
(2001) 04 AP CK 0054
In the Andhra Pradesh High Court
Case No : Writ Petition No. 4712 of 2001

CC

APPELLANT

Vs

A.P. Administrative Tribunal and Others

RESPONDENT

Date of Decision : 10-04-2001

Acts Referred:

Andhra Pradesh Village Administrative Officers Service Rules, 1990 — Rule 47(5)

Citation : (2001) 2 ALT 701

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : M. Surendar Rao, for the Appellant; G.P. for Services-I, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—The question which arises for consideration is as to whether prima facie the provisions of Rule 47 of the Andhra Pradesh Village Administrative Officers Service Rules, 1990 would be ultra vires having regard to the fact that there exists no provision for grant of subsistence allowance while placing the employee under suspension.

2. The petitioner herein is aggrieved by an order dated 20.2.2001 passed by the A.P. Administrative Tribunal in O.A.No.5 of 2001 whereby and whereunder the application filed by the petitioner herein questioning the order of suspension dated 16.11.2000 and the order of the appellate authority dated 29.11.2000, was dismissed.

3. The petitioner has at all and material times working as a village administrative officer. On an allegation that he gave a false nativity certificate to his daughter he had been placed under suspension by an order of the Revenue Divisional Officer dated 4.11.2000. Upon being questioned, the said order was set aside by the A.P. Administrative Tribunal in O.A.No.74 of 2000 on the ground that the said authority had no jurisdiction. Thereafter a criminal case u/s 420 of the Indian

Penal Code was filed against him at the instance of some political activists which was registered as crime No.97 of 2000. In connection with the said case the petitioner allegedly was detained in custody for a period of more than 48 hours. Thereafter the impugned order of suspension dated 16.11.2000 was passed which reads thus:

" The Mandal Revenue Officer, Khajipet in the reference read above reported that Sri K. Bala Subba Reddy, Village Administrative Officer, Thavvaripalli village was arrested on 12.11.2000 at 4.00 pm and registered the case in Crime No.37/2000 u/s 420 IPC sent for remand on 13.11.2000 at 4.35 pm and released on bail on 14.11.2000 at 6.45 pm on the charge that he has produced fabricated certificates for his appointment and that he has issued a bogus nativity certificate to his daughter Smt K. Sulochanamma and he was under detention for 50 hours and 45 minutes. As per the provision under rule 47(1) of A.P. Village Administrative Officers Services Rule, 1990 where is detained in custody whether on criminal charge or otherwise for a period exceeding 48 hours he shall be deemed to have been suspended with effect from a date of detention by an order of appointing authority and shall remain under suspension until further orders. As the above Village Administrative Officer was in detention beyond 48 hours, it is not desirable to continue him in office in the interest of public and natural justice.

Therefore, Sri K. Bala Subba Reddy, Village Administrative Officer, Thavvaripalli village of Khajipet is placed under suspension pending investigation u/r 47(1) of A.P.V.A.Os Service Rules, 1990 and Revenue Divisional Officer, Cuddapah is appointed as Enquiry Officer u/r 48(4) of A.P.V.A.Os Service Rules, 1990. He is directed to submit his enquiry report in one month without fail."

4. Rule 47 of the Rules reads thus:

"Suspension pending enquiry:- (1) An Officer competent to suspend a Village Administrative Officer as a measure of punishment may also place under suspension such Village Administrative Officer from service pending investigation or enquiry into grave charges, or where a case against a Village Administrative Officer in respect of any criminal offense is under investigation or trial, if he is satisfied that the continuance in Office of the Village Administrative Officer is detrimental to public interest or administration and he shall make a record in writing of his reasons for so doing and a copy of the same shall be furnished to the Village Administrative Officer concerned:

Provided that where a Village Administrative Officer is detained in custody, whether on a criminal charge or otherwise for a period exceeding 48 hours, he shall be deemed to have been suspended with effect from the date of detention by an order of the appointing authority and shall remain under suspension until further orders:

Provided further that, where a Village Administrative Officer has been suspended and the investigation has not been completed or the action proposed to be taken

in regard to him has not been completed within a period of suspension which shall not exceed six months, the Village Administrative Officer shall be deemed to have been reinstated to duty unless the authority, who ordered such suspension obtains the orders of the Head of the Department to continue the said Village Administrative Officer under suspension for a further period of six months. In no case shall such an interim suspension be in force for a period exceeding one year except in those where criminal cases are pending trial and this period of one year of suspension shall not include the period for disposal of Appeal and Revision.

(2) ...

(3) ...

(4) ...

(5) During the period of suspension, the Village Administrative Officer is not entitled to any remuneration or subsistence allowance."

5. An employee in contemplation of or during pendency of a departmental proceedings can be placed under suspension. A provision for a deemed suspension when an employee undergoes detention for a period of more than 48 hours is also not unconstitutional. However, when a person is placed under suspension, subsistence allowance must be paid. If subsistence allowance is not paid, the same would be violative of right to life as envisaged under Article 21 of the Constitution of India. Not only there must exist a provision for payment of subsistence allowance but such subsistence allowance must be adequate so that the employee does not starve.

6. Such an order of suspension which would not carry any subsistence allowance can only be passed by way of punishment. In *State of Maharashtra Vs. Chandrabhan Tale*, the apex Court has held that payment of a sum of Rs.1/- by way of subsistence allowance would be unconstitutional. Reference in this connection may also be made to *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another*, .

In *The District Manager, Andhra Pradesh State Road Transport Corporation, Bhimavaram Vs. Labour Court, Guntur and Another*, dealing with a case u/s 33 of the Industrial Disputes Act, 1947 it has been held:

"The creation of the master-and-servant relationship is initially the function of a contract. But the continuance of that contractual relationship together with the incidents thereof comes to be governed by law. Regulation 18 provides for the power to pass interim suspension. But interim suspension is not a punishment. Regulation 20 (3) which denied under certain circumstances the right to subsistence allowance is operative only during the pendency of the suspension order. The suspension order gets terminated with the order of acquittal. In the order of acquittal the reason of the fact that interim suspension cannot legally be a measure of punishment flows the right of the employee to full remuneration for the period of his suspension. This is part of the right to work which is protected

by Articles 14, 16 and 21 of our Constitution. The Legislature is therefore not competent to make any law abridging this basic right."

7. Relying upon various decisions, in *RAM LAKHAN v PRESIDING OFFICER (S.C.)*, 2000 (2) SLR 177 it has been reiterated that right to subsistence allowance is a right protected under Article 21 of the Constitution of India and held:

".... In such a situation, if the Management makes an application u/s 33(1) of the Industrial Disputes Act for permission of the Tribunal to dismiss such employee from service, the Management can, pending disposal of his application u/s 33(1), place that employee under suspension. Once the employee is placed under suspension, the Management cannot take any work from the suspended employee nor can the employee claim full salary from the Management. But the Management has to pay the Subsistence Allowance to the employee so that he may sustain himself till the application u/s 33(1) is finally disposed of."

8. In *JAGDAMBA PRASAD SHUKLA v STATE OF U.P.*, 2000 (5) SLR 164 it was held that the subsistence allowance is not a bounty.

9. Keeping in view the aforementioned authoritative pronouncements there cannot be any doubt that Rule 47 aforementioned is unconstitutional as by reason of sub-rule (5) thereof no subsistence allowance can be paid. It is also not a case where the provisions of the statute can be read up or read down so as to sustain its constitutionality. In *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, it has been held:

"On a proper consideration of the cases cited hereinbefore as well as the observations of Seervai. in his book "Constitutional Law of India and also the meaning that has been given in the Australian Federal Constitutional Law by Colin Howard, it is clear and apparent that Where any term has been used in the Act which per se seems to be without jurisdiction but can be read down in order to make it constitutionally valid by, separating and excluding the part which is invalid or by interpreting the word in such a fashion in order to make it constitutionally valid and within jurisdiction of the legislature which passed the said enactment by reading down the provisions of the Act. This, however, does not under any circumstances mean that where the plain and literal meaning that follows from a bare reading of the provisions of the Act, Rule or Regulation that it confers arbitrary, unanalyzed, unbridled, unrestricted power to terminate the services of a permanent employee without recording any reasons for the same and without adhering to the principles of natural justice and equality before the law as envisaged in Art. 14 of the Constitution, cannot be read down to save the said provision from constitutional invalidity by bringing or adding words in the said legislation such as saying that it implies that reasons for the order of termination have to be recorded. In interpreting the provisions of an Act, it is not permissible where the plain language of the provision gives a clear and unambiguous meaning can be interpreted by reading down and presuming certain expressions in order to save it from constitutional invalidity"

10. It has further been held thus:

".... The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them."

11. Furthermore, by reason of legal fiction an employee can be placed under suspension automatically only in the event of his being put in custody for a period of more than 48 hours. But when an employee is placed under suspension in contemplation of a departmental proceedings during pendency thereof, the competent authority therefore must apply its mind to the requirements of law and pass an appropriate order keeping in view the facts and circumstances of each case. Hence, the impugned order is set aside and the Writ Petition is allowed. There shall be no order as to costs.