
(2006) 08 SHI CK 0010
In the High Court Of Himachal Pradesh

Himachal Ayurvedic Association	Vs	APPELLANT
State of H.P. and Others		RESPONDENT

Date of Decision : 25-08-2006

Acts Referred:

Citation : (2006) 3 ShimLC 117

Hon'ble Judges : V.K. Gupta, C.J.; Surjit Singh, J

Bench : Division Bench

Judgement

V.K. Gupta, C.J.—In compliance to our order dated 24th July, 2006, Secretary (Ayurveda), Government of Himachal Pradesh, has filed his affidavit, which we have perused.

2. We have heard Mr. Goel, learned Counsel appearing for the petitioner, Mr. M.S. Chandel, learned Advocate General appearing for respondents No. 1 and 2, and Mr. Shrawan Dogra, learned Counsel appearing for respondent No. 3.

3. At this stage, we are concerned only with the issue of the deemed suspension of respondent No. 3 owing to the fact that he was in detention (police custody as well as on judicial remand) for a period of more than 48 hours, between 8th October to 12th October, 2004. Relevant facts of the case have been taken note of in our order dated 24th July, 2006. The affidavit of the Secretary (Ayurveda) also informs us that respondent No. 3 did remain in custody for more than 48 hours during October, 2004 but the State Government came to know about this fact only in March, 2006 after an inquiry had been conducted into this matter. The stand of respondents No. 1 and 2 in the aforesaid affidavit of Secretary (Ayurveda) is that since the Government came to know about the detention of respondent No. 3 only in March, 2006, they did not issue or pass any formal order of deemed suspension because the petitioner had all along, despite his having been detained in custody for more than 48 hours in October, 2004, been working in the Department of Ayurveda. The affidavit also says that respondent No. 3 has been charge-sheeted under Rule 14 of CCS (CCA) Rule, 1965 for imposition of a major penalty on the ground that he concealed the fact of his

having been detained in custody for more than 48 hours. Reply to the charge-sheet, according to the affidavit, has been filed by respondent No. 3, which has been shown to us today by Mr. Chandel from the official records. A perusal of the reply reveals that respondent No. 3 admits to his having been detained in custody for more than 48 hours even though he has taken a specious plea in the reply that for major part of his detention he was not in police station but was in transit while he was performing journey between Rajpura to Chamba and Chamba to Rajpura. The plea is specious because whether a detainee is in transit, or he is in hospital, the fact remains that he continues to be in custody and detention.

4. For ready reference, paras 5 and 6 of the aforesaid affidavit of the Secretary (Ayurveda) are produced hereinbelow, which reveal the thinking on the part of respondents No. 1 and 2 about their decision in not having issued or passed a formal order of deemed suspension of respondent No. 3. Paras 5 and 6 read thus:

5. No orders have been passed under Rules 10(5) and 10(6) of the CCS (CCA) Rules. A related issue in the instant case is whether an order under Rule 10(5), can be passed at this juncture by revoking his deemed suspension retrospectively, as he has always been working in the Department of Ayurveda, since the date of detention.

6. When the facts of his detention in custody came to the knowledge of the Government, respondent No. 3 has been charge-sheeted under Rule 14 of CCS (CCA) Rules, 1965 (Major Penalty) for concealing the facts of his custody, gross misconduct and violation of the provisions of Rule 3 of CCS (Conduct) Rules, 1964. The reply of the charges framed against respondent No. 3 has also been received. The respondent No. 3 has submitted in the reply that maximum time w.e.f. 9.10.2004 to 11.10.2004 (detention period) went in journey i.e. from Rajpura to Chamba and back Rajpura, i.e. not in a police station. In spite of his reply, the enquiry is being initiated by appointing an Inquiry Officer. On the receipt of the enquiry report necessary action will be initiated against respondent No. 3.

5. Sub-rule (2) of Rule 10 of 1965 Rules, reads thus:

10(2) A Government servant shall be deemed to have been placed under suspension by an order of Appointing Authority-

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(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 or compulsorily retired consequent to such conviction.

6. Rules 5, 6 and 7 of Rule 10 of 1965 Rules relate to the stages, and the

procedure to be followed after a Government servant has been placed under suspension, including a deemed suspension under Sub-rule (2). These three sub-rules read thus:

(5) (a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority which is competent to modify or revoke the suspension before expiry of ninety days from the date of order of suspension on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

(7) Notwithstanding anything contained in Sub-rule (5) (a), an order of suspension made or deemed to have been made under Sub-rule (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days.

7. On a plain reading of Sub-rule (2), it clearly transpires that on the very event or the fact of the Government servant having been detained in custody for more than 48 hours on a criminal charge or otherwise taking place, he shall be deemed to have been placed under suspension. Of course the fact of such deemed suspension has to be endorsed and recorded into writing by the passing of a formal order of deemed suspension and it is manifestly clear from a bare reading of the opening part of main Sub-rule (2), which does say of the Appointing Authority passing an order of deemed suspension by using the expression "by an order of the Appointing Authority...". Clause (a) of Sub-rule (2) also suggests clearly and unambiguously that the deemed suspension shall be effective from the date of the detention of the Government servant.

8. Here thus is a situation where, as per the stand taken by respondents No. 1

and 2, respondent No. 3 despite his having been in detention for more than 48 hours did not intimate the fact of his detention to the State Government or the Appointing Authority or any other Competent Authority. As per the version of respondents No. 1 and 2, they learnt about this fact only in March, 2006 when, based upon an inquiry this fact came to their notice. We do not at all agree with the stand taken by the State Government or the contention of the learned Advocate General that a Government servant cannot be or should not be considered under deemed suspension if a sufficient time gap has occurred between his having been detained and the Government coming to know of this fact. There can be situations and cases galore where Appointing Authority or any other Competent Authority actually does not come to know about the fact of the Government servant having been detained in custody for more than 48 hours because the Government servant may not actually inform the Competent Authority of his having been in custody clearly with a view to evade suspension.

9. Government cannot put premium to the aforesaid act of the Government servant. The legal position is absolutely clear. A plain reading of Sub-rule (2)(a) leaves no manner of doubt that the Government servant has to be considered having placed under deemed suspension if he has been detained for more than 48 hours in custody, irrespective of whether the Government comes to know about this fact immediately after the event of custody occurs or thereafter, even if the time gap is unduly long, say a year or two years or even more. No one can be allowed to circumvent law and thus succeed in evading the rigours of deemed suspension by concealing the fact of detention from the Appointing Authority or any other Competent Authority in the Government.

10. Sub-rule (2)(a) enjoins upon the Government and/or the Appointing Authority or the Competent Authority a statutory duty of passing an order of deemed suspension in the aforesaid circumstances. If the Government or the Appointing Authority/Competent Authority does not do so it shall be shirking from its duty, thus violating and circumventing the aforesaid statutory Rules.

11. Based upon the aforesaid circumstances and in the light of the aforesaid reasoning, we, while rejecting the aforesaid contention made in the aforesaid affidavit of Secretary (Ayurveda), direct the Appointing Authority to pass a formal order of deemed suspension against respondent No. 3 and thereafter to proceed further in the matter in the light of sub-rules (5), (6) and (7). The needful shall be done immediately and without any delay whatsoever.