

Ranjit Kumar Vs. State of Jharkhand and ors.

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Court : Jharkhand

Decided On : Feb-07-2003

Reported in : [2003(97)FLR535]; [2003(1)JCR611(Jhr)]

Judge : S.J. Mukhopadhaya, J.

Acts : Civil Services (Classification, Control and Appeal) Rules, 1930 - Rule 49A; Service Law; [Constitution of India](#) - Article 226

Appeal No. : W.P. (S) No. 5355 of 2002

Appellant : Ranjit Kumar

Respondent : State of Jharkhand and ors.

Advocate for Def. : R.R. Mishra, Adv.

Advocate for Pet/Ap. : P.P.N. Roy and; Praveen Kumar, Adv.

Judgement :

ORDER

S.J. Mukhopadhaya, J.

1. The petitioner has challenged the Order No. 4/Nigrani/ 378/2001 dated 17th September, 2001 issued by the Registrar. Cooperative Society, Jharkhand, Ranchi, whereby and where-under, he was placed under suspension, he having

taken in custody on 4th September, 2001, in connection with G.R. Case No. 768/2000. The effect of the order of suspension given from retrospective date when the petitioner was taken in custody.

2. The case of the petitioner is that he having suspended as per Rule 99 of the Bihar Service Code having taken in custody, after his release from jail custody, in absence of any order of suspension, under Rule 100 of the Bihar Service Code, the Respondents cannot force the petitioner to continue under suspension.

3. It appears that a complaint case was filed by one Budhna Bhagat against petitioner and two others in the Court of learned C.J.M., Gumla, vide Complaint Case No. 164/2000 under Section 419/409/ 467/468 and 471 of the IPC. It was ordered to institute and investigate case under Section 156(3), Cr PC and, accordingly, FIR was lodged vide Basia P.S. Case No. 71/2000 corresponding to G.R. Case No, 768/2000 under the aforesaid provisions. The petitioner was taken in custody on 4th September, 2001 and subsequently released from jail custody on 12th December, 2001 having granted bail by Court's order in B.A. No. 8148/2001. Thereafter, the petitioner stated to have given joining in the Office of the District Cooperative Officer, Gumla on 30th December, 2001 but it was not accepted as, in the meantime, the impugned order of suspension was issued on 17th September, 2001 w.e.f. 4th September, 2001 i.e. from the date the petitioner was taken in custody.

4. The respondents in their counter affidavit though alleged defalcation of certain amount by petitioner, pleaded that the petitioner gave joining on 16th January, 2003 after a lapse of one year, therefore, the departmental proceeding was initiated against him. Charge stated to have already been framed which they intend to serve on the petitioner very shortly.

The effect of order of suspension passed under Rules 99 and 100 of Bihar Service Code fell for consideration before the Patna High Court from time to time.

In the case of Satya Narayan Prasad Srivastava v. State of Bihar and Ors.,1978 BBCJ 208, a Division Bench of Patna High Court held that Rule 99 ceases to operate after release from custody. Separate order under Rule 100 can be issued

but such power cannot be exercised retrospectively.

Similar view was taken by the Patna High Court in the case of Sidhinath Jha v. State of Bihar, 1988 PLJR 1129, and in the case of Vidya Singh v. State of Bihar, 1994 (2) PLJR 746.

In another case of Dr. Kapil Singh v. State of Bihar, 1982 BBCJ 332, the Court noticed that the order of suspension was not under Rule 99. It also noticed Rule 49-A of the Civil Services (Classification, Control & Appeal) Rules, 1930, whereunder a Government servant can be suspended not only when a departmental proceeding is pending but also when it is under contemplation, the Court held that under Sub-rule (5)(a) of Rule 49-A suspension continues until modified. Release on bail also does not amount to revocation in view of Sub-rule (2A) of Rule 49-A. The rules are applicable to all the categories of Government servants.

5. The petitioner is a Co-operative Extension Officer as is evident from order of suspension dated 17th September, 2001. The Civil Services (Classification, Control & Appeal) Rules, 1930 is also applicable in his case.

The respondents have not cited any provision of law such as Rule 99 or Rule 100 of Bihar Service Code or Rule 49-A of the Civil Services (Classification, Control & Appeal) Rules, 1930 for placing the petitioner under suspension vide order dated 17th September, 2001.

In this background, there being power under Rule 49-A to suspend a Government servant if he/she is taken in custody or if any criminal case is instituted or in contemplation or pendency of a departmental proceeding. On release on bail, the petitioner cannot claim automatic revocation of suspension as held by the Division Bench of Patna High Court in the case of Dr. Kapil Singh v. State of Bihar and Ors., 1982 BBCJ 332.

6. However, taking into consideration that the petitioner is under suspension for about 1-1/2 years and the respondents contemplate to initiate a departmental proceeding, as stated in their counter affidavit, in the interest of justice, the

respondents are directed to initiate departmental proceeding, if they so choose and to conclude it on an early date, preferably within four months from the date of receipt/production of a copy of this order.

7. If the departmental proceeding is not initiated and final order is not passed within four months, as ordered above, the order of suspension shall stand revoked on completion of such four months' period.

8. The petitioner will produce a copy of this order before the Registrar, Co-operative Society, Jharkhand, Ranchi.

9. The writ petition stands disposed of with the aforesaid observations and directions.

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