

(2019) 03 J&K CK 0029

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2397 Of 2018, IA 01 Of 2018,
Miscellaneous Civil Cases (MCC) No.293 Of 2018

Irshad Ahmed Butt

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 05-03-2019

Acts Referred:

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

Citation : (2019) 03 J&K CK 0029

Hon'ble Judges : Dhiraj Singh Thakur, J

Bench : Single Bench

Advocate : O.P. Thakur, S.S. Nanda

Judgement

MCC No. 293/2018

Allowed as prayed for.

Requirement of placing on record the copies of review decisions taken by respondent No.1 dated 16.04.2018, 27.07.2018 and 25.10.2018 is dispensed with.

Application is, accordingly, disposed of.

SWP No. 2397/2018

1. The petitioner was placed under suspension by the Deputy Commissioner, Kishtwar vide order dated 11.10.2017. The basis of the order of suspension was the detention of the petitioner for a period beyond 48 hours in a criminal case. Charge-sheet in the case was filed in the appropriate Court on 10.09.2018 after a period of 11 months. The petitioner continues to remain under suspension. The challenge to the order of suspension passed by the Deputy Commissioner, Kishtwar is that the Deputy Commissioner had no authority to issue such an order, inasmuch as, he was not the appointing authority in terms of Clause 31 of Classification, Control and Appeal Rules.

2. Reference to Rule 31 would show that it is not just the appointing authority who can place the Government servant under suspension but any other authority also may order the same if it is empowered by the Government in that regard. Sub-clause (2) of Clause 31 however, envisages that in a case where the Government servant is detained in custody whether on a criminal charge or otherwise, for a period longer than 48 hours shall be deemed to have been suspended by the appointing authority under this rule.

3. A Coordinate Bench of this Court in case titled "Dr. Bilqees Vs State of J&K and others" 2007 2 JKJ 569 had an occasion to consider as to whether the District Development Commissioner being a Head of the Administrative set-up had the power to place a Doctor being a member of the Health Services under suspension in line with the Government Order No. 741-GAD of 1993 dated 03.09.1993. Having considered the issue, it was held as under:-

"8. Under the said order the District Development Commissioners have been given powers of control over the various departments in the District. It sets up a organizational structure for a District and provide the District Development Commissioner will be the In-charge of overall developments of the District and shall exercise the powers of a major head of the department for all development departments functioning in the District. The order further directs that all the department in the District shall continue to function under the Administrative and operational control of the District Development Commissioner concerned. Under these orders, therefore, the officers/officials of all the departments in the District came under direct Administrative control of the District Development Commissioner. These officers, therefore, became subordinate to the District Development Commissioner. District Development Commissioner has been given the status of a Head of the Department as such he would get all such powers which vest in the Head of the Department. The powers include administrative control over the subordinate officers and officials. Under the said Government Order the District Development Commissioner has, therefore, got powers to place an employee under suspension on the grounds mentioned in the Rule 31.

9. In view of this position of rules, I find the District Development Commissioner, Baramulla was competent and had the powers to place the petitioner who was under his administrative control, under suspension."

4. Since, a Coordinate Bench of this Court has already expressed an opinion on the subject, I cannot persuade myself to take a view different from the one so taken. Be that as it may, the argument that the Deputy Commissioner, Kishtwar had no jurisdiction to pass the order of suspension is, therefore, rejected.

5. The next point urged by the learned counsel for the petitioner was that the period of suspension could not have continued ad-infinity without the respondents having considered the issue as to whether it was at all necessary for the petitioner to remain under suspension beyond the period of three months having failed to serve the memorandum of charges/charge-sheet to the petitioner.

6. The issue as to whether the suspension can continue beyond the period of three months has been discussed by a Division Bench of this Court in case titled "Gulshan Choudhary Vs Punjab & Sind Bank and others" reported in 2017 0 Supreme (J&K) 341. What is stated in paragraph Nos. 11 & 12, keeping in view of the ratio of the Apex Court in case titled "Ajay Kumar Choudhary Vs Union of India & anr" reported in 2015 7 SCC 291, is reproduced hereunder:-

"11. In Ajay Kumar Choudhary's case (supra), we find that the directions were clear and unambiguous and those were that the suspension order would not extend beyond three months if within that period the memorandum of charges/charge sheet was not served upon the delinquent officer/employee and if the charge-sheet was served, a reasoned order would have to be passed for extension of the suspension.

12. These directions were not made subservient to the rules and regulations as applicable to delinquent officers and employees in individual cases."

7. In the present case, admittedly, the petitioner was suspended on 11.10.2017 and the charge-sheet was filed in the criminal case against the petitioner after a period of 11 months on 10.09.2018, way beyond the period of three months, as envisaged in the judgment supra. Failure on the part of the respondents to serve the charge-sheet, within the period prescribed entitles the petitioner to reinstatement.

8. Be that as it may, this petition is allowed. Order impugned dated 11.10.2017 is set aside. The respondents are directed to reinstate the petitioner forthwith.

9. Disposed of accordingly along with connected IA.