

(1993) 02 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 39512 of 1992

Chandrama Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 23-02-1993

Acts Referred:

Uttar Pradesh Civil Services (Classification, Control and Appeal) Rules, 1930 — Rule 49A, 49A(2)

Citation : (1993) 2 AWC 1262

Hon'ble Judges : R.A. Sharma, J

Bench : Single Bench

Advocate : Sankatha Rai, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—Petitioner claims to be an Accountant working in Agriculture Department of Government of U.P. A first information report was lodged on 14th June, 1992, implicating the Petitioner in a murder case, in connection with which he surrendered before the Chief Judicial Magistrate on 18-6-1992 and was sent to Jail, as his bail application was rejected by learned Chief Judicial Magistrate. Ultimately he was released on bail by this Court on 13th August, 1992. Petitioner, as such, remained in the custody in connection with the aforesaid criminal case from 18th June, 1992 to 25th August 1992, on which date he was released in pursuance of the order of bail dated 13th August, 1992, passed by this Court. Petitioner is said to have joined his duties in the Department on 26th August, 1992. It has been stated that the Plant Protection Officer permitted the Petitioner to Join his duties on 26-8-92 on which date the said officer submitted report to the Director of Agriculture for necessary order in connection with the working of the Petitioner in the Department, after his release on bail. The Director of Agriculture, vide order dated 8th October, 1992, passed an order of suspension against the Petitioner on the ground that he has been in custody for more than 48 hours It is against this order that this writ petition has been filed.

2. I have heard the learned Counsel for the Petitioner and learned Standing Counsel.

3. The contention of the learned Counsel for the Petitioner is that the Petitioner could be suspended under Rule 49-A(2) of U.P. Civil Services (Classification, Control and Appeal) Rules, for the period during which he was in its custody and it is not open to the Respondent to suspend him after he was released on bail and has been permitted to work in the Department for about two months. Learned Standing Counsel has opposed the above submission. Rule 49-A(2) which provides for suspension of a Government servant in the case of his detention or conviction, being relevant, is reproduced below;

49-A (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 the 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 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.

4. Under Rule 49-A(2) the suspension is automatic if the servant has been detained for a period exceeding 48 hours on a criminal charge or otherwise or he has been convicted for an offence where he is sentenced to a term exceeding 48 hours and is not forthwith dismissed or removal consequent to such conviction. Petitioner has not been convicted and his case falls under Rule 49 A(2)(a). The controversy raised by the learned Counsel for the Petitioner is squarely covered by a decision of Division Bench of this Court in the case of Hari Sharker Dwivedi v. Board of Revenue 1986 AWC 1118, wherein it was laid down that a government servant who has remained in custody for a period exceeding 48 hours has to be treated to have been placed under suspension by an order of the appointing authority under Rule 49-A(2)(a), even if in fact, such an order has not been passed, as no express order is required or is contemplated in view of fiction created by the said provision. It was further held therein that Sub-rule (2) of Rule 49-A not only contemplates immediate suspension but it also contemplates continued suspension. Relevant extracts from the above decision are reproduced below;

The contention that the deeming clause will apply only where there is an order of

suspension passed by the appointing authority cannot be accepted, as Clause (2) clearly lays down that a government servant shall be "deemed" to have been placed under suspension by an order of the appointing authority. The fictional suspension has two aspects. Not only that a government servant is to be deemed to have been placed under suspension, the further fiction is that he shall be deemed to have been placed under suspension by an order of the appointing authority

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Having regard to the principles enunciated above, a Government servant, who has been detained in custody for a period exceeding 48 hours, has to be treated to have been placed under suspension by an order passed by the appointing authority although, in fact, such an order has not been passed.

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Moreover, Sub-rule (2) of Rule 49-A not only contemplates immediate suspension, It also contemplates "continued suspension". The fiction created by Sub-rule (2) is that the Government servant, who has been detained in custody for more than 48 hours shall be treated not only to have been initially placed under suspension by an order of the appointing authority, he shall be deemed to be under continued suspension. The contention of the Petitioner that the order of suspension "deemed" to have been passed under this Sub-rule shall lapse on his being released from detention, cannot, therefore, be accepted as he shall be treated to be under continued suspension.

5. This Court has also laid down in the same case that as Clause (2) of Rule 49-A permits fictional suspension the fictional suspension can be terminated by the employer at any stage.

6. As the Petitioner has been in the custody on criminal charge for more than 48 hours the fiction created by Rule 49-A (2)(a) is attracted and the Petitioner shall be deemed to have been suspended by the appointing authority. The decision of this Court In the case of Hari Mohan Shukia v. Basic Shiksha Adhikari 1984 UP LB EC 562, on which reliance has been placed by learned Counsel for the Petitioner, is not any authority for the proposition raised by learned Counsel for Petitioner, in as much as it deals with case under Rule 49 A(2)(b) and not (2)(a).

7. Relying on a decision of Division Bench of this Court in the case of Kailash Singh v. Detector General (Special Appeal No. 303 of 1992, decided on 21-7-1992, of which I was a member, learned Counsel for the Petitioner has submitted that as the Petitioner has been permitted to join the Department after release on bail and has been permitted to work for about two months, it is not open to the Department to suspend him thereafter. It is not possible to agree with the learned Counsel. In the case of Kailash Singh (supra) after the Appellant, therein, was released on bail he was allowed to join his duties and continued to function for about six months and thereafter the order of his

suspension was passed. This Court, in view of the facts and circumstances of that case, held that as the employer, therein, did not invoke nor did it intent to invoke deeming provisions of Rule 49-A(2) the suspension was not Justified. As held by the Division Bench of this Court in the case of Hari Shanker Dwivedi (supra) it is open to the employer (State) to revoke fictional suspension at any stage, Employer is at liberty to withdraw the fictional suspension. Such withdrawal can be express order or can be inferred by necessary implication. As the State, in the case of Kailash Singh (supra), permitted the Appellant therein to work for six months, this Court assumed that the deeming provisions were not invoked in that case. In the instant case the position is different. The Petitioner, herein, has worked for about two months. That is not very substantial period so as to draw presumption that deeming provisions of Clause (2) of Rule 49-A were not invoked or were given-up. After the employee is released on bail and joins his duty it always takes time in Government department to communicate the release to the higher authorities and wait for orders. Period of two months cannot be said to be such a long period so as to warrant presumption of non invoking of deeming provisions of Clause (2) of Rule 49-A. Writ petition, as such lacks merit and is liable to be dismissed It may, however, be observed that as the Petitioner has worked for about two months it is open to him to approach the higher authorities for revoking fictional suspension and if he makes such a representation it is for the authority concerned to take a decision after taking into consideration of facts and circumstances of the case

8. The writ petition is accordingly dismissed.