

(1997) 08 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 924/88

Ghulam Qadir Lone

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 05-08-1997

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 31

Citation : (1997) SriLJ 282

Hon'ble Judges : R.C.Gandhi, J

Bench : Single Bench

Advocate : Majid Wani , G.Mustaffa, Advocates appearing for the Parties

Judgement

1. The petitioner has been placed under suspension by the director, Food and Supplies, Srinagar, Respondent No.2, under his Order NO.

DESK/ADM/x461 dated 29.9.1984, contemplating an inquiry into the conduct of the petitioner having found involved in misappropriation and

shortage of Foodgrains. The petitioner seeks writ of certiorari for quashing his suspension and a writ of mandamus of his reinstatement.

2. The allegation against the petitioner is that he has missappropriated the amount by preparing false remittance and has caused shortage in food

grains which were noticed on reconciliat6n of accounts. The shortages pointed out are:

1. Rice: Qtls. 401.41000

2. Wheat: Qtls. 00.1.000

3. E.Rags: 1852.

3. For these accusations an FIR No. 144/84 under section 409/RPC was also registered in police station Kupwara involving the petitioner. The

Superintendent of police Kupwara has closed the case as not admitted, on the plea that he has not been extended cooperation by the department

in the investigation of the offences.

4. The respondents have filed the counter affidavit, stating therein that the departmental inquiry against the petitioner has been deferred, awaiting

the result of the police investigation.

5. I have heard Learned Counsel for the parties, perused the record and other documentary evidence on the file. It is an admitted case of the

parties that the inquiry has not so far been completed and the petitioner is still under suspension.

6. The respondent has the power to place the Government servant under suspension provided an inquiry is contemplated into his conduct. Rule 31

of J&K Civil Service (Classification, Control and Appeal) Rules envisages such a power with the respondents which also places some restrictions

which are contained in Instruction 2 attached to the said rule, which reads as:

Government Instructions (2) Competent authorities should endeavour to have charge sheet filed in court, in case of prosecution or served on the

government servant, in case of departmental proceedings within three months from the date of suspension. Cases in which this is not possible such

authorities will report to the next higher authority, explaining the reason for delay. The cases of Government servants under suspension should be

reviewed by the competent authority periodically to see that steps could be taken to expedite the progress of the court trial/departmental

proceedings so as to reduce the periods of suspension to barest minimum.

7. The suspension of the petitioner apparently is in breach of the Government instructions. It was obligatory upon the respondents to review the

case of the petitioner and to expedite progress of the departmental proceedings in order to reduce the period of suspension to the barest minimum.

The petitioner since 1984 is under suspension and the respondents have not so far completed the inquiry. Such state of affairs does not justify on

the part of the respondents that till the inquiry is completed the petitioner will have to remain under suspension. For the inaction on the part of the

respondents, the petitioner cannot be penalized and made to suffer. There appears to be no justification on the part of the respondents to keep the

petitioner under suspension for years together. The suspension of the petitioner

is in breach of Government instructions attached to Rule 31 of J&K

Civil Service (Classification, Control and Appeal) Rules of 1956 and need to be interfered.

8. For the foregoing reasons the petition is allowed. The order impugned dated 29.9.1984 is set aside to the extent the petitioner has been placed

under suspension. The respondents are directed to reinstate the petitioner. However they are at liberty to conduct departmental inquiry in respect

of the allegations against the petitioner and accomplish it within a reasonable time.