

(2005) 08 GAU CK 0053
In the Gauhati High Court

Kongkham Kunjo Singh

APPELLANT

Vs

State of Manipur and Anr.

RESPONDENT

Date of Decision : 25-08-2005

Acts Referred:

Citation : (2005) 08 GAU CK 0053

Hon'ble Judges : M.B.K.Singh, J

Bench : Single Bench

Advocate : Bidyamani Devi, Kh.Tarun kumar Singh, Advocates appearing for Parties

Judgement

1. This Writ petition has been filed praying mainly for quashing or setting aside the order being No. 1/5/23/92/Plg. Govt. of Manipur, Planning Department dated 4.4.2000 issued by the Director, Planning Department by which the petitioner was deemed to have been suspended w.e.f. 27.1.2000 in terms of clause(a) of Subrule(2) rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 consequent upon his detention in custody from 27.1.2000 at Berhampore, Murshidabad, West Bengal for carrying Ganja by Revenue Intelligence, Berhampore, Murshidabad. The petitioner's grievance is that though he has been under suspension for more than 5(five) years, neither his suspension has been reviewed nor his subsistence allowance has been revised despite direction of this Court made in W.P(C) No. 1056 of 2002 on 24.1.2003.

2. Heard Mr. Kh. Tarunkumar, learned counsel appearing on behalf of the petitioner and Mrs. Bidyamani Devi, learned Addl. G.A. appearing on behalf of the Government respondents. I have perused the materials including the counter affidavit filed on behalf of the respondents. 3. There is no dispute that consequent upon his detention in custody from 27.1.2000 for carrying Ganja at Berhampore, Murshidabad, West Bengal, the petitioner was deemed to have been suspended w.e.f. 27.1.2000 vide the impugned order dated 4.4.2000. It is also ascertained that a criminal case is pending against the petitioner before the Additional Sessions Judge, Second Court at Berhampore, Murshidabad. Nothing

is stated about the stage of the said case. It is also not known if a charge has been framed or not against him. Neither of the parties can say as to how long the criminal case will take before its completion. At the same time, it is ascertained that apart from the requirement of making periodic review of the suspension order as well as revision of the subsistence allowance under the relevant rules, despite direction made by this Court on 24.1.2003 in W.P(C) No. 1056 of 2000 in this regard, the concerned authority has neither reviewed the suspension order nor revised the subsistence allowance.

4. An order of suspension continues until it is vacated and there is no time limit for the period during which a Government employee can be kept under suspension. It will not, however, be fair and just to allow a suspension order for an uncertain period particularly when the concerned authority fails to review the suspension order and also to review the subsistence allowance in compliance with provisions of the relevant rules.

5. A Division Bench of this Court in *Md. Sahabuddin Vs. State of Assam & Ors*(1990)1 GLR 276 held:

?Without entering into the controversy at this stage, we do think that prolonged suspension for more than three years of the petitioner from service without any further action having been taken in the matter was neither proper nor justified. Suspension from service is a very serious matter and should be for as minimum period as may only be necessary. A prolonged suspension without any justifiable cause is not only wastage of human resources of the organization which has to pay the subsistence allowance etc. without any return. We find absolutely no reason to continue the suspension of the petitioner.?

6. The above decision was followed in *Jinna Abdur Rahim Vs State of Assam* 2002(3) GLT 498 also. The Hon"ble Supreme Court also in case of *Sukhendar Reddy Vs State of Andhra Pradesh & Anr.*(1999) 6 SCC 257 deprecated the practice of keeping a Government employee under suspension for an indefinite period.

7. The Addl. G.A. refers to the decision of the Surpeme Court in *Allahabad Bank & Anr. Vs Deepak Kumar Bhol*a (1997) 4 SCC 1 and submits that there is no illegality in continuing suspension of the petitioner for the period more than 5(five) years on the ground of Pendency of criminal case against him. On perusal of the said case, it is ascertained that the Hon"ble Supreme Court never discussed the point as to whether or not keeping a person under suspension for an indefinite period on the ground of Pendency of criminal case against the said person was justified. In that case, the suspension order was set aside by the High Court on merit and the Supreme Court interfered with the order of the High Court for setting aside the suspension order on merit. In this case, this Court is not considering for setting aside the suspension order on merit. This Court is considering if suspension of the petitioner for a period more than five years with no certainty as to how many years it will continue on the ground of Pendency of

a criminal case against him but without reviewing the suspension order and revising the subsistence allowance is justified or not.

8. Having regards to all the relevant consideration, in my considered opinion, it is not fair, reasonable and just on the part of the concerned authority to keep the petitioner under suspension for more than five years without reviewing the suspension order as well as without revising his subsistence allowance on the ground of Pendency of the criminal case about which there is no information as regards its stage and also as to when it is likely to be completed.

In the facts and circumstances, keeping the petitioner under suspension is an arbitrary action on the part of the concerned authority and it is not sustainable in the eye of law.

9. Accordingly, the impugned suspension order dated 04.04.2000 is hereby quashed. Petitioner is to be reinstated forthwith on receipt of a copy of this order. However, liberty is given to the authority to take necessary action subsequent to the decision of the pending criminal case, if so advised. This Writ petition is allowed to the extent mentioned above. No order as to costs.