
(2001) 03 AP CK 0034

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17358 of 1999

Kattika Koteswara Rao

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 28-03-2001

Acts Referred:

Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 — Rule 8, 8(1), 8(2)
Constitution of India, 1950 — Article 226

Citation : (2001) 03 AP CK 0034

Hon'ble Judges : S.B. Sinha, C.J;S.R. Nayak, J

Bench : Division Bench

Advocate : M. Kavitha, for the Appellant; G.P. for Services-II, for the Respondent

Judgement

1. This writ petition is directed against a judgment dated 22.7.1999 passed by the A.P. Administrative Tribunal in O.A. No. 4531 of 1999 whereby and whereunder the application filed u/s 19 of the A.P. Administrative Tribunal Act praying for a declaration that the proceedings dated 17.5.1999 issued by the 3rd respondent be set aside; was dismissed. The said application was dismissed at the admission stage.

The petitioner is an executive officer of temples at Tenali in the district of Guntur. He was placed under suspension by the Deputy Commissioner of Endowments by an order dated 17.5.1999. The said order was passed purported to be on the basis that the petitioner herein was arrested on 12.5.1999 in a criminal case filed against him and he was remanded to judicial custody upto 26.5.1999 by the competent court. By reason of the said order the petitioner was placed under suspension with retrospective effect from 12.5.1999. The learned Tribunal dismissed the said application on the ground that the Deputy Commissioner of Endowments herein was empowered to pass the said order of suspension in terms of Rule 8(2)(a) of the A.P. Civil Services (C.C.A) Rules, 1991 (for short "the Rules"). Rule 8 of the Rules reads thus:

"8. Suspension:- (1) A member of a Service may be placed under suspension from service -

- (a) where a disciplinary proceeding against him is contemplated or is pending, or
- (b) Where in the opinion of the authority competent to place the Government Servant under suspension, he has engaged himself in activities prejudicial to the interest of the security of the State, or
- (c) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial;

Provided that, where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

(2) A government Servant shall be deemed to have been placed under suspension by an order of the authority competent to place him under suspension.

(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.

Explanation:- The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment shall be taken into account.

(3)"

2. A bare perusal of the said provision would clearly show that an order of suspension could be passed in two different situations. Sub-rule (1) of Rule 8 of the said Rules provides for an order of suspension by the disciplinary authority upon application of his mind in a case where one or the other factors referred to therein is satisfied.

3. On the other hand, sub-rule 2 of Rule 8 provides for an automatic suspension as by reason thereof a legal fiction has been created. An order of suspension normally would take effect from the date of communication of the order. An order of suspension passed in terms of sub-rule (1) of Rule 8 would be prospective in nature. However, if an order of suspension is passed having regard to the legal fiction created under sub-rule (2) aforementioned, the same would be retrospective in nature i.e. from the date of expiry of 48 hours of detention or the date of conviction, as the case may be. In the instant case the petitioner was

arrested on 12.5.1999 and he was released on bail on 27.5.1999. The impugned order of suspension was passed on 17.5.1999 with retrospective effect from 12.5.1999.

4. If an order of suspension is passed in terms of sub-rule (2) upon release of the delinquent officer from custody, he may be placed under suspension by reason of a fresh order by the disciplinary authority upon application of his mind in terms of clause (c) of sub-rule (1) of Rule 8.

5. The difference in the phraseology used in sub-rule (1) and sub-rule (2) of Rule 8 is absolutely clear and distinct. In terms of sub-rule (1) of Rule 8 the delinquent officer may or may not be placed under suspension and the disciplinary authority has been given a discretionary power in that regard whereas suspension in terms of sub-rule (2) does not attract such discretionary jurisdiction as an order of suspension is almost automatic. The order dated 17.5.1999 placing the petitioner under suspension reads thus:

"In the reference cited, the Sub-Inspector of Police, Tenali III Police Station has reported that Sri K. Koteswara Rao, II Grade Executive Officer, Group temples-Appikotla was arrested on 12.5.99 in a criminal case lodged by his wife and he was remanded upto 26.5.99 by the Hon"ble I Addl. Munsif Magistrate, Tenali.

In view of the arrest of Sri K. Koteswara Rao, II Grade Executive Officer, Appikotla in a criminal case filed by his wife and in view of the arrest on 12.5.99 and remanded upto 26.5.99 by the Hon"ble I Addl. Munsif Magistrate, Tenali upto 26.5.99 Sri K. Koteswara Rao, II Grade Executive Officer, Group Temples, Appikotla is hereby kept under suspension with retrospective effect from 12.5.99 subject to the result of the criminal case filed against him.

....."

6. The order of suspension has to be read as a whole.

7. If the order of suspension was in terms of sub-rule (2) of Rule 8, the same would only subsist till he is under detention and not thereafter. Such an order of suspension could not have been subjected to the result of the criminal case against him. If an employee is to be placed under suspension during pendency of the criminal case, the same can be done only in terms of clause (c) of sub-rule (1) of Rule 8 thereof.

8. It is not the case of the respondents that a departmental proceeding is contemplated or pending against the petitioner with reference to the criminal case. The said order of suspension although proceeds on the basis that the same had been passed on a report made by the Sub-Inspector of Police and thus could have been passed mechanically, the appointing authority has gone a step further and directed that the said order of suspension be kept operative till the pendency of the criminal case. Such an order of suspension is not contemplated under sub-rule (2). It is not the case of the respondents that the appointing authority considered the matter having regard to the desirability of passing such an order

keeping in view the gravity of the misconduct or otherwise.

9. A statutory authority must exercise its statutory function reasonably and bona fide and having regard to the powers delegated to him under the Rules. We are fortified in this regard by a decision of P. Venkatarama Reddi, J (as the learned Chief Justice then was) in *T.DEVENDER v. ASSOCIATE DIRECTOR RESEARCH*¹. The apex court also in *STATE OF ORISSA v. BIMALA KUMAR MOHANTY*² held:

"12. It is thus settled law that normally when an appointed authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation would be another thing if the action is by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result. The authority also in mind a public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge."

10. Thus, each case has to be considered on its own facts. Having regard to the fact that the impugned order of suspension was passed by the disciplinary authority without application of mind and as order of suspension must be held to be valid only from 12.5.1999 to 26.5.1999 the petitioner cannot, in absence of any other or further order by the disciplinary authority, having regard to the provisions of clause (c) of sub-rule (1) of Rule 8 be kept under suspension.

11. For the reasons aforementioned, the judgment of the learned Tribunal cannot be sustained. It is set aside accordingly and the writ petition filed by the petitioner is disposed of in terms of the directions aforementioned. There shall be no order as to costs.