

Khem Chand Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Dec-20-2012

Judge : Tarun Agarwala

Appeal No. : Civil Misc. Writ Petition No. 6730 of 2010

Appellant : Khem Chand

Respondent : State of U.P. and Others

Judgement :

Tarun Agarwala, J.

Heard the learned counsel for the petitioner and the learned standing counsel for the respondents.

The petitioner was posted as a Head Constable at Police Station Loni in District Ghaziabad and was placed under suspension by the Superintendent of Police, by an order dated 20.5.1996, on the ground, that a criminal case was registered against the petitioner. Subsequently, by an order dated 22.6.1996, the petitioner was reinstated. Subsequently, for the same criminal case, the petitioner was again suspended on 18th April, 1998 and was reinstated in service on 7.4.2000. The petitioner made a representation contending that for the suspension period he should be given his salary and other allowances. Since the same was not paid, the petitioner filed Writ Petition No.41892 of 2006, which was disposed of by a judgment dated 29.6.2009 directing the Senior Superintendent of Police to pass

appropriate orders with regard to the release of his salary and other benefits for the period when the petitioner was under suspension. Pursuant to the said direction, the D.I.G., Moradabad has passed an order dated 25.11.2009 contending that in view of the Criminal Case No.221 of 1996, pending in the Criminal Court of Ghaziabad, no payment of salary during the period of suspension would be payable till the disposal of the criminal case. The petitioner, being aggrieved by the said order, has filed the present writ petition.

The petitioner was suspended under Rule 17 of the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991. For facility, Rule 17 is extracted hereunder:

17. Suspension- (1) (a) A Police Officer against whose conduct an enquiry is contemplated, or is proceeding, may be placed under suspension pending the conclusion of the enquiry in the discretion of the appointing authority or by any other authority not below the rank of Superintendent of Police, authorised by him in this behalf.

(b) A Police Officer 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 Police Officer or is likely to embarrass him in the discharge of his duties or involves moral turpitude, if the prosecution is instituted by a private person on complaint, the appointing authority may decide whether the circumstances of the case justify the suspension of the accused.

(2) A Police Officer shall be deemed to have been placed, or, as the case may be, continued to be placed, under suspension by an order of the appointing authority-

(a) With effect from the date of his detention if he is detained in custody whether the detention is on Criminal Charge or otherwise for a period exceeding forty eight hours;

(b) With effect from the date of his conviction if in the event of a conviction for an offence he is sentenced to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed consequent to such conviction.

Explanation. -- The period of forty eight hours referred to in Clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose intermittent periods of imprisonment, if any, shall be taken into account.

(3) Where a penalty of dismissal or removal from service imposed upon a Police Officer is set-aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions

(a) If he was under suspension immediately before the penalty was awarded to him, the order of his suspension shall, subject to any such directions as aforesaid, be deemed to have continued in force on and from the date of the original order of dismissal or removal;

(b) If he was not under suspension, he shall, if so directed by the appellate or reviewing authority, be deemed to have been placed under suspension by an order of the appointing authority, on and from the date of the original order of dismissal or removal;

Provided that nothing in this sub-rule shall be construed as effecting the power of competent authority, in a case where a penalty of dismissal or removal from service imposed upon a Police Officer is set-aside in appeal or on review under these rules on grounds other than the merits of the allegations on which the said penalty was imposed but the case is not remitted for further inquiry or action or with any direction, to pass an order of suspension pending further inquiry against him on those allegations, so, however, that any such suspension shall not have retrospective effect.

(4) Where a penalty of dismissal or removal from service imposed upon a Police Officer is set-aside or declared or rendered void in consequence of or by a decision of a Court of law and the appointing authority, on a consideration of the

circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal or removal was originally imposed, whether the allegations remain in their original form are clarified or their particulars better specified or any part thereof a minor nature omitted-

(a) If he was under suspension immediately before the penalty was awarded to him, the order of his suspension shall, subject to any direction of the appointing authority, be deemed to have continued in force on and from the date of the original order of dismissal or removal;

(b) if he was not under suspension, he shall, if so directed by the appointing authority, be deemed to have been placed under suspension on and from the date of original order of dismissal or removal.

(5) (a) Any suspension ordered or deemed to have been or to have continued in force under this rule shall continue to remain in force until it is modified or revoke by any authority specified in sub-rule (1).

b) Where a Police Officer is suspended or is deemed to have been suspended whether in connection with any disciplinary proceeding or otherwise and any other disciplinary proceedings is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may for reasons to be recorded by him in writing, direct that the Police Officer shall continue to be under suspension till the termination of all or any such proceedings.

(6) Subsidiary Rule 199, Financial Hand Book, Volume II, Part II to IV, shall cease to apply to the Police Officers governed by this rule."

Under Clause 1(a) of the Rules 17, a police officer could be placed under suspension against whose conduct an inquiry is contemplated or is proceeding which would continue till the conclusion of the inquiry. Under Clause (b) of Rule 17 a police officer can be placed under suspension wherein an investigation, inquiry or trial relating to a criminal charge is pending.

In the instant case clause (b) of Rule 17(1) was invoked. The petitioner was suspended on account of the investigation into a criminal case, but subsequently,

the petitioner was reinstated in service.

The question for consideration is, whether the petitioner is entitled for suspension allowance during the period when he was under suspension ?

In this regard Rule 53 of the Financial Hand Book, Volume 2 Part II to IV comes into play. For facility, Rule 53 is extracted hereunder:-

53. (1) A Government servant under suspension or deemed to have been placed under suspension by an order of the appointing authority shall be entitled to the following payments, namely:-

(a) a subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn if he had been on leave on half average pay or on half pay and in addition, dearness allowance, if admissible on the basis of such leave salary;

Provided that where the period of suspension exceeds three months, the authority which made is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first three months as follows:

(i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of first three months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant;

(ii) the amount of subsistence allowance may be reduced by a suitable amount not exceeding 50% of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant;

(iii) the rate of dearness allowance will be based on the increased or, as the case may be, the decreased amount of subsistence allowance admissible under sub-

clauses (i) and (ii) above.

(b) Any other compensatory allowance admissible from time to time on the basis of pay, of which the Government servant was in receipt on the date of suspension;

Provided that the Government servant shall not be entitled to the compensatory allowance unless the said authority is satisfied that the Government servant continues to meet the expenditure for which they are granted.

(2) No payment under sub-rule (1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, Business, profession or vocation:

Provided, that in the case of a Government servant dismissed or removed from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal, and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods, as the case may be, fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him; where the subsistence and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him.

The aforesaid Rule provides, that where a Government Servant is placed under suspension, he shall be entitled to a subsistence allowance. The word "shall" is mandatory and it is not directory and is not dependent on the whims and fancies of the appointing authority. Suspension is not a punishment and a government employee is entitled to survive during the period when he was under suspension, otherwise it would be in violation of Article 21 of the Constitution of India. Whenever a disciplinary authority suspends an employee, it is the bounden duty of the disciplinary authority to pay suspension allowance and non-payment of the suspension allowance would be in violation of the fundamental rights of the petitioner to live with dignity as provided under Article 21 of the Constitution of India.

Mere pendency of a criminal case does not entitle the disciplinary authority not to release the suspension allowance. The discretion can be exercised by the disciplinary authority with regard to the balance payment of the salary, but no discretion can be exercised for payment of the suspension allowance.

In the light of the aforesaid, the impugned order cannot be sustained and is quashed. The writ petition is allowed and a writ of mandamus is issued commanding the competent authority to release the suspension allowance for the period when the petitioner was under suspension, as per the provision of Rule 53 of the Fundamental Rules, within 8 weeks from the date of the production of a certified copy of this order.

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