

(2020) 06 J&K CK 0145

In the Jammu And Kashmir High Court

Case No : SWP No. 2727 Of 2010, IA No. 3834 Of 2010

Mohan Lal

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 04-06-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 488, 498(A)
Constitution Of India, 1950 — Article 31, 31(1)(3)

Citation : (2020) 06 J&K CK 0145

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : R. K. Dullo

Final Decision : Disposed Off

Judgement

Sindhu Sharma, J

1. Petitioner is a Class-IV Employee working as Nursing Orderly in Government Chest Disease Hospital, Jammu. It appears that some matrimonial disputes arose between him and his wife which resulted in filing of a petition under section 488 Cr.P.C. According to him, all efforts for re-conciliation between them failed.

2. On a complaint made by his wife, a case was registered and petitioner was arrested by the police on 19.09.2009 and kept in detention from 19.09.2009 to 23.09.2009. He was granted bail by the Special Excise Mobile Magistrate, Jammu vide order dated 23.09.2009.

3. In view of his arrest in FIR No. 36/2009 the Medical Superintendent, Chest Disease Hospital, Jammu placed the petitioner under suspension with immediate effect vide order dated 22.09.2009. The petitioner has been suspended because he was detained in custody for more than 48 hours. Since there is a dispute between him and his wife, she complained against him and petitioner was arrested, though he was admitted to bail by the Court, he is being prosecuted under section 498-A RPC.

4. The grievance of the petitioner is that despite representation, his order of suspension has not been revoked as required under Article 31(1)(3) of Classification, Control and Appeal Rules, 1956, which is reproduced as under:

"31. (1) The appointing authority or any authority to which it is subordinate or any other authority empowered by the Government in this behalf, may place a Government servant under suspension where:-

(a) an inquiry into his conduct is contemplated or is pending: or

(b) a complaint against him of any criminal offence is under investigation or trial.

(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 by the appointing authority under his rule.

(3) An order of suspension under sub-rule (1) may be revoked at any time by the authority making the order or by any authority to which it is subordinate."

5. Assuming that a case under section 498-A RPC is still pending against the petitioner, but it is not a case involving moral turpitude or any other serious offence, therefore, it was a fit case for exercising of powers under Article 31(3) of Classification, Control and Appeal Rules, 1956.

6. It is un-necessary to keep such a person under suspension for such a long time, as provided in Government Instructions under Article 31, which is as under:

"Government Instructions (2).- Competent authorities should endeavour to have charge-sheet filed in Court, in case of prosecution, or served on the Government servant, in case of departmental proceedings within three months from the date of suspension. Cases in which this is not possible such authorities will report to the next higher authority, explaining the reasons for delay. The cases of Government servants under suspension should be reviewed by the competent authorities periodically to see that steps could be taken to expedite the progress of the court trial/departmental proceedings, so as to reduce the periods of suspension to barest minimum."

7. So, it was the duty of the competent authority to review the order in the interest of Department because if a substitute is appointed, he will be getting the pay which is a burden on the Exchequer because the suspended employee is also getting 75% of Substance Allowance.

8. In view of the above, this writ petition is allowed and the respondent, who placed him under suspension is directed to review the order of suspension within a period of one month from the date a copy of this order is made available to him by the petitioner, failing which the suspension order of the petitioner shall be revoked and the petitioner shall be allowed to resume his duties without waiting of conclusion of Trial under section 498-A RPC.

9. Disposed of alongwith IA.