

**Shraini Dan Vs. State and ors.**

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**Court :** Rajasthan

**Decided On :** Feb-21-1984

**Reported in :** 1984WLN(UC)43

**Judge :** S.K. Mal Lodha, J.

**Appeal No. :** S.B. Civil Writ Petition No. 1569 of 1983

**Appellant :** Shraini Dan

**Respondent :** State and ors.

**Advocate for Pet/Ap. :** Mr. S.D Vyas

**Disposition :** Petition allowed

**Judgement :**

**S.K. Mal Lodha, J.**

1. By this petition under Article 226 of the Constitution, the petitioner, Shraini Dan seeks to quash the order (Ex. 7) dated April 16, 1983 of the Collector, Jodhpur, by which he was suspended.

2, It is not in dispute that the petitioner was appointed by the Collector, Banner as Patwari on July 9,1959 and, thereafter, he continued as such. The petitioner was transferred to Jodhpur district from Banner district by order of the Collector and

thereafter, he was posted as Patwari in Solankiyatalla village vide order dated November 6, 1978, of the Collector, Jodhpur. For the purpose of the disposal of the writ petition, it is not necessary to re-count the facts in detail. However, it may be mentioned that the petitioner was suspended by order (Ex. 7) dated February 16, 1983 of the Collector, Jodhpur. The petitioner filed the writ petition on May 20, 1983 for quashing the order of suspension and also for payment of the arrears of the salary.

3. Show cause notice was issued to non-petitioners No. 1 to 4. Reply to the show cause notice was filed on December 2, 1983 contesting the writ petition. Along with the reply, photo copy of the charge-sheet (Ex.R 3) issued to the petitioner; photo copy of the order appointing Enquiry Officer (Ex. R 4); photo copy of the preliminary enquiry report (Ex. R 5); photo copy of the complaint (Ex. R 6) of Sarpanch, Solankiyatalla and the photo copy of the petitioner's statement (Ex R 7) were filed. A rejoinder was filed by the petitioner. It may be stated that on January 6, 1984, learned Assistant Government Advocate sought time to seek instructions from non-petitioners No. 1 and 2 to enable him to answer the queries made by the Court. When the matter was listed in court on January 19, 1984, learned counsel for the petitioner referred to r. 17 of the Rajasthan Land Revenue (Land Records) Rules, 1957 (hereinafter referred to as 'the Rules'). On that day also, learned Assistant Government Advocate sought time to enable him to obtain 1. necessary instructions. The next date fixed was February 13, 1984. Mr. R.P. Dave, learned Deputy Government, on February 13, 1982, contended that the period fixed for suspension during the completion of the enquiry under Rule 17(3) of Rules, is directory. He, however, submitted that he wants to argue the writ petition after calling the officer-in-charge.

4. Today Mr. S.D Vyas, learned Counsel for the petitioner and Mr. L.S. Udawat, Assistant Government Advocate-submitted that the writ petition may be disposed of finally at the admission stage.

5. I have heard Mr. S.D. Vyas for the petitioner and Mr. L.S Udawat, learned Assistant Government Advocate.

6. Learned Counsel appearing for the parties submit that the enquiry has not been completed as yet though the order Ex.7 suspending the petitioner was passed on April 16,1983. There is no dispute also between the parties that the relevant rules applicable to the petitioner are contained in the Rajasthan Land Revenue (Land Records) Rules, 1957.

7. Material portion of Rule 17 of the Rules, for the present purpose, reads as under:

Suspension : - A patwari may be suspended by the Sub-Divisional Officer, pending enquiry into charges framed against him and final decision by the Collector-

(i) ...

(iii) ...

(iii) Suspension of pending enquiry may be treated as punishment only if charges are found to be established. The period of suspension shall in no case exceed 6 months; the enquiries shall be finished and decision shall be given as early as possible.

8. A perusal of Sub-rule (ii) of Rule 17 of the Rules makes it abundantly clear that the period of (sic) in no case can exceed six months. It is further clear that the enquiry is to be (sic) and the decision has to be given as early as possible. As stated above the enquiry, which is said to have been initiated by appointing an Enquiry Officer, is pending and it had not been finished and so the question of giving decision does not arise. The grievance of the petitioner is that he was suspended by order (Ex. 7) dated April 16, 1983 and as this period has exceeded six months and the enquiry has not been completed, it should be quashed.

9. Having regard to the clear language used in Sub-rule (iii) of Rule 17 of the Rules and further for the fact that the learned Assistant Government Advocate appearing for non-petitioners No 1 and 2 could not satisfy me that it is merely directory, it is difficult to continue the suspension order Anx. 7 dt. April 16,1983 after expiry of six months from the date of the order Ex.7. At the risk of repetition, it may be stated that in Sub-rule (iii) of Rule 17 of the Rules, the words 'in no case'

are not of without significance. The mandate of Rule 17 of the Rules, the words 'in no case' are not without significance. The mandate of 17 is that the period of suspension under no circumstances, can exceed six months.

10. As the contention raised on behalf of the petitioner deserves to be accepted, the order (Ex. 7) dated April 16, 1983 cannot be allowed to continue after expiry of six months. It is, therefore, held that it is no more in force at present. Further consequence as a result of the aforesaid relief which has been granted to the petitioner shall follow.

11. The attention of all concerned is drawn that the enquiry should be completed and finished as early as possible and as such steps may be taken to expedite the enquiry and the decision thereon.

12. In view of what has been stated above, the writ petition is allowed as indicated above. No costs.

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