
(2001) 07 PAT CK 0024
In the Patna High Court
Case No : LPA No. 300 of 2001

Kamta Prasad Pandey and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-07-2001

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(ii), 7

Citation : (2005) 3 PLJR 146

Hon'ble Judges : P.N. Yadav, J; Nagendra Rai, J

Bench : Division Bench

Advocate : S.N. Jha and Awadhesh Kumar Mishra, for the Appellant; Shashi Bhushan Kumar For the State, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is directed against the order dated 19.3.2001 passed by a learned Single Judge dismissing the writ application filed by the appellants challenging the order of their suspension as well as the repatriation from the Transport Department to their parent department i.e. the Police Department. As we agree with the order of the learned Single Judge, it is not necessary to state the facts of the case in detail. Suffice it to say that these appellants were holding substantive posts of Sub-Inspector of Police in the Police Department. Their services were sent on deputation to the Transport Department. While they were working in the said department, a criminal case under sections 7/13(ii) of the Prevention of Corruption Act was registered and they were apprehended while accepting bribe. They were remanded to custody on 31.10.2000 and they were released on bail on 2.1.2001. On 6.1.2001, the impugned order was passed putting them under suspension with effect from 31.10.2000 and repatriating them to their parent department.

2. Learned counsel for the appellants submitted that the order of suspension is vitiated in law as it was passed with retrospective effect after the appellants were released on bail.

3. The said submission advanced on behalf of the appellants is, in our view, devoid of any substance. It is an admitted position that the order of suspension has been passed u/s 49-A(2) of the Bihar Civil Services (Classification, Control and Appeal) Rules (hereinafter referred to as "the Rules"). The relevant provisions for the purpose of this appeal are sub-rules (2) & (5) of Rule 49-A of the Rules, which run as follows:--

"49-A(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 on 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.

(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 reason 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."

4. Conjoint reading of the aforesaid two provisions shows that in a case where an employee has been detained in custody for a period exceeding 48 hours, he shall be deemed to be under suspension. In other words, if an employee remains in custody for more than 48 hours, he is deemed to be under suspension and there " is no requirement of law that any specific order is to be passed putting him under suspension.

5. In that view of the matter, the moment appellants continued in detention for more than 48 years, they were deemed to be under suspension. The subsequent order dated 6.1.2001 is only a recognition of the fact of their deemed suspension from the date they were taken into custody. Thus, there is no question of any retrospective operation of the order.

6. Once an order of suspension is deemed to have been made, the same would continue to remain in force until it is modified or revoked by the authority competent to do so. The appellants, as stated above, will be deemed to be under suspension unless that order is modified or revoked by the authority competent to do so. For the reasons aforementioned, we find no merit in this appeal and it is, accordingly, dismissed. However, it is clarified that it will be open for the authority to modify or revoke the order under Rule 49A(5)(a) of the Rules if a proper case is made out for the same.