining appeal of the employee, however, the jurisdiction to be exercised is limited of an Appellate Authority under Rule 27. That jurisdiction would be governed by the provisions providing for remedy of appeal against the order of suspension. In that situation, it may be possible to suggest that the Appellate Authority must first set aside the suspension order and direct reinstatement of the employee at the same place where he was working at the time of suspension and then by a separate order the employee may be transferred to another place in public interest. This situation will be governed by the principle expounded in Dr. R.K.Shastri's case (supra).

24. To put it differently, there may be different factual matrix which may be germane to answer the question about the competency of the Authority who passed the composite order. That would depend on the facts of each case and will have to be decided in the context of the governing provisions pertaining to matters of suspension and transfer and indeed on the touchstone of competency of the Authority to pass such an order, as the case may be.

25. The argument of the appellants/petitioners, however, is that the revocation of suspension can be in three different situations. One, by operation of law, in view of the deeming provision contained in Rule 9(5)(a) of the Rules of 1966. The second situation may be by issuance of revocation order by the Appropriate Authority under Rule 9(5)(b) of the Rules of 1966; and the third situation may arise when the Appellate Authority allows the appeal against the order of suspension and as a result of which sets aside the same.

26. No doubt, the three situations referred to above, are mutually exclusive. However, the scheme of the Rules of 1966 do not prohibit, either expressly or impliedly, passing of a composite order by the Authority who is empowered under the Rules to revoke the suspension as also to transfer the concerned employee.

27. Indeed, in the case of revocation of suspension by virtue of Rule 9(5)(a), it would be a case of revocation in law - de jure. Whereas, revocation of suspension by the Appropriate Authority under Rule 9(5)(b) may be a case of revocation in fact - de facto. The same may be true about the order passed by the Appellate Authority of setting aside the suspension order. Nevertheless, in absence of any express provision in the Rules of 1966, prohibiting the Appropriate Authority, competent to suspend subordinate employee and including to revoke the suspension as also to transfer the concerned employee, it is not open to doubt the existence of power to pass a composite order of revoking suspension as also to simultaneously transfer the employee to another place in public interest. Taking any other view would be a pedantic approach and only necessitating multiplicity of orders (ministerial work), to be passed by the same Authority.

28. Suffice it to observe that the decision of Dr. R.K. Shastri is not an authority on the proposition that it is mandatory even for the Competent Authority to post the employee at the same place after revocation of the order of suspension from where he was suspended. It is, however, an authority on the proposition about the limited power invested in the Appellate Authority - either to uphold the suspension or not and confirm or revoke the order accordingly, as per Rule 27 of the Rules of 1966.

29. In the present cases, it is not necessary for us to examine the wider question as to whether, if the Appellate Authority is the same as Authority competent to transfer the employee, can it pass a composite order indicating that it was exercising

both powers simultaneously. Therefore, we leave that question open.

33. The next question is: whether the lien would be on the post held substantively or against the place where he was working. This doubt can be straightaway answered on the basis of the definition of expression "lien" given in Rule 9(13) of the Madhya Pradesh Fundamental Rules. Expression "lien" reads thus:-

"Lien" means the title of a Government servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post including a tenure post, to which he has been appointed substantively."

34. In view of this express provision, it is not open to contend that the lien would be against the place where the employee was working at the relevant time when he was placed under suspension. In the case of Haribans Mishra Vs. Rly. Board⁵, the Supreme Court has held that lien can be on a post and not a lien on a place. (*emphasis given*)

35. Indubitably, even if the employee is placed under suspension, he would continue to hold his lien on the "post" on which he was "appointed substantively", until reinstated after revocation of suspension. However, there can be no vested right to continue at a place where the employee was posted at the time of suspension. Any other view would be antithesis to the rule of transfer being an incidence of service. It may be a case of transfer and posting at a different place, by the Competent Authority. That may be open to challenge on permissible grounds.

36. A priori, the mere fact that the transfer has been ordered simultaneously with revocation of suspension, by passing a composite order, that per se cannot be the basis to question the authority of the Competent Authority. What needs to be established in such a case, is, whether the Authority who passed the composite order, had limited power and could not have passed such a composite order on both the matters - of revocation of suspension as also transfer, to successfully challenge the order.

12. Keeping in mind what the Full Bench of the Madhya Pradesh High Court has had to say in the case of **Asif Mohd. Khan** (*supra*) and even with regard to correctness or otherwise of the decision rendered in the case of

Kendriya Vidyalaya Sangathan (*supra*), we are constrained to hold that the order passed by a coordinate Bench of the Single Judge in the cases of ***Khadanand Patanwar*** (*supra*) and ***Khelendra Kumar Singh*** (*supra*) are not good laws. There is no right of an employee to claim a place of posting on revocation of suspension as a matter of right and the competent authority can very well transfer an employee to yet another place after revocation of suspension even otherwise keeping the exigencies of service into consideration as also that posting such a person on the same post and place where a departmental enquiry was still going on against him, may not be in the interest of the administration since there could be every possibility of such an employee to tamper with the evidence and not allow a free and fair enquiry to be held. We may also notice that during period of suspension, the Head Quarter of an employee is always fixed away from the place of posting which has an object and reason. The same will be defeated if it is held that the employee has a lien on place also.

13. We therefore hold that the impugned order under challenge in the present writ application contained in Annexure P/1 dated 12.10.2017 is not required to be interfered with. The writ application is dismissed.

14. The question of law for which the reference was made has been answered in the preceding paragraphs of this order. To sum, it cannot be a thumb rule that an employee whose suspension has been revoked has a right to be posted and continued in the same place of posting on revocation of suspension, as he only has a lien on the post and not on the place of posting.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE