

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

WP(C) No. 222/2021
CM No. 1131/2021
CM No. 1132/2021

Dated: 11th of February, 2021.

Qaiser Mehmood

.....Petitioner(s)

Through: -
*Mr S. S. Ahmad, Advocate with
Mr Sheikh Najeeb, Advocate.*

V/s

The Union Territory of JK & Ors.

.....Respondent(s)

Through: -
Mr S. S. Nanda, Sr. AAG.

CORAM:

**Hon'ble Mr Justice Ali Mohammad Magrey, Judge.
Hon'ble Mr Justice Puneet Gupta, Judge.**

(JUDGMENT)

{Per Magrey: J (Oral)}:

01. By medium of the instant petition, the petitioner is seeking quashing of order dated 3rd of February, 2021, passed by the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") in OA No.61/128/2021 titled '*Qaiser Mehmood V. The Union Territory of JK & Ors.*', whereby the prayer of the petitioner for grant of interim relief has been rejected by the Tribunal. Simultaneously, the petitioner is also seeking quashing of order No. DCS/Misc/2021/964-69 dated 16th of January, 2021, issued by respondent No.3/ Deputy Commissioner, Samba, whereby the petitioner has been placed under suspension and directed to remain attached in the office of respondent No.3.

02. The brief facts leading to the filing of this petition, as stated by the petitioner, are that during his posting as Tehsildar, Bari Brahmana since 18th of February, 2019, a civil dispute was going on with respect to land comprised in Khasra No.1786/579 of Village Birpur, Samba, in the Court of learned Munsiff (JMJC), Samba between Bhanu Pratap Singh and Ravinder Kumar, wherein, in terms of order dated 6th of February, 2020, the petitioner was appointed as Local Commissioner for demarcation of the land of the parties as per revenue record and submit a report before the Court concerned. The petitioner claims to have conducted the demarcation as per revenue record on 5th of August, 2020 and submitted the report on 20th of August, 2020 in the Court of learned Munsiff, Samba, reporting therein that Ravinder Kumar was in possession of land measuring 13 Kanals and 01 Marla and that Bhanu Pratap Singh was not in possession of any land at all. It is contended that immediately thereafter the respondent No.3 issued the order No. DCS/Misc/2021/964-69 dated 16th of January, 2021, thereby placing the petitioner under suspension pending enquiry. It is pleaded by the petitioner that since the aforesaid order dated 16th of January, 2021 was issued by the respondent No.3 without any jurisdiction, the same was, accordingly, challenged by him before the learned Tribunal by medium of OA No.61/128/2021. The learned Tribunal, as stated, in terms of order dated 3rd of February, 2021, has, while admitting the OA to hearing, rejected the prayer of the petitioner for grant of interim relief *qua* staying the order of suspension of the petitioner. It is this order dated 3rd of February, 2021 of the learned Tribunal that has been assailed by the petitioner in this petition on the grounds detailed out in the petition.

03. Learned counsel for the petitioner submitted that the petitioner is a member of the J&K Administrative Service (erstwhile Kashmir Administrative Service) having qualified the Combined Services Competition Examination conducted by the J&K Public Service Commission way back in the year 2011 and, on the basis of the recommendations of the Commission, the petitioner was appointed as Junior Scale KAS Officer in terms of Government Order No. 02-GAD of 2012 dated 2nd of January, 2012 issued by the respondent No.1. It is pleaded that, in these circumstances, the petitioner, being a Gazetted Officer, came to be appointed by the respondent No.1 and, that the respondent No.3, thus, in no manner whatsoever, was the appointing authority vested with the power to place the petitioner under suspension. It is contended that as per Rule 31 of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956, it is the appointing authority or any authority to which the appointing authority is subordinate that can place a Government servant under suspension and, in the case of the petitioner, the appointing authority is the Government, i.e., the respondent No.1 only which has the power and jurisdiction to place the petitioner under suspension. To bring home this argument, the learned counsel for the petitioner has placed reliance on Circular No.32-JK(GAD) of 2020 dated 26th of November, 2020 as well as Government Order No. 811-JK (GAD) of 2020 dated 1st of September, 2020, to contend that the cases regarding disciplinary action against KAS Officers are required to be placed before Hon'ble the Lieutenant Governor through the Chief Secretary, and any order/ act without the approval of competent authority, in this behalf, besides being legally untenable, may

lead to Administrative complications as well. It is urged that although all these issues were raised before the learned Tribunal by the counsel for the petitioner, but the learned Tribunal did not appreciate the controversy involved in its true and correct perspective, but has passed the impugned order in hot haste.

04. Mr S. S. Nanda, the learned Senior Additional Advocate General, appearing on behalf of the respondents, submits that the respondent No.3 had the requisite authority to pass the order of suspension in relation to the petitioner. It is contended that the matter stands already considered by the learned Tribunal in the proceedings initiated by the petitioner before it, resulting in rejection of the prayer of the petitioner for grant of interim relief.

05. We have heard the learned counsel for the parties, gone through the pleadings on record and have considered the matter.

06. The moot question that arises for consideration of this Court, herein this petition, is whether the respondent No.3 had the requisite jurisdiction/ authority to place the petitioner, a Gazetted Officer belonging to the J&K Administrative Services, under suspension.

07. At the very outset, what requires to be stated is that Rule 31 of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956, specifically provides the mechanism for placing Government servants under suspension. The mandate of this Rule is required to be followed by all and sundry in order to ensure that rule of law prevails in every set of circumstances. The unwavering object of framing this rule is to prevent frequent resort to suspensions that may otherwise be unwarranted or

counter-productive, besides putting avoidable stain on the public exchequer by way of subsistence allowance for no work done. Public interest should be the guiding factor in deciding whether or not a Government should be placed under suspension or whether such action should be taken even while the matter is under investigation and before a *prima facie* case has been established. It is, therefore, imperative that the discretion vested in the authorities should be exercised with due care and caution after taking all the factors into account.

08. Keeping the above object in mind, a plain reading of clause (1) of Rule 31 of the Rules of 1956 (*supra*) makes it explicitly clear that a Government servant can be placed under suspension by the appointing authority or any authority to which it is subordinate or any other authority empowered by the Government, in this behalf. In the case on hand, the petitioner, being a member of the Jammu and Kashmir Administrative Service, if at all any disciplinary proceeding was to be initiated against the petitioner, the same was only within the domain of the appointing authority of the Government of Jammu and Kashmir and not the respondent No.3/ Deputy Commissioner. Admittedly, the Deputy Commissioner is not the appointing authority of the petitioner. He is not a higher authority nor is any authorization forthcoming from the pleadings on record to show that the Government has authorised him to place the petitioner under suspension. Besides, the Government in the General Administration Department, in terms of Circular No. 32-JK (GAD) of 2020 dated 26th of November, 2020, has already issued instructions/ directions to all the Administrative

Secretaries/ HODs to ensure that the disciplinary proceedings, if any proposed against members of Jammu and Kashmir Administrative Service, are initiated only after following due process and with the prior approval of the competent authority. The order dated 16th of January, 2021, whereby the petitioner was placed under suspension by the Deputy Commissioner, Samba, clearly brings to fore that no approval of the competent authority was sought by the Deputy Commissioner for placing the petitioner, a member of the Jammu and Kashmir Administrative Service, under suspension, thereby resulting in violation of the mandate of the instructions issued by the Government vide circular dated 26th of November, 2020 (*supra*). This vital aspect appears to have not been considered by the learned Tribunal while passing the impugned order.

09. Looking at the case on hand from yet another perspective, the Government of the Union Territory of Jammu and Kashmir, by Circular No.811-JK (GAD) of 2020 dated 1st of September, 2020, in exercise of the powers conferred by Presidential Order S.O. No.3937(E) dated 31st of October, 2019 read with the third proviso to Rule 7 and with Rule 43 of the Transaction of Business of the Government of Union Territory of Jammu and Kashmir Rules, 2019, the cases of disciplinary action against the members of the All India Services and KAS are required to be submitted to the Lieutenant Governor through the Chief Secretary. This, too, has also not been followed by the respondent No.1/ Deputy Commissioner, Samba while issuing the order dated 16th of January, 2021 for placing the petitioner under suspension. This contention, even though specifically urged before the

learned Tribunal, also did not find favour with the learned Tribunal resulting in rejection of the claim of the petitioner for seeking interim relief qua staying the order of suspension dated 16th of January, 2021.

10. Law on the subject is no more *res integra*. Hon'ble the Apex Court of the country, in case titled '**State of Orissa V. Bimal Kumar Mohanty (AIR 1994 SC 2296)**', while dealing with the issue of the requirements that the competent authority has to follow in the process of directing suspension of a Government employee, has laid down as under:

"It is thus settled law that normally when an appointed authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct of defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office of post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegation, gravity of the situation and indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in and to the ultimate result of the investigation of enquiry. The authority also should keep in mind public interest of the impact of the delinquents continuance in office while facing departmental enquiry or trial of a criminal charge."

11. In '**R. S. Manhas V. District Development Commissioner, Udhampur (1986 SLJ 382)**', a Co-ordinate Bench of this High Court, while dealing with the subject of suspension, has held as under:

“Suspension means debarring usually, for a time from any privilege, from the execution of an office or from the enjoyment of an income according to the ordinary dictionary meaning. It is a temporary privation of office or a privilege. However, by reason of mere suspension the person concerned does not lose his office nor does he suffer any degradation but he ceases to exercise the powers and to discharge the duties of the office for the time being. Though his rank remains the same, yet he cannot draw his salary during the period of suspension. The powers, functions and privileges of a civil servant during suspension remain in abeyance and he continues to be subject to the same discipline and penalties and to the same authorities as any other civil servant. Suspension under the present set up attaches a stigma to the concerned public servant and cannot be treated as a normal routine order with respect to a civil servant which allegedly do not affect his rights. A suspended civil servant loses the respect and dignity which he enjoys before such an order is passed. Suspension may not amount to punishment within the meaning of Art. 311 of the constitution of India, or within the meaning of the punishments prescribed under any rules governing service conditions of the civil servants, even then it carries a stigma with respect to the concerned civil servant definitely lowers him in the estimation of the society, his friends, relations and colleagues. It is true that the principle as enumerated in AIR 1949 Nagpur 118 to the effect that when a man is suspended, he is in our opinion reduced in rank is no more good law in view of numerous judgments of different High Courts wherein the said decision has been dissented from. It is also not acceptable that suspension, as a matter of general rule is not justifiable by the courts of law. The construction, the statute and the statutory rules which govern the service conditions have to be kept in mind while adjudicating the order of suspension. We do not agree with the objection raised that in no case suspension was justiciable.”

Applying the ratio of law to the facts of the case on hand, it is the appointing authority or any authority to which it is subordinate or any other authority empowered by the Government, in this behalf, that has got the powers to place an employee under suspension where an inquiry into his conduct is contemplated or is pending or a complaint against him/ her of any criminal offence is under investigation or trial. Thus, the authorities by the law as well as the rules governing the subject for placing an employee under suspension are:

- i. Appointing authority;
- ii. A higher authority, to which such appointing authority is subordinate; and
- iii. Authority empowered by the Government in this behalf.

In the instant case, risking repetition, it must be noted that the Deputy Commissioner, admittedly, is not the appointing authority of the petitioner. He is not a higher authority nor has any authorization been placed on record to show that the Government has authorized him to place the petitioner under suspension. The judgment relied upon by the learned Tribunal, while passing the impugned order dated 3rd of February, 2021, being distinguishable in facts, is not applicable to the facts and circumstances of the case on hand.

12. Given the above position obtaining in the matter, we are of the view that the learned Tribunal has clearly erred in holding that the respondent No.3/ Deputy Commissioner, Samba, had the requisite jurisdiction to place the petitioner, a member of the Jammu and Kashmir Administrative Service, under suspension, that too without approval of the competent authority in the Government. That being so, the order dated 3rd of February, 2021, as passed by the learned Tribunal, is *set aside*. Consequently, the OM filed by the petitioner before the learned Tribunal is *allowed* and the order dated 16th of January, 2021 issued by the respondent No.3/ Deputy Commissioner, Samba, placing the petitioner under suspension, being without jurisdiction, is hereby *quashed*. We, however, make it clear that this order shall not preclude the competent authority in the

Government of the Union Territory of Jammu and Kashmir to take any action, as may be warranted under law.

13. Writ petition *disposed* of as above, alongwith all connected CM(s).

14. A copy of this judgment be forthwith send to the learned Tribunal so that the OA, which stands allowed by this Court hereinabove, is consigned to records as per rules.

(Puneet Gupta)
Judge

(Ali Mohammad Magrey)
Judge

JAMMU

February 11th, 2021

"TAHIR"

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| i. | <i>Whether the Judgment is reportable?</i> | <i>Yes/ No.</i> |
| ii. | <i>Whether the Judgment is speaking?</i> | <i>Yes/ No.</i> |