

PETITIONER:
A.K. JADHAV

Vs.

RESPONDENT:
STATE OF M.P. & ORS.

DATE OF JUDGMENT: 26/03/1997

BENCH:
K. RAMASWAMY, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted

While the appellant was working as a Tehsildar, a trap was laid on March 20, 1996 Pursuant to the information of his demanding and accepting an illegal gratification of Rs. 20,000/- which is not in consonance with the dignity of the post he held nor is it a legal remuneration. On March 21, 1996, the commissioner suspended the appellant pending investigation. The appellant questioned the competency of the commissioner which was negatived by the Administrative Tribunal, Jabalpur Bench by order dated October 14, 1996 made in OA No. 2193/96. Thus, this appeal by special leave.

Shri Shiv Sagar Tiwari, learned counsel for the appellant, contends that by virtue of definition of "appointing authority" under Rule 2(a) of the Madhya Pradesh Civil services (CCA) Rules, 1966 (for short, the 'Rules'), the appointing authority of the Tehsildars and Naib Tehsildars being the state Government, the commissioner was devoid of jurisdiction or power to suspend the appellant, pending investigation. In support hereof, he seeks to place reliance on the judgment of this court in U.P. Rajya Krishi Utpadan Mandi Parishad & Ors. vs. Sanjiv Rajan [(1993) suppl. 3 SCC 483]. The question for consideration is: whether the contention is legally tenable? It is true that under Rule 2(h) "service" means the Madhya Pradesh Junior Administrative Service comprising of Tehsildars and Naib Tehsildars. The appointing authority in relation to Government servant under Rule 2(a) means "(i) the authority empowered to make appointments to the services of which the Government servant is for the time being included; or (ii) the authority empowered to make appointments to the post which the Government servant for the time being holds; or (iii) the authority which appointed the Government servant to such service, grade or post, as the case may be; or (iv) where the Government servant having been a permanent member of any other service or having substantively held any other permanent of the Government, the authority which appointed him to that post, whichever authority is the highest authority," But in respect of the disciplinary proceedings and "suspensions", part IV contemplates various authority"

to mean the authority competent under the said rules to impose on a Government servant any of the penalties specified in Rule 10. Sub-rule (1) of Rule 9 provides that the appointing authority or any authority to which it is subordinate or that behalf by the Government by general or by special order, may place a Government servant under suspension :-

"(a) "Where a disciplinary proceedings against him is contemplated or is pending, or
(b) Where a case against him in respect of any criminal offence is under investigation, enquiry or trial:

Provided that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made."

Thus it could be seen the competent authority to suspend an officer is appointing authority or any subordinate authority or any subordinate authority on whom the power of disciplinary authority has been conferred by the Government by general or special order. The Government amended the Rules by notification dated August 8, 1977 which was published in the state Gazette on October 7, 1977 empowering the subordinate officers which reads as under:

"Class III (Non-Ministerial) ; The column (3) indicates the state Government or the commissioner of the division in which the delinquent official was posted during the relevant period. The column (4) indicates all powers except removal, dismissal and reduction in rank."

Thus, it could be seen that the commissioner has been delegated of the powers of the Governor under the Rules, empowering the commissioner in that behalf to take the appropriate action including power to suspend Naib-Tehsildar. Since crime No. 49/96 registered against the appellant pursuant to the trap, is pending and is under investigation, by operation of Rule 9, the commissioner is empowered to keep the appellant under suspension. The decision in Sanjiv Rajan's case has no bearing on the controversy in question. Therein, when an accused was kept under suspension pending investigation into the charge of defalcation, the order of suspension made in the first instance had lapsed and thereafter second order came to be passed. The High court had held that the state had no power to pass second order of suspension in the same manner and accordingly it allowed the appeal. This court interfering with the order of the High court had held that the Government had the power to pass second order of suspension, even though the first order had lapsed and there was no restriction on the competent authority to pass such second order but that order of suspension would be subject to the final result. The facts therein, as stated earlier, are inapplicable to the present facts situation.

The appeal is, accordingly, dismissed, No costs.