



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 16<sup>TH</sup> DAY OF MAY, 2024**

**PRESENT**

**THE HON'BLE MR JUSTICE R DEVDAS**

**AND**

**THE HON'BLE MS JUSTICE J.M.KHAZI**

**WRIT PETITION NO. 10727 OF 2024 (S-KSAT)**

**BETWEEN:**

DR. SATHISHKUMAR S HOSAMANI  
AGED ABOUT 55 YEARS  
S/O SHAMBULINGA  
WORKING AS DIRECTOR  
DEPARTMENT OF PUBLIC LIBRARIES,  
BENGALURU  
R/AT NO 100, 3RD FLOOR, 4<sup>TH</sup> CROSS,  
PATEL MUNIYAPPA LAYOUT,  
V NAGENAHALLI, R T NAGAR  
BENGALURU - 560032

...PETITIONER

(BY PROF. RAVIVARMAKUMAR, SR. COUNSEL FOR  
SRI. VIJAYA KUMAR., ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA  
REPRESENTED BY ITS  
PRINCIPAL SECRETARY,  
SCHOOL EDUCATION AND  
LITERACY DEPARTMENT  
M S BUILDING, BENGALURU - 560001





2. THE COMMISSIONER  
DEPARTMENT OF SCHOOL EDUCATION  
NRUPATHUNGA ROAD  
BENGALURU - 560001

...RESPONDENTS

(BY SRI.REUBEN JACOB., AAG A/W  
SRI. MAHANTESH SHETTAR, AGA FOR C/R1 & R2)

THIS WP IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO i)SET ASIDE THE ORDER DATED 02/04/2024 PASSED BY THE HONBLE TRIBUNAL IN APPLICATION NO.1407/2024 (VIDE ANNEXURE-A) AND ALLOW THE APPLICATION AS PRAYED FOR ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING - B GROUP, THIS DAY, **R.DEVDAS J.**, PASSED THE FOLLOWING:

**ORDER**

**R.DEVDAS J., (ORAL)**

The petitioner who is working as the Director in the Department of Public Libraries is before this Court aggrieved of the dismissal of his application at the hands of the Karnataka State Administrative Tribunal, wherein the petitioner had called in question the impugned order of suspension bearing No.EP.114.LIB.2023 dated 11.03.2024.

2. Learned Senior Counsel Prof.Ravivarma Kumar, appearing on behalf of the petitioner submits that the



respondent - State Government passed the order of suspension without even considering the reply given by the petitioner and therefore having regard to the expressed provision contained in sub-rule (3) Rule 10 of the Karnataka Civil Services (Classification, Control and Appeal) Rules 1957 which contemplates that the competent authority was required to examine the relevant materials relating to the case and consider whether there is prima facie evidence to support the charges made against the Government servant and if the competent authority was satisfied that there exists prima facie evidence, then on such examination alone it was required to place the petitioner under suspension. Emphasis is sought to be laid on the words "examine relevant material". In this regard, learned Senior Counsel sought to place reliance on a decision of the Hon'ble Supreme Court in case of ***Union of India and another /vs./ Ashok Kumar Aggarwal – (2013) 16 SCC 147.***

3. Taking this Court through paragraphs No.21 and 22, the learned Senior Counsel submitted that the law



on the issue has been summarized by the Hon'ble supreme Court to the effect that suspension order can be passed by the competent authority only after taking into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry. The competent authority is required to consider the gravity of the alleged misconduct and the nature of evidence available. It was held that such action cannot be actuated by mala fides, arbitrariness or for ulterior purpose. Effect on public interest due to employee's continuation in office is also a relevant and determining factor. At any rate, suspension order should be passed only where there is a strong prima facie case against the delinquent and if the charges are proved, it would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc.

4. While taking this Court through the impugned order of suspension, the learned Senior Counsel submitted



that action is sought to be taken against the petitioner in respect of incidents that have occurred more than 5 to 6 years ago. Moreover, the charges sought to be imputed against the petitioner are not serious in nature, while technical irregularities are sought to be alleged and imputed against the petitioner during the relevant period. Learned Senior Counsel submitted that the Tribunal erred in coming to the conclusion that it cannot be said that the order of suspension is passed only upon considering the report of the committee and on the other hand it is clear that the competent authority has not taken into consideration the reply given by the petitioner. Once again attention of this Court is drawn to the impugned order of suspension and submitted that it is clear from the order of suspension itself that the competent authority/State Government has only considered the report submitted by the committee and no mention is made about the reply given by the petitioner.

5. Per contra, Sri Reuben Jacob, learned Additional Advocate General appearing on behalf of respondents



submitted that Rule 10(3) is not a stage which would contemplate consideration of the reply given by the petitioner. Learned Additional Advocate General submits that in the normal course order of suspension in terms of Rule 10(3) is passed by the competent authority having regard to the material placed before it. Nevertheless, in the present case since the action was initiated based on a complaint given by a Member of Legislative Council, when the State Government found that in terms of the complaint made by the Member of Legislative Council, it would become necessary to secure more information, the State Government thought it fit to appoint a committee to look into the allegations made by the Hon'ble Member of the Legislative Council. It is the committee which collected all the information, thereafter put it to the petitioner calling for his reply. Learned Additional Advocate General would therefore submit that this is a case where the normal procedure preceding the issuance of an order of suspension has been varied and although the Rule does not require a reply to be called for, nevertheless



Committee thought it fit to call for reply from the petitioner and therefore reply has been caused by the petitioner. Nevertheless, the Tribunal called for the original records and the same was submitted before the Tribunal and having gone through the original records including the note sheets, the Tribunal has rightly come to the conclusion that the State Government has followed the procedure prescribed in terms of Rule 10(3) and therefore no fault can be found in the impugned order passed by the Tribunal.

6. The learned Additional Advocate General would also draw the attention of this Court to few other paragraphs in the very same judgment that was relied upon by the learned Senior Counsel appearing for the petitioner namely the case of ***Sri Ashok Kumar Aggarwal*** (supra). Learned Additional Advocate General drew the attention of this court to paragraphs No.26 to 28 and submitted that having regard to the Rule 10 it has been held that 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 counter claims on factual issues. The court cannot act as if it is an appellate forum de hors the powers of judicial review.

7. Learned Additional Advocate General further submitted that even in terms of paragraphs No.21 and 22, which was relied upon by the learned Senior Counsel appearing for the petitioners, the authority is required to take into account all the available material and find out as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the enquiry. At any rate, Rule 10(3) does not prescribe or contemplate a situation where reply is sought at the hands of the delinquent officer and the order of suspension





should contain statements which would indicate application of mind on the part of the competent authority before passing the order of suspension. Such a stage is not the one in terms of Rule 10(3), but it comes subsequently after the charge memo is issued and reply is called for by the competent authority.

8. At this stage learned Additional Advocate General would also submit on instructions that charge memo has been issued to the petitioner on 14.05.2024 and dispatched on 15.05.2024. The learned Additional Advocate General has furnished the original record along with the charge memo and the seal containing the dispatch of the same to the petitioner. The learned Additional Advocate General would also draw the attention of this court to the contents of the communication made to the petitioner and submits that a written reply is called for from the petitioner within a period of 15 days from the date of receipt of the communication. The learned Additional Advocate General would therefore submit that once a reply is now given by the petitioner, the competent



authority will have an opportunity to review its order of suspension and thereafter pass necessary orders after considering the reply given by the petitioner.

9. Learned Additional Advocate General submits that this is not a stage where this court could consider staying the order of suspension having regard to the admitted fact that the petitioner did not have the benefit of an order of stay even before the Tribunal or before this Court.

10. Heard the learned Senior Counsel appearing for the petitioner, learned Additional Advocate General for the respondents State and perused the original records.

11. Having regard to the provisions contained in Rule 10(3) of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 when juxtaposed with the other provisions contained in the Rules viz., Rule 11(2), where express provisions are contained that the Delinquent Officer shall be called upon to give a reply and in such circumstances and stages, the Disciplinary



Authority is required to consider such reply and pass reasoned orders considering the reply given by the Delinquent Officer. However, Rule 10(3) is not a stage where such a course of action is contemplated. Just because the Committee which was constituted in the present case called for a reply at the hands of the petitioner, it cannot be said that the impugned order of suspension should also animate the consideration of the reply given by the petitioner, since Rule 10(3) is not a stage which contemplates such a course of action and the provision does not expressly mandate considering of such reply given by the Delinquent Officer. Having gone through the allegations made against the petitioner which are found in the impugned order of suspension, it cannot be said that the charges are not serious in nature.

12. At any rate, these are all matters that are required to be considered at a later stage. Moreover, as rightly submitted by the learned AAG, now that the charge memo has been issued to the petitioner and the petitioner



is called upon to submit his written reply, the respondent Disciplinary Authority is required to once again reconsider its order of suspension or review its order of suspension after having gone through the reply that would be caused by the petitioner.

13. For the reasons stated above, this Court is of the considered opinion that this is not a fit case where the indulgence of this Court is called for at this stage, having regard to the facts narrated hereinabove.

14. Consequently, the writ petition stands ***dismissed.***

**(Sd/-)  
JUDGE**

**(Sd/-)  
JUDGE**

KLY/JT  
CT: JL