

Shiv Ram Misra Vs. Controller, Legal Metrology, U.P., Lucknow and Another

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Court : Allahabad

Decided On : Mar-17-1998

Reported in : 1998(3)AWC1885

Judge : S.R. Singh, J.

Acts : Uttar Pradesh Subordinate Services (Punishment and Appeal) Rules, 1932 - Rule 1A(2); Uttar Pradesh Subordinate Services (Punishment and Appeal) (Amendment) Rules, 1975; [Prevention of Corruption Act, 1988](#) - Sections 7 and 13(1) and (2)

Appeal No. : C.M.W.P. No. 9287 of 1998

Appellant : Shiv Ram Misra

Respondent : Controller, Legal Metrology, U.P., Lucknow and Another

Advocate for Def. : S.C. .

Advocate for Pet/Ap. : Ajit Kumar, Adv.

Judgement :

S.R. Singh, J.

1. Heard Sri Yasharth holding brief of Sri Ajit Kumar, counsel appearing for the petitioner and Sri K. S. Kushwaha standing counsel representing the State

Authorities.

2. Relying upon Annexure-4 to the writ petition which purports to be an extract from Punishment and Appeal Rules for Subordinate Services. U. P., the learned counsel for the petitioner canvassed that the suspension of the petitioner pending investigation, enquiry and trial of a criminal case is impermissible in that there is no such provision in Punishment and Appeal Rules for Subordinate Services. U. P. Sri K, S. Kushwaha standing counsel, on the other hand, submitted that Punishment and Appeal Rules for Subordinate Services, U. P. as initially published with the Appointment Department Notification No. 2627/11-264 dated August 3. 1932 was amended by means of Notification No. 18.4.1976. Karmik-1 dated October 30, 1976 sub-rule (2) of Rule 1A of which specifically empowers the Appointing Authority to suspend the Government servant in respect of, or against whom an investigation, enquiry or trial relating to a criminal charge is pending. The relevant sub-rule (2) of Rule 1A reads as under ;

'A Government servant in respect of, or against, whom an investigation, enquiry or trial relating to a criminal charge is pending may, at the discretion of the Appointing Authority under whom he is serving, be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude.'

3. Sub-rule (2) of Rule 1A excerpted above, it appears, was conspicuous by its absence in the book from which Annexure-4 to the writ petition was copied. The petitioner was caught *flagrante delicto* in a trap while accepting bribe. A criminal case being Case Crime No. 756 of 1997 under Section 7/13(2) read with 13 (1) (d) of the Prevention of Corruption Act. 1988 was registered against the petitioner. The appointing authority in the instant case has passed the impugned order of suspension on a proper self-direction to the relevant factors and after arriving at a *prima facie* finding that it would not be in public interest to allow the petitioner to continue on the post. The submission made by the learned counsel for the petitioner that there was no application of mind, does not commend itself for acceptance. The offence punishable under the Prevention of Corruption Act is

certainly an offence involving moral turpitude and besides that, the charge is connected with petitioner's position as a Government servant and his continuance on the post would certainly embarrass him in discharge of his duties. The decision in *Bryesh Bahadur Sriuastava v. State of U. P.*, 1994 (1) UPLBEC 348. reliance on which was placed by the learned counsel for the petitioner during the course of his argument does not. in the facts and circumstances of the case, help the petitioner.

4. The petition being devoid of merits, is therefore, dismissed in limine.

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