

(2010) 02 MAD CK 0063

In the Madras High Court

Case No : Writ Petition No. 22424 of 2009 and M.P. No. 1 of 2009

K. Balachandar

APPELLANT

Vs

The State of Tamilnadu and Others

RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10(3), 10(4), 12(1), 12(3), 12(4)
Constitution of India, 1950 — Article 14, 16, 19(1), 19(6), 22(2)
Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17, 17(6)

Citation : (2010) 5 MLJ 186

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V.T. Gopalan, SC for R. Maheswari, for the Appellant; E. Ranganayaki, GA, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides. The petitioner's father was a School Teacher. Unfortunately, he passed away on 13.5.1986.

Considering the family circumstances, the petitioner was appointed on compassionate ground as Junior Assistant with effect from 1.10.1986.

Subsequently, by an order, dated 26.1.1992, he was brought under regular establishment and he was working in the office of the District

Elementary Education officer at Coimbatore.

2. The petitioner was arrested in a trap case on 07.10.2009 and a FIR was registered against the petitioner. The charge against the petitioner was

that he demanded Rs. 1 lakh for promising employment to one Stella Mary and had received Rs. 20,000/- as advance on 7.10.2009 at 21.25

hours. The Vigilance and Anti Corruption police laid a trap and arrested him. The

money was also recovered from the bag which threw on seeing the police. The petitioner was released on bail by an order dated 13.10.2009 by the Special Judge-cum-Chief Judicial Magistrate, Coimbatore and that he was in jail for more than 5 days. On receipt of the report from the police, the fourth respondent suspended the petitioner under Rule 17(e)(2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

3. It is an admitted case that the petitioner was arrested and kept in custody beyond 48 hours so as to attract Rule 17(e)(2). Therefore, the petitioner has come forward to challenge the said suspension order in this writ petition with a prayer to declare that Rule 17(e)(2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules as ultra vires and unconstitutional. The petitioner thereafter filed M.P. No. 2 of 2009 to implead the Secretary to Government, Department of Personnel and Administrative Reforms, Government of Tamil Nadu as party 5th respondent. He also filed an additional typed set, dated 18.1.2010, stating that alternatively, suspension order, dated 8.10.2009 can be quashed for the grounds stated therein.

4. According to the petitioner, his suspension was unjustified. The defacto complainant had made a false complaint.

5. Heard the arguments of Mr. V.T. Gopalan, learned Senior Counsel leading Ms. R. Maheswari for petitioner and Ms. E. Ranganayaki, learned

Government Advocate taking notice for respondents.

6. Before proceedings with the rival contentions, it is necessary to extract Rules 17(e)(1) and (2) and 17(6) of the Tamil Nadu Civil Services

(Discipline and Appeal) Rules, which are 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; or
- (ii) a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest.

(2) A Government servant who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours shall be deemed to have been suspended under this Rule.

....

(6) An order of suspension made or deemed to have been made under this Rule may at any time be revoked by the Authority which made or is

deemed to have made the order or by any Authority to which that Authority is subordinate.

7. The learned Senior Counsel for the petitioner contended that inasmuch as Rule 17(e)(2) provides automatic suspension without giving power to

the authority who can suspend any Government servant only on account of detention beyond 48 hours is arbitrary. Even in cases where a

Government servant was convicted for any offence involving, he has to be given notice before any penalty is imposed. He further submitted that if

detention is less than 48 hours, then under Rule 17(e)(1), the competent authority can place a Government servant under suspension only for stated

reasons. Therefore prescription of time factor of 48 hours detention is not only artificial, but violative of Article 14 of the Constitution of India. It

was further stated that the State Administrative Tribunal had set aside the rule by order, dated 19.1.1995 as found it arbitrary.

8. The learned Senior Counsel further stated that inasmuch Rule 17(e) begins by showing that members of a service may be placed under

suspension in respect of Rule 17(e)(1)(i) and (ii), but when it comes to Rule 17(e)(2), there is automatic suspension. Therefore, the rule gives no

discretion to the competent authority and even without application of mind, such suspension was made.

9. The learned Senior Counsel relied upon the judgment of the Supreme Court in Union of India (UOI) Vs. Rajiv Kumar, .

10. However, this Court is unable to agree with the submissions made by the learned senior Counsel. It must be noted that rule of suspension of a

Government servant is framed under Article 309 of the Constitution. The prescription of 48 hours has nexus with the deemed suspension

prescribed therein, unless it is violative of Articles 14 or 16 of the Constitution.

11. Suspension of a Government servant does not attract constitutional protection granted under Article 311(2) of the Constitution. The Supreme

Court in Mohammad Ghouse Vs. State of Andhra, in paragraph 9 held as follows:

9. It was next contended on behalf of the appellant that as the authority which appointed him was the Governor of the Province, it was only that

authority that could dismiss or remove him from service, and that the order of

suspension made by the High Court on January 28, 1954, was in contravention of Article 311 of the Constitution, and was, in consequence, bad. This contention does not appear to have been pressed in the High Court, and is, moreover, without substance....

12. The same view was reiterated by the Supreme Court in *State of Orissa and Others Vs. Shiva Parashad Das*, . The following passage found in paragraph 3 may be usefully extracted below:

3. An order of suspension passed against a government servant pending disciplinary enquiry is neither one of dismissal nor of removal from service within Article 311 of the Constitution. This position was clearly laid down by a Constitution Bench of this Court in *Mohammad Ghouse v. State of*

Andhra. It is unfortunate that this decision was not brought to the notice of the learned Judges of the High Court. Clause (1) of Article 311 will get

attracted only when a person who is a member of Civil Service of the Union or an All-India Service or a Civil Service of a State or one who holds

a civil post under the Union or a State is "dismissed" or "removed" from service. The provisions of the said Clause have no application whatever to

a situation where a government servant has been merely placed under suspension pending departmental enquiry since such action does not

constitute either dismissal or removal from service. The High Court was, therefore, manifestly in error in quashing the order of suspension passed

against the respondent on the ground that it was violative of Clause (1) of Article 311 of the Constitution.

13. Even in case where the final order of punishment was set aside on technical ground, the person was held to be placed under deemed

suspension to facilitate further enquiry. Therefore, the concept of deemed suspension or automatic suspension on account of certain contingencies

is not new to the service rules.

14. In construing Rule 12(4) of Central Civil Services (Classification, Control & Appeal) Rules, 1957, the Supreme Court in *Khem Chand Vs.*

Union of India (UOI), held in paragraphs 16, 18 and 19 as follows:

16. Equally untenable is the appellant's next contention that the impugned Rule contravenes the provisions of Article 19(1)(f) of the Constitution.

The argument is that as a result of this Court's decree the appellant had a right to his arrears of pay and allowances. This right constituted his

property; and as the effect of the impugned Rule is that he would not, for some time at least, get those arrears it restricts his right. It may be conceded that the right to arrears of pay and allowances constituted property within the meaning of Article 19(1)(f) of the Constitution and further, that the effect of Rule 12(4) is a substantial restriction of his right in respect of that property under Article 19(1)(f). The question remains whether this restriction is a reasonable restriction in the interests of the general public. No body can seriously doubt the importance and necessity of proper disciplinary action being taken against government servants for inefficiency, dishonesty or other suitable reasons. Such action is certainly against the immediate interests of the government servant concerned; but is absolutely necessary in the interests of the general public for serving whose interests the government machinery exists and functions. Suspension of a government servant pending an enquiry is a necessary part of the procedure for taking disciplinary action against him. It follows, therefore, that when the penalty of dismissal has been set aside but the disciplinary authority decides to hold a further enquiry on the same facts against him a fresh order of suspension till the enquiry can be completed, in accordance with law, is a reasonable step of the procedure. We have no hesitation in holding, therefore, that insofar as Rule 12(4) restricts the appellant's right under Article 19(1)(f) of the Constitution, it is a reasonable restriction in the interests of the general public. Rule 12(4) is therefore within the saving provisions of Article 19(6), so that there is no contravention of the constitutional provisions.

....

18. This brings us to the attack on the Rule on the basis of Article 14. According to Mr Sharma the result of the impugnet Rule is that where a penalty of dismissal, removal or compulsory retirement from service imposed on a government servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority decides to hold a further enquiry against him on the allegations on which the penalty was originally imposed, the consequence will follow that the government servant shall be deemed to have been placed under suspension from the date of the original imposition of penalty, whereas no such consequence will follow where a similar penalty is set aside not by a

court of law but by, the departmental disciplinary authority. According to Mr Sharma, therefore, there is a discrimination between a government

servant the penalty of dismissal, removal or compulsory retirement on whom is set aside by a decision of a court of law and another government

servant a similar penalty on whom is set aside on appeal by the departmental disciplinary authority. The argument however ignores the result of

Rule 30(2) and Rule 12(3) of these Rules. Rule 30(2) provides inter alia that in the case of an appeal against an order imposing any of the penalties

specified in Rule 13 i.e. the penalty of dismissal, removal or compulsory retirement and certain other penalties, the Appellate Authority shall pass

orders: "(i) setting aside, reducing, confirming or enhancing the penalty; or (ii) remitting the case to the authority which imposed the penalty or to

any other authority with such direction as it may deem fit in the circumstances of the case." Rule 12(3) provides that "where a penalty of dismissal,

removal or compulsory retirement from service imposed upon a government servant under suspension is set aside in appeal or on review under

these rules and the case is remitted for further enquiry or action or with any other directions, the order of his suspension shall be deemed to have

continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further

orders". Where a penalty of dismissal, removal or compulsory retirement imposed upon a government servant is set aside by the departmental

authority on appeal, it may or may not order further enquiry; just as where a similar penalty is set aside by a decision of a court of law the

disciplinary authority may or may not direct a further enquiry. Where the Appellate Authority after setting aside a penalty of dismissal, removal or

compulsory retirement makes an order under Rule 30(2)(ii) remitting the case to the authority which imposed the penalty, for further enquiry, Rule

12(3) will come into operation and so the order of suspension which in almost all cases is likely to be made where a disciplinary proceeding is

contemplated or is pending shall be deemed to have continued in force on and from the date of the original order of dismissal and shall remain in

force until further orders. There is therefore no difference "worth the name between the effect of Rule 12(4) on a government servant the penalty of

dismissal, removal or compulsory retirement on whom is set aside by a decision of a court of law and a further enquiry is decided upon and the

effect of Rule 12(4) on another government servant a similar penalty on whom is set aside in appeal or on review by the departmental authority and a further enquiry is decided upon. In both cases the government servant will be deemed to be under suspension from the date of the original order of dismissal, except that where in a departmental enquiry a government servant was not placed under suspension prior to the date when the penalty was imposed, this result will not follow, as Rule 12(3) would not then have any operation. It is entirely unlikely however, that ordinarily, a government servant will not be placed under suspension prior to the date of his dismissal. Rule 12(1) provides that the appointing authority or any authority to which it is subordinate or any other authority empowered by the President in that behalf may place a government servant under suspension: (a) where a disciplinary proceeding against him is contemplated or is pending, or (b) where a case against him in respect of any criminal offence is under investigation or trial. Mr Sharma does not say that ordinarily any cases occur where a government servant is visited with a penalty of dismissal, removal or compulsory retirement, in a departmental proceeding, without there being a previous order of suspension under the provisions of Rule 12(1) and we do not think any such case ordinarily occurs. Consequently, the effect of Rule 12(3) will be the same on a government servant a penalty of dismissal, removal or compulsory retirement on whom is set aside in appeal by the departmental authority as the effect of Rule 12(4) on a government servant a similar penalty on whom is set aside by a decision of a court of law. The contention that Rule 12(4) contravenes Article 14 of the Constitution must therefore be rejected.

19. As we find that all the above attacks on the validity of Rule 12(4) fail, the further attack on the Rule on the basis of Article 31(1) of the Constitution also necessarily fails. For, whatever deprivation of property may result from Rule 12(4) would be by authority of law - the law being Rule 12(4).

15. The said Rule 12(4) was subsequently made as Rule 10(4) of CCS(CCA) Rules. When the said rule came to be challenged, the Supreme Court upheld the constitutional validity of the said rule in Mahender Singh Vs. Union of India (UOI) and Another, . The following passage found in paragraph 6 may be usefully extracted below:

6. There are three requirements for the application of Rule 10(4); (i) the government servant is dismissed, removed or compulsorily retired as a measure of penalty; (ii) the penalty of dismissal, removal or compulsory retirement is set aside or declared or rendered void by a decision of a court of law; (iii) the disciplinary authority, decides to hold a further inquiry against the government servant on the allegations on which the original order of penalty was imposed. If these three requirements are satisfied then the government servant shall be deemed to have been placed under suspension by the appointing authority from the date of original order of penalty of dismissal, removal or compulsory retirement and he shall continue to remain under suspension until further orders.

16. Thereafter, the very same rule was once again considered by the Supreme Court in *Nelson Motis Vs. Union of India* and another, . In paragraph 10, the Supreme Court observed as follows:

10. ...The cases which attract Sub-rule (4), are thus those where the penalty imposed on the government servant is set aside on technical grounds not touching the merits of the case. Since at one stage the disciplinary authority records a finding on the charges against the government servant, which is not upset on merits, the situation is entirely different from that in the cases covered by Sub-rule (3). The classification is thus founded on an intelligible differentia, having a rational relation to the object of the rules and Rule 10(4) has to be held as constitutionally valid.

17. When a Government servant who is also a public servant is arrested and being tried in a criminal case, he cannot be allowed to discharge his duties as a public servant lest it may not inspire confidence of public faith imposed on the Government. Further, when arrest takes place in relation to a corruption case and where a Government servant had demanded and accepted bribe, the question of his being kept in service before the trial is concluded is unthinkable. Therefore, rules have been framed to the effect that if a Government servant is arrested in connection with a criminal case and detained in custody beyond 48 hours, he should be deemed to be under suspension and it to avoid any administrative delay being obtained from the competent authority or from the State Government. Therefore, the said rule has been made.

18. Introduction of 48 hours has nexus to the object sought to be achieved. If a

person is arrested by the police, then Article 22(2) mandates that such arrested should be produced before the nearest Magistrate within a period of 24 hours of such arrest. It was thereafter, the concerned Magistrate will consider the question of remanding the person in custody. Therefore, minimum time that can be taken for this process can be 48 hours. In case a person comes out on bail on a bail granted by the Magistrate, then the deemed provision under Rule 17(e)(2) may not operate.

19. If a Government servant is not at all arrested or on coming to know that he may be arrested in a case involving cognizable offence, if gets anticipatory bail even in those cases, there may not be any detention in custody. But that does not mean that the Government servant can escape from being suspended. In those cases, the competent authority can always depending upon the gravity of the offence and pending criminal investigation, can suspend him under Rule 17(e)(1)(ii) in public interest. In either of the circumstances, the Government servant cannot escape from any action being taken against him in connection with his misconduct. It is not as if the government servant has no remedy against any arbitrary suspension, because either the same authority or the appellate authority has power to revoke suspension, which is deemed to have been made under those rules, under Rule 17(6) as extracted above.

20. Therefore, the power to place a government servant under suspension, who is involved in a criminal case and also creating a deemed Clause for suspension has got its aim and purpose and it is fully in consonance with Articles 14 and 16 of the Constitution. It is one thing to state that the provision is invalid. The other thing is to state is an order made pursuant to the rule was illegal. Since the rule has been made in public interest and for efficiency of civil service, the question of impugning the same as ultra vires or unconstitutional may not arise.

21. The decision of the Supreme Court in Union of India (UOI) Vs. Rajiv Kumar, cited by the learned Senior Counsel has no relevance to the facts of this case. In that case, the question arose was whether deemed suspension will come to an end as soon as detention period is over. After considering the relevant rule, the Supreme Court held that it is not so. Perhaps having this decision in mind, the petitioner has come forward to challenge the vires of the said rule.

22. The Supreme Court in its decision reported in Director General and Inspector General of Police, Andhra Pradesh, Hyderabad and others Vs.

K. Ratnagiri, has held in paragraph 3 as follows:

3. ...The government may review the case and make further or other order but the order of suspension will continue to operate till it is rescinded by an appropriate authority.

23. The Supreme Court in Union of India (UOI) Vs. Rajiv Kumar, had an occasion to decide the issue of prolonged suspension. The Supreme

Court held that in a genuine case, if the authorities feel that suspension has to be continued, the court cannot interfere with the same. The following passage found in paragraph 29 may be usefully extracted below:

29. Another plea raised relates to a suspension for a very long period. It is submitted that the same renders the suspension invalid. The plea is clearly untenable. The period of suspension should not be unnecessarily prolonged but if plausible reasons exist and the authorities feel that the suspension needs to be continued, merely because it is for a long period that does not invalidate the suspension.

24. Knowing fully well that it is impossible to strike down the rule as unconstitutional, the petitioner has made the alternative plea to set aside his suspension. Considering the fact that the petitioner had involved in a trap case and caught red-handed for receiving bribe of Rs. 20,000/-, the question of revoking suspension will not arise.

25. Hence, the writ petition will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petition also stands dismissed.