

Bharat Lal Son of Late Bahraich, Executive Engineer, Construction Division (Maintenance), U.P. Jal Nigam Vs. State of U.P. Through Its Secretary, Nagar Vikas, Civil Secretariate,

Bharat Lal Son of Late Bahraich, Executive Engineer, Construction Division (Maintenance), U.P. Jal Nigam Vs. State of U.P. Through Its Secretary, Nagar Vikas, Civil Secretariate,

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Court : Allahabad

Decided On : Mar-09-2005

Reported in : 2005(3)AWC2631; 2005(2)ESC1125

Judge : B.S. Chauhan and ;Dilip Gupta, JJ.

Acts : [General Clauses Act, 1897](#) - Schedule - Article 21; Uttar Pradesh Water Supply and Sewerage Act, 1975 - Sections 5; [Prevention of Corruption Act, 1947](#); Statutory Rules - Rule 12; Statutory Regulation; Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 - Rule 4; Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955; Employees' State Insurance (Central) Rules, 1950; [Constitution of India](#) - Article 311 and 311(1)

Appeal No. : Civil Misc. Writ Petition No. 13725 of 2005

Appellant : Bharat Lal Son of Late Bahraich, Executive Engineer, Construction Division (Maintenance), U.P. Jal N

Respondent : State of U.P. Through Its Secretary, Nagar Vikas, Civil Secretariate, ;chairman, Managing Director,

Advocate for Def. : S.M.A. Kazmi and ;Q.H. Siddiqui, Advs. and ;S.C.

Advocate for Pet/Ap. : U.N. Sharma and ;A.K. Pandey, Advs.

Disposition : Petition allowed

Judgement :

B.S. Chauhan, J.

1. This writ petition has been filed for quashing the impugned suspension order dated 17.02.2005 (Annex. 1) passed by the respondent No. 2.

2. The facts and circumstances giving rise to this case are that the petitioner, an Executive Engineer in Construction Division (Maintenance), U.P. Jal Nigam, had been working as the Executive Engineer in the respondent-Department. There had been a direction at district level to repair the hand pumps at the instance of Members of Parliament as well as Members of Legislative Assembly. The spare parts for repairing the hand pumps had been purchased at local level. However, on the allegations of irregularity, illegality, financial loss to the Department in purchasing the material in contravention of the order issued by the Head Office, and maligning the image of the Department against the petitioner, the impugned suspension order has been passed.

3. Shri U.N. Sharma, learned Senior Counsel appearing for the petitioner has submitted that the impugned

suspension order has been passed by the Chairman-cum-Managing Director, U.P. Jal Nigam, who was not competent being the Chairman of the Jal Nigam; there was no authorization by the State to the Chairman-cum-Managing Director to exercise the power of suspension; as per the Rules, suspension order could be passed only by the appointing authority, i.e. the State or the Head of the Department if so empowered by the Governor of the State; in the instant case, the Governor of the State had not empowered the Chairman, and so Shri Mohd. Azam Khan, Hon'ble Minister of Nagar Vikas, who was the Chairman of the Jal Nigam could not pass the impugned order, and so the order impugned is without jurisdiction, hence liable to be quashed.

4. On the other hand, Shri S.M.A. Kazmi, learned Chief Standing Counsel appearing for the respondents has vehemently opposed the petition submitting that the impugned suspension order has been passed by the Competent Authority - Shri Mohd. Azam Khan, the Hon'ble Minister of Nagar Vikas, who had been appointed as a Chairman of the U.P. Jal Nigam and at the relevant point of time, was also working as officiating Managing Director; he had rightly exercised the powers of suspension; the Rules, though provide that a Chairman may be an Engineer, has not been followed since long; there has been a long standing practice of appointing a person-non-Engineer as a Chairman. Thus, no interference is required with the impugned suspension order and the petition is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. During suspension, relationship of master and servant continues between the employer and the employee. However, the employee is forbidden to perform his official duties. In certain cases, suspension may cause stigma even after exoneration in the departmental proceedings or acquittal by the criminal court, but it cannot be treated as a punishment even by stretch of imagination in strict legal sense.

7. A Constitution Bench of the Hon'ble Supreme Court in R.P. Kapur v. Union of India and Ors. : (1966)IILLJ164SC , observed that the Authority competent to appoint a public servant would be entitled to suspend him during pendency of the departmental enquiry into his conduct or pending a criminal case.

8. While reiterating a similar view in Balvantray Ratilal Patel v. State of Maharashtra : (1968)IILLJ700SC , the Apex Court held as under:-

'It is now well settled that the power to suspend, in the sense of a right to forbid 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 by the 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.....Where, however, there is a 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 temporary suspending the relationship of master and servant with the consequence that servant is not bound to render services and the master is not bound to pay.'

9. In Management of Hotel Imperial, New Delhi v. Hotel Workers' Union, : (1959)IILLJ544SC ; T. Cajee v. U. Jormanik Siem and Anr. : (1961)ILLJ652SC ; and V.P. Gindroniya v. State of M.P. and Anr. : (1970)IILLJ143SC , the Hon'ble Apex Court held that putting a Government servant under suspension during the pendency of Departmental Proceedings or Criminal trial, means that the Government merely issued a direction that he must not do any thing in discharge of the duties of his office and the employee is bound by the said order.

10. The scope of interference by the Court with the order of suspension has been examined by the Hon'ble Supreme Court in large number of cases, particularly in State of M.P. v. Sardul Singh : [1970]3SCR302 ; P.V. Srinivasa Sastry v. Comptroller & Auditor General of India : (1993)ILLJ824SC ; Director General, ESI and Anr, v. E. Abdul Razak, JT 1996 (6) SC 502; Kusheshwar Dubey v. Bharat Cooking Coal Ltd. and Ors. : (1988)IILLJ470SC ; Delhi Cloth General Mills v. Kushan Bhan : (1960)ILLJ520SC ; U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjeev Rajan, (1993) Supp. (3) SCC 483; State of Orissa v. Bimal Kumar Mohanty : (1995)ILLJ568SC ; State of

Rajasthan v. B.K. Meena and Ors., : (1997)ILLJ746SC ; Secretary to Govt., Prohibition and Excise Department v. L. Srinivasan, : (1996)IILLJ245SC ; and Allahabad Bank and Anr. v. Deepak Kumar Bholra, : (1997)ILLJ854SC , and 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 him 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.

11. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground. Suspension should be made only in a case where there is a strong prima facie case against the employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, where the contents of strong prima facie case against him, if proved, would ordinarily result in reduction in rank, his removal or dismissal from service. The Authority should also consider taking into account all the available material as to whether in a given case, it is advisable to permit him to continue not to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

12. As Shri U.N. Sharma, learned Senior Counsel, appearing for the petitioner has not made the submission regarding competence of His Excellency, the Governor, appointing Shri Mohd. Azam Khan, the Hon'ble Minister as a Chairman of the U.P. Jal Nigam, we do not consider it necessary to decide the issue in view of the provisions of Section 5 of the U.P. Water Supply and Sewerage Act, 1975, hereinafter called the 'Act 1975'. The Government Order dated 26th September, 2003 provides that in view of the fact that Shri Arvind Nath, Managing Director of U.P. Jal Nigam stood relieved from the said, post the Chairman of the U.P. Jal Nigam will also officiate as Managing Director. It may also be pointed out that at the relevant time, one Shri Dharmendra Dev, a bureaucrat, had been the Chairman of the U.P. Jal Nigam and he also started officiating as a Managing Director, By the Government Order dated 19th October, 2003, Shri Atul Krishna was appointed by His Excellency, the Governor of the State of U.P., as the Managing Director of the U.P. Jal Nigam. However, his appointment was made subject to the decision of the High Court in Writ Petition No. 1309 (S/B) of 2003, Arvind Nath v. State and Ors., pending before the Lucknow Bench of this Court. On 21st October, 2003, the Chairman of the Jal Nigam passed another order to keep the appointment of Shri Atul Krishna as a Managing Director in abeyance. However, he was directed to remain as officiating Managing Director. It appears that one writ petition was also filed by Shri Atul Krishna in the High Court and both the petitions had been disposed by the Lucknow Bench of this Court vide order dated 09.09.2004. Being aggrieved, the State of U.P. filed a Special Leave Petition before the Hon'ble Supreme Court and their Lordships of the Hon'ble Supreme Court, vide order dated 19.11.2004, granted leave and stayed the operation of the judgment and order of the High Court. However, it appears that in the meanwhile, vide order dated 19.08.2004, His Excellency, the Governor of the State of U.P. appointed Shri Mohd. Azam, Khan, Hon'ble Minister of Nagar Vikas, as the Chairman of the Jal Nigam. The impugned order has been passed by the Hon'ble Minister purported to in exercise of the powers as a Chairman-cum-Managing Director of the U.P. Jal Nigam. Thus, the question does arise as to whether the said Hon'ble Minister, on that date, was officiating as a Managing Director, and, if not, whether the Chairman of the Corporation could pass the impugned suspension order.

13. It is evident from the order dated 19th October, 2003 that Shri Arvind Krishna had been appointed as the Managing Director. Vide order dated 21st October, 2003, his appointment as a Chairman was kept in abeyance. However, he was permitted to officiate as a Managing Director. The said order remains intact and has not been changed till today and no order has been placed on record to show to the contrary, Therefore, the Hon'ble Minister, though appointed as a Chairman of the Nigam, could not act as a Managing Director also. We do not find any force in the submissions made by Shri Kazmi that in view of the order dated 26th September, 2003, the Chairman had been asked to officiate as a Managing Director for the reason that such an officiating was permitted only till further orders and that order lapsed immediately after appointment of

Shri Atul Krishna as a Managing Director vide order dated 19th October, 2003 and even if that order had been kept in abeyance, he had been permitted to officiate as a Managing Director vide order dated 21.10.2003 and admittedly, the impugned order has not been passed either by the Appointing Authority, i.e. the State, or by the Head of the Department empowered by the Hon'ble Governor of the State of U.P. Rule 4 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 as under: -

'4. Suspension. - (1) A Government Servant against whose conduct an inquiry is contemplated, or is proceeding may be placed under suspension pending the conclusion of the inquiry in the discretion of the Appointing Authority.....'

Provided further that concerned Head of the Department empowered by the Governor by an order in this behalf may place a Government Servant or class of Government Servants belonging to Group 'A' and 'B' posts under suspension under this rule:.....'

14. It is submitted by Shri U.N. Sharma, learned Senior Counsel appearing for the petitioner that the Chairman of the Nigam is not the Appointing Authority. State of U.P. is the Appointing Authority of the petitioner. The Chairman cannot be the Head of the Department, and the Managing Director is the Head of the Department as per the provisions of the Rules. He can pass the suspension order provided he has been empowered to do so by the Governor of the State. As the Governor had not empowered the Chairman, the suspension order could only be passed by the State, i.e. the Appointing Authority and by no one else. Shri Kazmi, learned Chief Standing Counsel opposed the submission contenting that along with the counter affidavit, no order of the Governor could be placed, as the petitioner had not taken any pleadings, whatsoever, in his petition or even in the rejoinder affidavit. Petitioner cannot be permitted to make submissions out of the pleadings and, therefore, the contention in respect of empowerment cannot be permitted to be raised.

15. It is a settled legal proposition that no party can be permitted to agitate an issue unless there are specific pleadings in this behalf.

16. There can be no dispute to the settled legal proposition that the Court or Tribunal is not permitted to decide a case going out of pleadings of the parties nor the evidence led on a non-existing plea is permitted to be taken into consideration. (Vide Sri Mahant Govind Rao v. Site Ram Kesho, (1898) 25 IA 195 (PC); Trojan & Co. v. RM. N.N. Nagappa Chettiar : [1953]4SCR789 ; Kishori Lal v. Chaltibai : AIR1959SC504 ; Samant N. Balakrishan v. George Fernandez and Ors., : [1969]3SCR603 ; Dalim Kumar Sain and Ors. v. Smt. Nand Rani Dassi and Anr. : AIR1970Cal292 ; Rao Sahab v. Rangnath Gopalrao : AIR1971SC2548 ; Bhoona Bi and Anr. v. Gujar Bi : AIR1973Mad154 ; DR. R.K.S. Chauhan v. State of U.P. and Ors., 1995 Supp (3) SCC 688; Commissioner of Income Tax v. Park Hotel, : [1996]218ITR221(SC) ; Syed Dastagir v. T. R. Gopalakrishna Setty : AIR1999SC3029 ; Sankaran Pillai (Dead) by LRs v. P. Venuguduswami and Ors. : [1999]237ITR1(SC) ; J. Jermons v. Aliammal : AIR1999SC3041 ; Life Insurance corporation of India and Ors. v. Jyotish Chandra Biswas : AIR2000SC3666 ; OM Prakash Gupta v. Ranbir B. Goyal : [2002]1SCR359 ; and Ashutosh Gupta v. State of Rajasthan and Ors., : AIR2002SC1533 .

17. It is not possible for the Court to decide an issue, not raised/agitated by the authority for the reason that other party did not have opportunity to meet it and such a course would violate the principles of natural justice, (Vide New Delhi Municipal Council v. State of Punjab AIR 1997 SC 2841). Similarly, in Vs.K. Majotra v. Union of India and Ors. : AIR2003SC3909 , the Apex Court held as under:-

'The Courts would be well advised to decide the petitions on the points raised in the petition and if in a rare case keeping in view the facts and circumstances of the case any additional points are to be raised then the concerned and affected parties should be put to notice on the additional points to satisfy the principles of natural justice. Parties cannot be taken by surprise.'

18. Now, the question does arise as to whether an authority, other than the Appointing Authority or a

Delegated Authority, can pass the suspension order as it has been contended by Shri U.N. Sharma that the Rules do not permit a person, other than the Appointing Authority or Head of the Department, to pass the suspension order. Therefore, we are not inclined to enter into the controversy as to whether the Hon'ble Minister had delegated the power to the Managing Director for exercise of power of suspension.

19. In *State of M.P. v. Sardul Singh*, the Supreme Court held that Article 311(1) of the Constitution provides for guarantee to a civil servant that he would not be dismissed or removed by an authority subordinate to his appointing authority but it does not provide for further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authority mentioned therein.

20. Similarly, in *P.V. Srinivasa Shastri and Ors. v. Comptroller and Auditor General of India* : (1993)ILLJ824SC, the Hon'ble Supreme Court elaborated the same issue again and observed as under: -

'It need not be pointed out that initiation of a departmental proceedings per se does not visit the officer concerned with any evil consequences and the framers of the Constitution do not consider it necessary to guarantee even that too holder of civil posts..... At the same time this will not give right to authorities having the same rank as that of the officer against whom proceedings is to be initiated to take a decision whether any such proceedings should be initiated. In absence of a rule any supervisory authority, who can be held to be a controlling authority, can initiate such proceedings.'

21. In *Inspector General of Police and Anr. v. Thavasiappan* : (1997)ILLJ191SC, the Hon'ble Supreme Court considered the provisions of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 and held that unless there is specific bar under the Statutory Rules for an authority, other than mentioned in the Rules to pass the order of initiating the proceedings or any other matter, the Officer having the control can initiate the proceedings for the reason that the Rule making authority did not intend in such an eventuality to take away the power of otherwise competent authorities, like an Appointing/Disciplinary Authority or Controlling Authority and confine the same to a particular designated authority.

22. Similar view has been reiterated in *Director General, ESI and Anr, v. T. Abdul Razak* : (1996)ILLJ765SC, while considering the provisions of the Employees' State Insurance (Central) Rules, 1950. That was a case where the Standing Committee had delegated the power to the Director General for further delegation of powers. The Court held that the proceedings can be initiated by any Superior Authority who can be held to be a Controlling Authority, who may be an officer subordinate to the Appointing Authority. It is not necessary that the authority competent to impose penalty must initiate the disciplinary proceedings.

23. In *Sampuran Singh v. State of Punjab* : (1982)ILLJ281SC, the Hon'ble Supreme Court has considered the issue at length and held that an authority, higher than the authority competent to remove or dismiss or reduce in rank, can grant the sanction of prosecution under the provisions of [Prevention of Corruption Act, 1947](#) for the reason that Article 311 of the Constitution guarantees that the authority to remove should not be subordinate to that by which he was appointed. However, it does not mean that the power cannot be exercised by an authority higher than the appointing authority. Article 311 of the Constitution does not require that dismissal or removal must be ordered by the authority who made the appointment. The requirement of law stands fulfilled if removal order is passed by the authority not lower in rank or greater than the Appointing Authority.

24. In *State of Orissa and Ors. v. Baidhar Sahu*, : (2000)ILLJ1057SC, the Hon'ble Supreme Court held that where by delegation, which was permissible under the Statutory Rules, the Governor of the State has empowered the District Collector to initiate disciplinary proceedings for minor punishment, the suspension order was permissible by him. The issue raised before the Court had been that as the District Collector had been empowered only to impose minor punishment and in cases which warrant only minor punishment, suspension was not permissible as the Rules provide for suspension only in cases the charges stand proved and warrant major punishment. The High Court had held that the District Collector was not competent to pass

a suspension order. Their Lordships of the Hon'ble Supreme Court reversed the judgment of the High Court observing that Rule 12 permitted the Governor to delegate the power of suspension on the Collector of the District and subsequently, the Collectors have also been authorized to inflict minor punishment. The Court held that the subsequent authorization to the District Collector to inflict minor punishment would not mean that by such delegation, the Governor is not denuded of his power to delegate the power of the District Collector.

25. In *Balbir Chand v. Food Corporation of India Ltd. and Ors.*, : (1997)2LLJ879SC , the Hon'ble Supreme Court examined the case of joint enquiry wherein the removal order had been passed by the highest authority who was also the Appellate Authority. The Hon'ble Supreme Court upheld such a removal holding that an authority, lower than the Appointing Authority, cannot take a decision in the matter of disciplinary action but there is no prohibition in law that the higher authority should not take a decision or impose the penalty as the primary authority in the matter of disciplinary action. While deciding the said case, a distinction was made from the earlier judgment in *Surjit Ghosh v. Chairman & Managing Director, United Commercial Bank* : (1995)IILLJ68SC on the ground that it had been a case of joint enquiry. In normal circumstances, such a course was not permissible as the delinquent officer loses the right of appeal.

26. In *Surjit Ghosh (supra)*, the Hon'ble Apex Court examined a case where the punishment had been imposed by the higher authority which was also the Appellate Authority. The Court quashed the proceedings on the ground that the substantive right of appeal had been taken away by initiation of proceedings by the Appellate Authority. The Court held as under:-

'it is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority. The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality.'

27. In *Chairman and Managing Director, Andhra Bank and Ors. v. Ramoo Ramesh and Anr.* : (1997)11SCC610 , the Hon'ble Apex Court held that the Regulations applicable there provided clearly that the Disciplinary Authority who can impose a punishment on the delinquent officer may be different from the officer authorized to pass a suspension order and in case where a particular authority has been nominated as the Competent Authority for the purpose of passing the order of suspension, that authority should pass the appropriate order.

28. It is a settled proposition of law that when Statute confers power on a particular Authority or person to perform certain functions, it cannot be exercised by any other person. (*Vide Purtabpur Company Ltd. v. Cane commissioner of Bihar and Ors.*, : [1969]2SCR807 ; *Karan Singhji Jadeja and Anr. v. State of Gujarat and Ors.*, : 1995CriLJ4154 ; *State of U.P. and Ors. v. Ram Naresh Lal*, : AIR1970SC1263 ; *Central Inland Water Transport corporation Ltd. v. Brojo Nath Ganguly and Anr.* : (1986)IILLJ171SC ; *Board of High School and Intermediate Education, U.P., Allahabad v. Ghanshyam Das Gupta* : AIR1962SC1110 ; *Smt. Maneka Gandhi v. Union of India and Anr.* : [1978]2SCR621 ; *Chandrika Jha v. State of Bihar and Ors.* : [1984]1SCR646 ; and *Tarlochan Dev Sharma v. State of Punjab and Ors.*, : [2001]3SCR1146 .

29. In view of the above, the law can be summarised that the suspension of an employee is not a condition of service like transfer. Neither a suspension order can be passed in view of the master and servant relationship, nor it can be passed in exercise of the provisions of Article 21 of the General Clauses Act. The power to suspend can be exercised, provided the statutory rules permit such an action. An authority which has the supervisory/administrative control over an employee, can initiate disciplinary proceedings and pass an order of suspension unless the statutory rules provide to the contrary. If the statutory rules authorise a particular authority by natural corollary, all other persons stand excluded from exercising the power to suspend, and no one other than the authority named in the rules, can pass the suspension order. The power should not be exercised in an arbitrary manner, or in a case where if the allegations/charges, which stood proved, do not warrant imposition of major punishment. The power to suspend an employee is a substantive power; and it is not a matter of procedure. A person/authority who has not been accredited with the power to suspend such an employee by the statutory rules, cannot exercise such a power.

30. In the instant case, the Rules are crystal clear, only the Appointing Authority, i.e. the State Government, or the Managing Director if authorised by the Governor to exercise such power, has power to pass the suspension order. The provisions impliedly exclude any other authority to exercise such a power, as referred to above, neither there are pleadings regarding authorization nor any order of the Hon'ble Governor authorizing the Managing Director to pass suspension order. Thus, without entering into that issue, we have no hesitation in holding that the suspension order had been passed by the authority having no competence, as the Hon'ble Minister at the relevant point of time, was not the officiating Managing Director and if the Chairman is the Appellate Authority under the Statutory Rules, the petitioner loses the right of appeal.

31. Thus, in view of the above, petition deserves to be allowed and the impugned order is liable to be quashed.

32. Petition succeeds and is allowed. The impugned suspension order dated 17.02.2005 (Annex. 1) passed by the respondent No. 2 is quashed.

33. Needless to say that it will be open to the Competent Authority to pass an appropriate order strictly in accordance with law. No costs.

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