
(1978) 08 MAD CK 0011
In the Madras High Court

Dr. Balaguru

APPELLANT

Vs

The Government of Tamil Nadu and Another

RESPONDENT

Date of Decision : 17-08-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1979) 1 MLJ 4

Hon'ble Judges : V. Ramaswami, J

Bench : Division Bench

Judgement

V. Ramaswami, J.—In response to the notice of motion issued to the Government, a note and the file concerning G.O. Nos. 1087 and

1088, dated 22nd June, 1978, are produced by the Government Pleader. This file and the note show that a petition containing certain allegations

against the petitioner herein was received by the Director of Animal Husbandry. But the Director forwarded the petition to the Government with a

request to entrust the matter to some other senior high-level officer of the Government for enquiry on the ground that the petitioner had been

disputing the bona fides of the Director on earlier occasions and therefore he did not want to deal with that matter. On receipt of the petition, the

Government forwarded the matter to the Director of Vigilance and Anti-corruption for a discreet enquiry and report. On receipt of the report of

the Director of Vigilance and Anti-corruption in which the Director has suggested that a detailed enquiry is called for, the concurrence of the

Vigilance Commissioner was sought for and obtained. The Vigilance Commissioner also appears to have stated that since the allegations levelled

against the petitioner are serious enough, the Government could consider the question of suspending the officer pending a detailed enquiry. First the

Government is stated to have considered the question of transferring the official to a different station. But ultimately, the Government came to the

conclusion that since an enquiry into grave charges is contemplated, the officer had to be placed under suspension and accordingly by the

impugned order, the petitioner was placed under suspension pending enquiry into the grave charges contemplated.

2. The learned Counsel for the petitioner strenuously contended that there is no inherent power of suspension as such and the power of suspension

could be traced only to Rule 17(e) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules and that rule so far as it is relevant,

reads as follows:

17 (e)(1). A member of a service may be placed under suspension from service, where (i) an enquiry into grave charges against him is

contemplated, or is pending.

According to the learned Counsel unless a definite charge which is considered to be very grave is communicated to the petitioner, the power of

suspension could not be invoked. The learned Counsel pointed out that the word ""charges"" itself shows that there is a definiteness of the charge

against him and that charge should have been communicated. It is true that the words ""an enquiry into grave charges"" qualifies both the words ""is

contemplated"" and ""is pending"" thereby suggesting that the word ""charges"" has a definite meaning In that place, because if an enquiry into grave

charges is said to be pending, it would only mean that the charges had already been communicated to the petitioner. The same meaning is sought to

be given even in the case of an enquiry that is contemplated. Having given my serious consideration, I am of the view that this interpretation of the

rule is not acceptable. If a charge memo, had to be served on the officer before the power of suspension is invoked, then the enquiry itself would

have been initiated and it would be pending. Therefore we will not be giving any meaning to the words ""is Contemplated"", if the charge memo, is to

be served on the officer. The rule itself, though is not happily worded, is clear enough to show that when an enquiry into grave charges is

contemplated, the power of suspension could be invoked. In this case, as already stated, the petition received was forwarded to the Director of

Vigilance and Anti-Corruption and after an enquiry, he submitted his report that a

detailed enquiry is called for and for initiating a detailed enquiry, the concurrence of the Vigilance Commissioner was also obtained. In those circumstances, an enquiry into grave charges against the petitioner can be said to be in contemplation of the Government enabling the Government to suspend the officer pending such contemplated enquiry.

3. The decision of the Supreme Court in P.R. Nayak Vs. Union of India (UOI), relied on by the learned Counsel for the petitioner dealt with the power of suspension under Rule 3 of the AH India Services (Discipline and Appeal) Rules, 1969. The wording, in that rule is clearly different from those in Rule 17(e) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. Rule 3(1) of the All India Services (Discipline and Appeal) Rules, 1969, in so far as it is relevant is as follows:

3. Suspension during disciplinary proceedings - (1) If, having regard to the nature of the charges and the circumstances in any case, the Government which initiates any disciplinary proceedings is satisfied that it is necessary or desirable to place under suspension a member of the Service against whom such proceedings are started, that Government may (a) If the member of the service is serving under it, pass an order placing him under suspension, or (b) if the member of the Service is serving under another Government request that Government to place him under suspension, pending the conclusion of the inquiry and the passing of the final order in the case.

The later portion of the rule shows that the Government could place the officer under suspension ""pending the conclusion of the inquiry and the passing of the final order in the case"". Even in the beginning of the rule, it is mentioned as ""having regard to the nature of the charges"". It is in these circumstances and having regard to Sub-rules (3), (4), (5), (6) and (7), the Supreme Court held that the rule does not contemplate or suggest that suspension can be ordered merely when disciplinary proceedings is contemplated. The decision therefore is of no application to the interpretation of Rule 17(e) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules where it is provided specifically that an officer may be placed under suspension where an enquiry is contemplated or is pending. In fact, in the decision cited supra, the Supreme Court has pointed out the difference in language in Rule 12 of the Central Civil Services (Classification,

Control and Appeal) Rules, 1957, where we find a provision for suspension of the Government servant concerned when, inter alia ""a disciplinary proceeding against him is contemplated or is pending"" and the language used in Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969, and observed as follows:

In our view, the difference in the language used in the relevant rules dealing with suspension in the two sets of rules, namely, Central Civil Services

(Classification, Control and Appeal) Rules and All India Services (Discipline and Appeal) Rules may not be considered to be wholly irrelevant and

unhelpful for discovering the intention of the draftsman in adopting different phraseology while dealing with the same subject of suspension of

Government servants of different categories.

When once the power is vested in the Government, since suspension pending enquiry itself cannot be considered to be a punishment, this Court

cannot interfere with the order of suspension exercising jurisdiction under Article 226 of the Constitution of India. The writ petition therefore fails

and the same is dismissed. There will be no order as to costs.

4. It is made clear that none of the observations made in this order shall prejudice the petitioner in the enquiry pending against him.