

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR

**BEFORE
SHRI JUSTICE SUJOY PAUL
&
SHRI JUSTICE DWARKA DHISH BANSAL
ON THE 13th OF MAY, 2022**

WRIT APPEAL No. 447 of 2022**BETWEEN :-**

1. STATE OF MADHYA PRADESH
THROUGH PRINCIPAL
SECRETARY DEPARTMENT OF
COMMERCIAL TAXES
VALLABH BHAWAN, BHOPAL,
MADHYA PRADESH.
2. THE COMMISSIONER, EXCISE
GOVT. OF MP, MOTI MAHAL
GWALIOR, MADHYA PRADESH.

.....Appellants/State

(By SHRI AMIT SETH, DEPUTY ADVOCATE GENERAL)

AND

SATYA NARAYAN DUBEY, S/O
LATE SHRI K.P. DUBEY,
ASSISTANT COMMISSIONER
EXCISE (UNDER SUSPENSION),
58 ANANTARA TILAHARI
JABALPUR DISTT. JABALPUR,
MADHA PRADESH.

.....Respondent

(By SHRI SANJAY K. AGRAWAL, ADVOCATE)

*This writ appeal coming on for hearing this day, **Hon'ble Shri Justice Sujoy Paul, Judge** passed the following :*

J U D G M E N T (Oral)

Sujoy Paul, J.:-

This intra court appeal takes exception to the interlocutory order of the learned Single Judge dated 19.4.2022 passed in W.P. No.26621/2021 whereby the effect and operation of order of suspension dated 13.8.2021 and the appellate order rejecting the appeal dated 12.11.2021 (Annexure P/13) are stayed by the learned Single Judge.

2. At the outset, learned Deputy Advocate General placed reliance on a Division Bench judgment of this Court reported in **2011 (2) MPLJ 206 [State of M.P. Vs. Ashok Sharma (Dr)]** to contend that against the interim order staying the suspension order, a writ appeal is indeed maintainable.

3. Shri Amit Seth, learned Deputy Advocate General for the appellants/State submits that under Rule 9(1)(a) of M.P. Civil Services (Classification, Control and Appeal) Rules 1966 (in short, '**CCA Rules**'), an employee can be placed under suspension by the competent authority, if inquiry, investigation or trial is pending against him.

4. Indisputably, in the instant case, the suspension order is passed by a Competent Authority and one of the ingredient on which an employee can be placed under suspension is certainly satisfied.

5. Criticizing the order of learned Single Judge, the stand of appellants/State is that the learned Single Judge has entered into the merits of the case and recorded findings as under :-

(i) Order of suspension of the respondent is without application of mind.

(ii) There is no material available with the Department to show direct relation of the writ petitioner with the alleged irregularity as under which provision of law, the duty is cast on the writ petitioner to keep a check on the price of liquor being sold by the Department is not known ?

(iii) Acts/omissions on the part of the respondent has not caused any financial loss to the State exchequer.

(iv) No material has been supplied to the writ petitioner with the charge sheet to show involvement of the writ petitioner in the charges levelled against him.

(v) There is no possibility of the respondent influencing departmental witnesses in the on-going Departmental Enquiry.

(vi) The appellate authority had not considered the aspect that the order of suspension passed by the disciplinary authority is without application of mind.

6. To elaborate, Shri Amit Seth, learned Deputy Advocate General urged that it was not open to the learned Single Judge to either examine the correctness of the allegations or to examine whether there exists sufficient material to place the employee under suspension. This is the prerogative of the Competent Authority to place the employee under suspension and rely on the adverse material at appropriate occasion. The learned Single Judge has gone wrong while entering into the merits of the case.

7. Learned Deputy Advocate General placed reliance on the circular dated 27.5.2018 (Annexure WA-2) and argued that although this circular was not placed for consideration before learned Single Judge, language of the same is reproduced in the charge sheet dated 13.10.2021. The relevant rule/executive instruction can be very well be relied upon by the employer at appropriate stage. This circular makes it clear that it was the duty of the present respondent to take into account the illegal activities of liquor shopkeepers on regular/daily basis. The liquor shops were required to be continuously monitored. The respondent has miserably failed to undertake the same.

8. Thus, while placing the respondent under suspension his involvement in such things was not ruled out. In this view of the matter,

the learned Single Judge should not have stayed the suspension order. Moreso, when in the first round of litigation in W.P. No.15518/2021 decided on 27.8.2021, the learned Single Judge has given following findings:

“7. Perused the orders and considered the principles which are laid down in the aforesaid cases. Considering the totality of the facts and circumstances of the case and perusing the order dated 13.8.2021 carefully, it is found that reasons have been given for passing the suspension order dated 13.8.2021. The Deputy Secretary, Govt. of M.P. had material available with him that country made liquor and foreign made liquor were sold at price more than minimum supply price in district Jabalpur. The chart filed by the petitioner also reflects the action which was taken by petitioner against the defaulters in Jabalpur. In view of the material which is available in this writ petition, it cannot be said that there is total absence of material against the petitioner. Discreet enquiry was carried out by respondent and prima facie material is available with respondent No.1. The impugned order dated 13.8.2021 cannot be said to be an order without reasons. In view of the same, the writ petition filed by the petitioner is dismissed.”

(Emphasis Supplied)

Although while deciding W.A. No.801/2021 on 15.9.2021 the Division Bench opined that the finding of learned Single Judge should be taken only as tentative for the purpose of deciding appeal, the said finding

was indeed binding on the another Single Bench in the second round of litigation.

9. It is further argued that in the first round of litigation, this Court gave a finding that there is material available with the Government against the respondent and therefore, in the second round while passing an interim order, the learned Single Judge could not have taken a different view.

10. The interim order of learned Single Judge will affect the merits of the case and the Departmental Enquiry. The allegations are very grave and respondent's involvement cannot be ruled out. While leading evidence in the Departmental Enquiry, the prosecution/department will establish the allegations and at this stage it was no more open to learned Single Judge to enter into the merits of the case. In support of his submissions Shri Seth, Dy. Advocate General placed reliance in the case of **U.P. Rajya Krishi Utpadan Mandi Parishad and Ors. vs. Sanjiv Rajan** reported in **1993 (suppl.3) SCC 483**, **State of Orissa vs. Bimal Kumar Mohanty**, reported in **(1994) 4 SCC 126**, **State of M.P. and others vs. Ashok Sharma (Dr.)** reported in **2011 (2) MPLJ 206** and order of Single Bench reported in **Devendra Singh Kirar Vs. State of M.P. and others** reported in **2014 (3) MPLJ 117**. Stay of suspension

order amounts to giving final relief to the respondent and therefore, in the teeth of Division Bench order in **Ashok Sharma** (supra) the appeal is very much maintainable.

11. Shri Sanjay K. Agrawal, learned counsel for the respondent countering the aforesaid argument submits that the findings given by the learned Single Judge in the first round of order were diluted by the Division Bench by directing that said findings will not come in the way of respondent for the purpose of appeal. Since appellate order is passed without affording opportunity to him and without proper application of mind, the learned Single Judge has rightly stayed the operation of suspension order.

12. Shri Agrawal has taken pains to submit that allegation of lack of supervision by a Class-I employee (respondent) under whom a huge departmental team was working was highly improper and without basis. Department did not suffer any loss. The suspension order is passed in a mechanical manner which amounts to ‘suspension syndrome’ on the part of the department. Apart from the respondent there exist a Collector, Dy. Collector and flying squad which takes care of the departmental function. Suspending the respondent is without any justification.

13. The interlocutory order of learned Single Judge dated 18.01.2021 (Annexure P-7) was relied upon to contend that the department was

directed to produce material indicating that shopkeepers were selling liquor on higher rate than the prescribed rate, but at no point of time such material was produced before the learned Single Judge.

14. For this reason, the case of present respondent is different than the case of **Ashok Sharma** (supra) in which Division Bench interfered because before ink on the suspension order could dry, the learned Single Judge passed an ex-parte order of suspension, whereas in the instant case after giving ample opportunity to the State and after considering their reply, a detailed order of stay is passed. Thus, **Ashok Sharma** (supra) is of no assistance to the State.

15. During the course of argument Shri Agrawal, learned counsel for the respondent submits that although three charge-sheets dated 01.10.2021, 08.10.2021 and 13.10.2021, respectively are pending against the respondent, fact remains that respondent is placed under suspension because of the charge-sheet dated 13.10.2021. The charge-sheet dated 01.10.2021 relates to certain allegations of 2018, whereas charge-sheet dated 08.10.2021 is pregnant with allegations of 2020.

16. By taking this Court to the charge-sheet dated 13.10.2021 learned counsel for the respondent submits that in the charge-sheet the only allegation is relating to lack of supervision. The witnesses cited by the department are mainly related to Commercial Tax Department on which

present respondent has no element of control. Thus, learned Single Judge was right in recording a *prima facie* finding that respondent will not be able to influence the witness who belong to a different department.

17. In support of aforesaid contention, Shri Agrawal also placed reliance on the judgment of **Bimal K. Mohanty** (supra). In addition, he placed reliance on the case of **Union of India and Ors. vs. J. Ahmed**, reported in (1979) 2 SCC 286 and **Ajay Kumar Choudhary vs. Union of India** reported in (2015) 7 SCC 291.

18. The parties confined their argument to the extent indicated above. We have bestowed our anxious consideration on rival contentions and perused the record.

19. As noticed, the parties are at logger heads on the question of maintainability of writ appeal. During the course of arguments, Shri Agrawal placed reliance on a full Bench Judgment of this court in **Arvind Kumar Jain and others Vs. State of M.P. and others** reported in 2007 (3) M.P.L.J. 565 to urge that writ appeal against interlocutory order is not maintainable. We do not see any merit in this contention for the simple reason that this Full Bench decision was specifically considered by Division Bench in the case of **State of M.P. and others Vs. Ashok Sharma (Dr.)** (supra). The Division Bench recorded as under :-

“In view of aforesaid Full bench decision of this Court, we have no hesitation in holding that the writ appeal is maintainable against such an order. Effect of staying the order of suspension is that writ petition stands allowed at the initial stage itself. Thus, the order impugned falls within the purview of the orders against which appeal lies.”

(Emphasis Supplied)

Thus, the writ appeal at the behest of State Government against an interim order staying the suspension order is very much maintainable.

20. Before dealing with the rival contentions, it is apposite to remind ourselves that the suspension does not cast any stigma. As per CCA Rules, an employee can be placed under suspension during the pendency of an investigation, inquiry or trial. One such ingredient on the strength of which the suspension order can be passed is very much available and therefore, it cannot be said that suspension order is passed without there being any reason at all.

21. This is trite that the scope of judicial review against a suspension order is very limited. This aspect is considered by the Supreme Court in the case of **U.P. Rajya Krishi Utpadan Mandi Parishad and others Vs. Sanjiv Rajan (supra)**. The relevant portion of this judgment are reproduced for ready reference :-

“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 March 22, 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 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.**

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.”

(Emphasis Supplied)

22. A plain reading of the para makes it clear that whether charges are baseless, malicious or vindictive, cannot be gone into at the stage of examining the validity of a suspension order. A Single Bench of this court in **Devendra Singh Kirar Vs. State of M.P. and others (supra)** poignantly held that at the stage of suspension the correctness of allegations are not required to be looked into.

23. In **State of Orissa Vs. Bimal Kumar Mohanty (supra)** on which both the parties placed heavy reliance, the Apex Court has held as under :-

“13. 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.”

(Emphasis Supplied)

24. In **Dr. Ashok Sharma (supra)**, Court held :-

“Apart from that there are other cases and pendency of Departmental Enquiry also in which charge-sheet was issued. Correctness of the allegations of Departmental Enquiry cannot be determined by making roving enquiry in the matter of suspension.”

(Emphasis Supplied)

25. A minute reading of this portion makes it clear that *public interest* is also an element on the consideration of which an employee can be placed under suspension. Thus, Merely because it is not alleged that the department has suffered any loss, the employee does not get any immunity from suspension. Thus, judgment of **J. Ahmed (supra)** is of no assistance in the factual backdrop of this case.

26. Apart from this, it cannot be forgotten that if the respondent, a senior officer is reinstated by staying the suspension order, he can scuttle the inquiry or investigation or can win over the witnesses of the departmental inquiry. This is within the province of the disciplinary authority to decide whether an employee is required to be suspended or not because suspension is a step towards ultimate result of an investigation or inquiry. In this view of the matter, in our opinion, learned Single Bench was not justified in asking for the sufficient material on the strength of which the suspension order can be justified. It amounts to conducting a roving inquiry. In imputation of charges, it was clearly mentioned that respondent's involvement cannot be ruled out. Whether or not employer will be able to establish it in the inquiry is not the subject matter of adjudication at this stage.

27. Reference may also be made to **M. Paul Anthony vs. Bharat Gold Mines Ltd., (1999) 3 SCC 679** wherein it has been held as under :-

“26. To place an employee under suspension is an unqualified right of the employer. This right is conceded to the employer in service jurisprudence everywhere. It has even received statutory recognition under service rules framed by various authorities, including the Government of India and the State Governments.”

(Emphasis Supplied)

28. In Union of India vs. Ashok Kumar Aggarwal, (2013) 16 SCC

147 it was poignantly held 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.”**

(Emphasis Supplied)

29. In view of the foregoing analysis, in our judgment the learned Single Judge has erred in staying the suspension order by passing the impugned order dated 19.4.2022. Resultantly, the order dated 19.4.2022 is set aside. The writ appeal is **allowed**.

**(SUJOY PAUL)
JUDGE**

**(DWARKA DHISH BANSAL)
JUDGE**