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Anil Sharma Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Mar-16-2001

Reported in : 2001(2)AWC1133; [2001(89)FLR749]; (2001)2UPLBEC1325

Judge : S.R. Singh, J.

Acts : Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 - Rules 4(1), (2), (3), (5), (7), (8) and 17; Uttar Pradesh Civil Services (C.C.A.) Rules, 1930 - Rule 49A(1); Prevention of Corruption Act, 1988 - Sections 7 and 13; Constitution of India - Articles 14 and 21

Appeal No. : C.M.W.P. No. 5486 of 2001

Appellant : Anil Sharma

Respondent : State of U.P. and Another

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Rajesh Tandon and ;P.C. Shukla, Advs.

Judgement :

S. R. Singh, J.

1. Impugned herein is the order dated 7.2.2001 (Annexure-3 to the petition) whereby the petitioner-a Reader in the court of Tahsildar Sadar Moradabad, was

placed under suspension with retroactive effect, i.e.. with effect from the date a criminal case, it being Case Crime No. 69 of 2001 under Section 7/13 of the Prevention of Corruption Act, 1988, was registered against him. A perusal of the First Information Report registered in case Crime No. 69 of 2001 at Police Station Kotwali, Moradabad under Section 7/13 of the Prevention of Corruption Act, would evince that the petitioner was caught by the Dy. Superintendent of Police. Anti-corruptton/Crime Investigation Branch Moradabad, flagrante delicto on 2.2.2001 accepting Rs. 1,000 asIllegal gratification as a quit pro quo for getting the restoration application filed in a mutation case in the Court of Tahsildar Sadar decided in favour of the complainant Gulab Singh.

2. The main thrust of the submissions advanced across the bar by Sri Rajesh Tandon, learned Senior Advocate is two-fold : firstly, that the first information report taken in its entirety, does not spell out a prime facie case under Section 7/13 of the Prevention of Corruption Act, 1988 and, therefore, the impugned order of suspension suffers from error of law being an order passed without there being any valid justification ; and secondly, that the impugned suspension comes in the category of a 'deemed suspension' which automatically petered out after the petitioner was enlarged from jail. To enforce this submission, the learned counsel has placed credence on a Full Bench decision of this Court in Chandra Shekhar Saxena v. Director of Education (Basic), U. P. Lucknow and another, 1997 (1) UPLBEC 165, wherein it has been held that the 'deemed suspension should be confined to the period of detention in custody only and it cannot be carried further after release from detention' and if the appointing authority wants to continue the deemed suspension further, a specific order is required to be passed and for passing such order, all the requirements provided in the relevant rules should be taken into account.

3. As regards the first submission, though I forbear myself from pronouncing any opinion upon the truth or otherwise of the indictment against the petitioner. I would not scruple to say that the charge which has been made the basis for suspension of the petitioner, is grave enough to warrant imposition of major penalty, if it is established at the enquiry. In this conspectus, recourse to suspension cannot be branded as unwarranted or unjustified. The first proviso to Rule 4 (1) of the Uttar

Pradesh Government Servants (Discipline and Appeal) Rules, 1999, which envisages that suspension should not be resorted tounless the allegations against the Government servant are so serious that if established at the enquiry, may ordinarily warrant major penalty, is not infringed upon in this case. The charge of graft as spelt out in the impugned order and the factum of arrest on the spot, if established at the enquiry, will be fraught with the consequence of dismissal or removal from service and, therefore, the disciplinary authority cannot be anathematised to have erred in taking recourse to suspension in the fact-situation of the case.

4. The Full Bench was called upon the consider the scope and ambit of the duration of 'deemed suspension' within the meaning of related sub-rules of Rule 49A of the U. P. Civil Services (Classification. Control and Appeal) Rules. 1930. These rules have since been rescinded by Rule 17 of the U. P. Government Servant (Discipline and Appeal) Rules. 1999 (In short 'the Rules'). Sub rules (2), (3), 17) and (8) of Rule 4 of the Rules being germane are quoted below :

'(2) A Government Servant in respect of, or against whom an investigation, inquiry or trial relating to a criminal charge, which is connected with his position as a Government servant or which is likely to embarrass him in the discharge of his duties or which involves moral turpitude, is pending, may, at the discretion of the Appointing Authority or the Authority to whom the power of suspension has been delegated under these rules, be placed under suspension until the termination of all proceedings relating to that charge.

(3) (a) A Government servant shall be deemed to have been placed or, as the case may be, continued to be placed under suspension by an order of the Authority Competent to suspend, 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) The aforesaid Government servant shall, after the release from the custody, inform in writing to the Competent Authority about his detention and may also make representation against the deemed suspension. The Competent Authority shall, after considering the representation in the light of the facts and

circumstances of the case as well as the provisions contained in this rule, pass appropriate order continuing the deemed suspension from the date of release from custody or revoking or modifying it.

* * * * (7) Where a Government Servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise) and any other disciplinary proceeding 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 Government servant shall continue to be under suspension till the termination of all or any of such proceedings.

(8) Any suspension ordered or deemed to have been ordered or to have continue in force under this rule shall continue to remain in force until it is modified or revoked by the Competent Authority.'

The question is as to what is meant by the expression shall be deemed to have been placed or, as the case may be, continued to be placed under suspension by an order of the Authority Competent to suspend' used in clause (a) of sub-rule (3) of Rule 4 of the Rules. 'Deemed suspension' within the meaning of sub-rule (3) (a) of Rule 4, in my opinion, is fictional and takes effect by operation of law irrespective of an order by the competent authority if a Government Servant is 'detained in custody, whether the detention is on criminalcharge or otherwise /or a period exceeding forty eight hours'- The petitioner was detained in custody on 2.2.2001 and he remained in custody until released on bail pursuant to the bail order dated 7.2.2001. He would be thus 'deemed to be under suspension' till he was actually released on ball. By the impugned order passed on 7.2.2001, the petitioner was in fact 'continued to be placed under suspension' and but for the impugned order, the deemed suspension would have lapsed as per Full Bench decision in C. S. Saxena (supra) on the petitioner being released on bail. The impugned order which is covered by the second part of sub-rule (3) (a) of Rule 4 of the Rules would not lapse automatically upon the petitioner being released from custody though it may be revoked, in 'the discretion of the competent authority, under sub-rule (3) (b) of Rule 4 of the Rules after considering the representation, if

any, in the light of the facts and circumstances of the case as well as the provisions contained in the rules. The Full Bench decision, therefore, is unavailing to the petitioner. It could have been pressed into service had he been not 'continued to be placed under suspension' by the order impugned herein.

5. Sub-rules (2) and (3) and Rule 4 of the Rules are almost ipsissima verba with sub-rules (2) (a) and (5) of Rule 49A of the U. P. Civil Services (Classification. Control and Appeal) Rules, 1930 which was up for consideration before the Full Bench in C. S. Saxena's case (supra). These sub-rules are excerpted below :

'(2) a Government servant 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 ; and

(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.

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

(b) Where a Government servant is suspended or is deemed to have been suspended (whether in connection, with any disciplinary proceeding or otherwise), and any other disciplinary proceeding 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 directed that the

Government servant shall continue to be under suspension till the termination of all or any of such proceedings.'

The expression 'shall be deemed to have been placed under suspension' creates a legal fiction and applies to a case of suspension sans an order by the competent authority. It is such a 'deemed suspension' which according to the Full Bench was not liable to be 'carried beyond the period of detention in custody'. The argument raised on the basis of the language used in sub-rule (5) (a) of the U. P. Civil Services (Classification, Control and Appeal) Rules, 1930, that 'deemed suspension .....' shallcontinue to remain in force until it is modified or revoked by the appointing authority and the Government servant shall continue under suspension even after release from the custody' was repelled by the Full Bench in the language recorded as under :

'In our opinion, under sub-rule (5) (a) suspension deemed to have been ordered shall continue to remain in force does not mean that the actual suspension shall also continue after release from custody. However, the deemed suspension shall remain in force for other purposes which may include all the consequences which flow from an order of suspension of a Government servant. From the combined reading of clauses (a) and (b) of sub-rule (2) and sub-rule (5) (a) of Rule 49A, the possible and reasonable conclusion is that deemed suspension shall be operative only for the period of custody and not beyond that. However, it shall remain in force for other purposes, which flow from the order of suspension. In our opinion, such a harmonious interpretation can be safely given to the provisions contained in sub-rule (5) (a) without doing any violence to the purpose and object and the legislative intent behind the aforesaid provisions.'

6. It may usefully be observed that the two questions referred to the Full Bench did not warrant the decision rendered by the Full Bench on the scope and ambit of sub-rule (5) (a) of Rule 49-A of the Civil Services (Classification. Control and Appeal) Rules for the questions, which the Full Bench was called upon to answer, were these :

(i) Whether sub-clause (a) of sub-rule (2) of Rule 49A of the Civil Service (Classification, Control and Appeal) Rules. 1930, as applicable in Uttar Pradesh is

violative of Articles 14 and 21 of the Constitution of India and null and void?'

(ii) Whether the legal fiction envisaged under Rule 49A, (2) (a)or (b) can come into play even in the absence of an order of suspension passed in writing?'

7. The express language employed in sub-rule (8) of Rule 4 of the Rules and in sub-rule (5) of Rule 49A of the rescinded rules, spares no room for doubt that any suspension deemed to have been ordered or to have been continued 'shall continue in force until it is modified or revoked by the Competent Authority'. I am of the firm view that sub-rule (8) of Rule 4 of the U. P. Government Servant (Discipline and Appeal) Rules, 1999, leaves no room for doubt that any suspension ordered or deemed to have been ordered or have continued in force under this rule 'shall continue to remain in force until it is modified or revoked by the Competent Authority.' The phraseology 'shall be deemed to have been placed or, as the case may be continued to be placed under suspension by an order of the authority competent to suspend' occurring in sub-rule (3) of Rule 4, crystallises the effect that the deemed suspension may be continued by an order of the authority competent to suspend the Government servant. Clause (b) of sub-rule (3) of Rule 4, postulates that, 'the aforesaid Government servant shall, after the release from the custody, inform in writing to the competent authority about his detention and may also make representation against the deemed suspension. The competent authority shall, after considering the representation in the light of the facts and circumstances of the case as well as the provisions contained in this rule, pass appropriate order continuing the deemed suspension from the date of release from custody or revoke or modify it.'

8. The Full Bench, though not called upon to decide whether 'deemed suspension' will automatically lapse, it has considered and answered the question. The FullBench has not expatiated upon what are the 'other purposes' for which a 'deemed suspension' shall remain in force while 'actual suspension' will not. In my humble opinion, there seems serious incongruity in the observations in para 22 of the report. I would have referred the case to a larger Bench setting afoot the question for reconsideration as to whether, in view of C. S. Saxena's case (supra), a 'deemed suspension' would automatically lapse on the Government Servant

being released from detention even in the face of an express stipulation to the contrary contained in sub-rule (8) of Rule 4 of the Rules and in sub-rule (5) (a) of Rule 49A of the rescinded Rules but the present is not a case of deemed suspension merely because it has been given into effect from the date of arrest. Here, specific order of suspension has been passed and although the competent authority may be oblivious of the fact that the petitioner was ordered to be released on ball on the date the impugned order was passed, yet it can be very well said to signify that the petitioner has been 'continued to be placed under suspension by an order of authority competent to suspend within the meaning of clause (a) sub-rule (3) of Rule 4. The order does not suffer from the blemish of any illegality. The petitioner is, however, at liberty to make a representation as envisaged in clause (b) of sub-rule (3) of Rule 4, seeking revocation of the suspension order. In case, any representation is filed, the competent authority shall, after going into the tenability of the representation in the light of the facts and circumstances of the case, as well as the provisions embodied in the rules, pass appropriate order continuing the suspension from the date of release from custody or revoke or modify it.

9. As a result of foregoing discussion, the petition is dismissed subject to the above observations.

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