



[2024:RJ-JD:51277]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



S.B. Civil Writ Petition No. 16307/2024

Shamboo Singh S/o Shri Amar Singh, Aged About 50
Years, R/o 40-A, Pwd Colony, Jodhpur.

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary,
Department Of Education, Government Of
Rajasthan, Jaipur.
2. Director, Primary Education, Bikaner.
3. The District Education Officer (Elementary
Education), (Head Quarter), Jodhpur.
4. The Joint Director, School Education, Jodhpur
Division Jodhpur, Rajasthan.

----Respondents

For Petitioner(s) : Mr. Divik Mathur
Mr. D. S. Sodha

For Respondent(s) : Mr. N. K. Mehta
Mr. Deepak Chandak, AAAG
& Ms. Sonal Parihar
for Mr. B. L. Bhati, AAG

JUSTICE DINESH MEHTA

JUDGMENT

REPORTABLE

12/12/2024

1. The instant writ petition has been preferred by the petitioner challenging the order dated 19.09.2024 issued by the District Education Officer (respondent no.3), whereby he has been placed under suspension.

2. Apprising the Court about the factual matrix, Mr. Mathur, learned counsel for the petitioner submitted that the petitioner, who is working as Teacher Grade-III is



President of Secondary Teachers Association and therefore, the respondents have proceeded vindictively against him in order to wreak vengeance.

3. He submitted that the petitioner's services has been appreciated by the State and even his name was recommended for the State Level award. However, in changed circumstances, not only he has been deprived of his award, but a charge-sheet has been issued to harass him. He added that the petitioner has challenged the charge sheet by preferring a writ petition (S.B. CWP No. 15138/2024) in which an interim order has been passed by the High Court due to which, the respondents got annoyed and have placed the petitioner under suspension by way of order dated 19.09.2024.

4. Learned counsel argued that the petitioner's suspension is not only actuated with mala-fide - in order to settle the score but is also without jurisdiction. He argued that the order dated 19.09.2024 is said to have been issued in exercise of powers under Rule 13(2) of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (hereinafter referred to as 'the Rules of 1958').

5. While accepting that a fresh order dated 20.09.2024 has been issued by the respondent No.3, whereby an attempt has been made to show that Rule 13(2) of the Rules of 1958 shall be read as Rule 13(1)(a) of the Rules of 1958, learned counsel argued that the basic order (19.09.2024), that was issued by the respondent no.3 is void, inasmuch as, powers under Rule 13(2) of the Rules of



1958 can be exercised only when a government servant has remained behind the bars for a period of more than 48 hours, whereas the petitioner has never remained incarcerated.

6. Learned counsel argued that though the respondent no.3 has passed another order on 20.09.2024, but since the basic / first order dated 19.09.2024 is fundamentally void, its inherent lacuna cannot be cured by passing another order dated 20.09.2024.

7. Inviting Court's attention towards the relevant provisions of the Rules of 1958, learned counsel for the petitioner submitted that the expression 'modification' and 'review' given under Chapter-VII of the Rules of 1958 operate entirely in different field and such powers cannot be used to validate an otherwise illegal order.

8. It was further contended by Mr. Mathur, learned counsel for the petitioner that the order dated 19.09.2024, whereby the petitioner has been placed under suspension clearly shows that the respondents have proceeded against him vindictively. He argued that if the facts mentioned in the said order are taken to be correct, then also, they cannot be said to have been done by the petitioner in discharge of his duties. He added that no act which is done out of the work place and not during discharge of duties can be taken as misconduct.

9. Learned counsel submitted that simply because the petitioner is a Teacher, his freedom of speech and expression and right to raise grievance cannot be stifled by



the respondents in the manner done. He further argued that the power to place an employee under suspension cannot be used casually and vindictively. He argued that when the facts available with the appointing/ disciplinary authority do not constitute a misconduct, he cannot place an employee under suspension.

10. Learned counsel for the petitioner relied upon the following judgments of this Court so also the Hon'ble the Supreme Court in support of his case:-

(i) **Union of India vs. Ashok Kumar Aggarwal**, reported in **(2013) 16 SCC 147**.

(ii) **Om Prakash Pandiya vs. The State of Rajasthan & Anr. (S.B. CWP No. 4073/2001)** decided on 04.05.2015.

(iii) **Vidarbha Industries Poser Ltd. vs. Axis Bank Ltd.**, reported in **(2022) 8 SCC 352**.

(iv) **Samrath Singh vs. State of Rajasthan & Anr.**, reported in **2010 (2) RLW 1670 (Raj.)**.

11. In order to contend that the allegations levelled against the petitioner do not constitute any misconduct, Mr. Mathur relied upon Para No.10 of the judgment of Hon'ble the Supreme Court rendered in the case of **Inspector Prem Chand vs. Govt. of NCT of Delhi & Ors.**, reported in **(2007) 4 SCC 566**.

12. Mr. Chandak, learned Government Counsel raised a preliminary objection that the petitioner is having efficacious remedy of appeal firstly, in the Departmental hierarchy and secondly before the Rajasthan Civil Services Appellate Tribunal in terms of Rule 22 of the Rules of 1958.





He relied upon the judgment of co-ordinate Bench of this Court rendered in the case of **Ms. Nidhi Singh vs. The State of Rajasthan (S.B. Civil Writ Petition No. 19780/2023)** decided on 23.01.2024 and the judgment of Hon'ble the Supreme Court in the case of **Government of Andhra Pradesh & Ors. vs. P. Chandra Mouli & Anr.**, reported in **(2009) 13 SCC 272**.

13. Learned Government Counsel submitted that the petitioner has been suspended under contemplation of disciplinary inquiry, which was decided to be instituted on account of his unruly behaviour. He submitted that a government employee does have every right to raise his voice, but the manner in which the voice has been raised and the manner in which protest has been carried out cannot be countenanced by the employer, more particularly when he has hurled baseless allegations, used inappropriate expressions and language about the Education Minister of the State, who is Minister incharge of the Department, in which the petitioner is serving.

14. Learned Government Counsel submitted that the respondent – State has placed on record a charge-sheet that was served upon the petitioner and highlighted that the petitioner's behaviour clearly falls within the ambit of misconduct as defined in various provisions of Rajasthan Civil Services (Conduct) Rules, 1971.

15. Mr. Chandak, learned Government Counsel relied upon the judgment of Hon'ble the Supreme Court rendered in the case of **Union of India & Anr. vs. Tulsiram Patel**





reported in **(1985) 3 SCC 398**, in order to contend that wrong mentioning of the provision is not fatal to the proceedings, regardless of his stand that inadvertent error has been cured.

16. Heard learned counsel for the parties and perused the record.

17. So far as the argument of Mr. Chandak that the petitioner has efficacious remedy of appeal before the competent authority of the Department and under Rule 22 of the Rules of 1958 is concerned, given the fact that the allegation against the petitioner is that he had hurled slogans against the sitting Education Minister, this Court feels that the Appellate Authority of the Department which is directly under the control and supervision of concerned Minister, will find it difficult to decide petitioner's appeal objectively and dispassionately.

18. So far as remedy of appeal before the Rajasthan Civil Services Appellate Tribunal is concerned, the fact that the co-ordinate Bench of this Court has already entertained the present writ petition and granted interim order and pleadings of the case are complete, this Court feels that it will not be expedient to relegate the petitioner to avail remedy of appeal as provided under Rule 22 of the Rules of 1958. That apart, considering the allegations against the petitioner and in view of what has been pleaded by the petitioner, the present writ petition deserves its disposal on its own merits.





19. Before proceeding to pronounce upon legality and propriety of the order impugned, it would be apt to reproduce the text thereof :-

“कार्यालय, जिला शिक्षा अधिकारी (मुख्यालय) प्रारम्भिक शिक्षा, जोधपुर।

कार्यालय आदे”।

श्री शंभूसिंह मेड़तिया अध्यापक लेवल-1 पदस्थापन स्थान राप्रावि बागा, सूरसागर, जोधपुर में कार्यरत रहते हुए माननीय शिक्षा मंत्री राजस्थान सरकार के जिला जोधपुर में प्रवास के दौरान बार-बार राज्य सरकार एवं शिक्षा विभाग के खिलाफ जमकर अशोभनीय नारेबाजी करना, माननीय शिक्षा मंत्री का पुतला Qwaduk@tykuk, विभिन्न समाचार पत्रों में माननीय शिक्षा मंत्री का विरोध प्रदर्शन किए जाने एवं माननीय शिक्षा मंत्री के विरुद्ध जोधपुर शहर के विभिन्न स्थानों पर होर्डिंग्स लगाना, जिसमें माननीय शिक्षा मंत्री जी को पलटूराम जैसे अशोभनीय शब्दों का प्रयोग किए जाने के कारण विभाग की छवि आमजन में धूमिल होने के कारण राजस्थान सिविल सेवाएं (वर्गीकरण, नियंत्रण एवं अपील) नियम 1958 के नियम 13(2) के अन्तर्गत शक्तियों का प्रयोग करते हुए इन्हें तत्काल प्रभाव से निलंबित किया जाता है।

(पुरुषोत्तम राजपुरोहित)
जिला शिक्षा अधिकारी(मुख्यालय)
प्रारम्भिक शिक्षा, जोधपुर

20. A simple look at the impugned order dated 19.09.2024 reveals that the petitioner has been placed under suspension on the allegation that he has hurled slogans against the Education Minister and used unparliamentary expression “पलटूराम” and has even burnt effigy of the Education Minister. Not only that, he has also raised hoardings at various conspicuous places of the city, belittling office of the Minister.

21. True it is, that the oppugned order was passed while making reference to Rule 13(2) of the Rules of 1958, but according to this Court, simply incorrect mentioning of the provision, when the powers are clearly traceable rather



available under sub-rule (1) of Rule 13, it cannot be said that the order is void, illegal or without jurisdiction.

22. When the power vests with the respondent no.3, under Rule 13(1) of the Rules of 1958 to suspend the petitioner in case any disciplinary proceeding is pending, initiated or in contemplation, the same can be traced and the order can be validated.

23. That apart, another order immediately within 24 hours has been issued by the respondent No.3 (on 20.09.2024) stipulating that reference of Rule 13(2) of the Rules of 1958 be read as Rule 13(1)(a) of the Rules of 1958 and that the disciplinary proceedings are contemplated against the petitioner.

24. According to this Court, the order dated 20.09.2024 does not fall within the purview of either review or modification, as provided under Chapter – VII of the Rules of 1958. The subsequent order dated 20.09.2024 is simply an amendment or rectification of inadvertent error which had crept in, while issuing the order dated 19.09.2024.

25. Hence, while holding that mere wrong mentioning of a provision does not render the proceedings or order invalid, when power are available under any other provision, this Court is of the view that since the subsequent order dated 20.09.2024 has remedied or cured even such discrepancy, which existed in the order dated 19.09.2024, no interference on this count is required.





26. Now, what remains to be considered by this Court is, whether the powers under Rule 13(1)(a) of the Rules of 1958 have been validly and rightly exercised ?

27. So far as the jurisdiction to place the petitioner under suspension is concerned, the same is presently not a ground for challenge at all, because District Education Officer is indisputably petitioner's appointing and disciplinary authority. This Court has been called upon to examine the legality and propriety of the contentious order on the principles of proportionality and anvil of Article 14 of the Constitution of India.

28. Reply filed by the respondents clearly shows that a charge-sheet has been issued and served upon the petitioner on 25.09.2024. Therefore, there cannot be any quarrel to the fact that the petitioner has been placed under suspension under contemplation of the disciplinary inquiry.

29. Mr. Mathur's argument that the disciplinary authority (respondent no.3) has not applied its mind while placing the petitioner under suspension, is misconceived. His argument that there is no possibility of influencing the witness or tampering the evidence, is equally fallacious.

30. The apprehension of tempering or influencing the witness is one of the criteria but not the only consideration for placing an employee under suspension. It is a trite position of law that suspension is not a punishment.

31. In the instant case, the petitioner who is an employee – serving as Teacher Grade-III, has exhibited the audacity





of affixing placards and hoardings at various conspicuous places and hurling intemperate rather inappropriate expressions against none other than the Education Minister himself. That apart, when the petitioner is President of the Secondary Teachers Association, his likelihood of meeting the higher authorities in connection with the activities of the association cannot be ruled out.

32. His remaining in the office is likely to spoil and pollute the environment of the department and sure to dent the discipline which is the fulcrum of administration.

33. While examining correctness, legality and propriety of the order of suspension, this Court has examined the record to ensure as to whether the disciplinary authority had sufficient reasons or material to come to a conclusion that suspension of an employee is warranted.

34. The orders impugned dated 19.09.2024/20.09.2024 and charge-sheet issued to the petitioner reveal that the respondent no.3 had enough material and reasons to initiate the disciplinary inquiry for major penalty under Rule 16 of the Rules of 1958 (which as a matter of fact has been initiated on 25.09.2024) and for such purpose, the action to place the petitioner under suspension cannot be faulted with.

35. The aforesaid view of the court is strengthened by the judgment of Hon'ble the Supreme Court rendered in the case of **A.K.K. Nambiar vs Union of India & ors.** reported in **1969 SCC (3) 864**. The relevant part is reproduced hereinfra:





"The order recites first that there are serious allegations of corruption and malpractice against the appellant, secondly that the enquiry made by the Central Government revealed that there is a prima facie case and thirdly that the Government of India after considering the available material and having regard to the nature of the allegations against the appellant, the circumstances of the case is satisfied that it is necessary and desirable to place the appellant under suspension."

xx xx xx

"This order indicates that the Government applied its mind to the allegations, the enquiries and; the circumstances of the case. The appellant has failed to establish that the Government acted mala fide. There is no allegation against any particular officer of the Government of India about acting mala fide. The order or suspension was made under subrule (3) and does not suffer from any vice of infringement of Rule 7."

xx xx xx

"The appellant made allegations against the Chief Minister of Andhra Pradesh and other persons some of whose names were disclosed and some of whose names were not disclosed."

"We have only to examine whether the order of suspension was warranted by the rule and also whether it was in honest exercise of powers. The order of suspension satisfied both the tests in the present case."





36. The High Court of Gujarat in the case of **Jigneshkumar Gangarambhai Patel vs. State of Gujarat & Ors.** (Special Civil Application No. 9000 of 2020) decided on 30.09.2020, has taken similar view and observed thus:

“7. Considering the submissions made by learned advocates for the respective parties, what needs to be appreciated is that the petitioner is a Primary Teacher working under the DPEO, Vadodara. In the hierarchical set up of the authorities, the umbrella institution is the Minister of Education, the Secretary of Education and the Director, Primary Education. The petitioner is a government servant, admittedly, bound by the conduct of the disciplinary rules which govern his terms of employment.”

xx xx xx

“13. Apparent it is from the statement on facebook that the petitioner cannot be deserving to plead infringement of his freedom of speech in context of his reasonable restriction that he was bound to follow in context of Rule 9 of the Conduct Rules. The decision of the Kerala High Court is in the context of a case especially when the student who was a victim of police atrocity was sympathised by a university teacher. The Kerala High Court also expressly states that what would constitute a misconduct would depend upon the nature of criticism or comment. This is case on hand where the nature of





criticism or comment made by the petitioner cannot be said to be a private opinion in a purely private domain but was directly attributed to the criticism of his superior in context of the discharge of their duties especially that of the Secretary and the Minister of Education which cannot be said to be within his 'freedom of expression' so perceived by the petitioner. The suspension of the petitioner therefore cannot be said to be completely unjustified."

37. So far as the judgments cited by the learned counsel for the petitioner are concerned, they deal with general principles governing power, necessity and continuation of suspension.

38. The present case is however, an exceptional case – there cannot be any glaring case of insubordination than the one in hands. This Court is more than satisfied that there existed cogent and valid reasons with the disciplinary authority to take immediate action against the petitioner at least in order to maintain discipline and decorum in the department.

39. Petitioner's unruly behaviour cannot be tolerated in the name of freedom of expression. His remaining on duties will not only create undue pressure upon the Inquiry Officer but also disseminate indiscipline and wrong signals amongst other employees. That apart, this Court is unable to fathom the impact which his behaviour would make on the students, who would be learning from him – the



students who are future of the country. A teacher is a maker of the country - what type of country and generation we would be nurturing, by protecting rather patronising such teachers?

40. Petitioner's engagement in political activities as has been highlighted in the reply and his behaviour definitely falls within the scope of misconduct and calls for disciplinary inquiry against him. The petitioner cannot use freedom guaranteed by the Constitution to garner his fiefdom. To keep the society in order, self-restraint is necessary while respecting self-esteem of others.

41. The writ petition is, therefore, dismissed.

42. Needless to mention that the observation made by this Court are relevant only qua the adjudication of the impugned order of suspension. The inquiry officer while conducting inquiry against the petitioner pursuant to the charge-sheet already served shall not be bound by the order instant. He shall conduct and conclude the inquiry on the basis of ocular and oral evidence, in accordance with law.

43. Stay application also stands dismissed, accordingly.

(DINESH MEHTA),J

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