
(2010) 03 J&K CK 0020

In the Jammu And Kashmir High Court

Case No : LPASW No. 159 of 2007, CMP No's. 176 of 2007 and 52 of 2008

Mohd. Rafiq

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 29-03-2010

Acts Referred:

Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 — Rule 31(1)

Citation : (2010) 2 JKJ 194

Hon'ble Judges : Barin Ghosh, C.J; Mohammad Yaqoob Mir, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. In a criminal case, Appellant, a Government employee, was arrested on February 27, 2007, and was released from custody on bail on March

5, 2007. He was, therefore, in custody for more than 48 hours. He was suspended for being in custody for a period more than 48 hours, with

effect from the date he was arrested. This order of suspension was passed about eight months from the date he was released from custody on bail.

2. In a writ petition, the Appellant contended that suspension with retrospective effect is not good in law. The learned Judge, who dealt with the

writ petition, noticed Rule 31 of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956, which Rule deals with

suspension, and held by noticing Sub-rule (2) thereof that, by virtue thereof, the Appellant by a fiction of law stood suspended, the moment

Appellant remained in custody for more than 48 hours and, accordingly, there was no retrospective suspension of the Appellant.

3. In present appeal, the Appellant is contending that Sub-rule (1) of Rule 31 of

the said Rules vests power to suspend in the authority mentioned therein and provides under which circumstances the authority can use the power to suspend. The Appellant is contending that such a suspension order can also be revoked in terms of Sub-rule (3) of the said Rule. Appellant is contending that there is no provision in Rule 31 of the Rules as to when and how the deemed suspension under Sub-rule (2) of the said Rule can be revoked. Appellant, therefore, contends that the deemed suspension, as mentioned in the Sub-rule (2) of the said Rule, should be deemed to be suspension only for the period the Government servant is detained in custody.

4. The authority competent to suspend in terms of Sub-rule (1) of the said Rule, can use its power to suspend in two situations, namely, when an inquiry is contemplated or is pending; and when a complaint pertaining to any criminal offence is under investigation or trial. Sub-rule (3) of the said Rule authorises revocation of such suspension. Therefore, the question is whether deemed suspension contemplated in Sub-rule (2) of the said Rule is a different species of suspension spelt out in the Rule. Sub-rule (2) of Rule 31 of the said Rules says that there shall be deemed suspension of a Government servant, who is detained in custody for a period longer than 48 hours. It does not stop there. It says that the deemed suspension shall be by the appointing authority. In other words, whereas the authority competent to suspend, as mentioned in Sub-rule (1) of the said Rule, may be either the appointing authority or any authority to which it is subordinate or any authority empowered by the Government in that behalf but, the deemed suspension in terms of the mandate contained in Sub-rule (2) of the said Rule, would be deemed suspension by the appointing authority. Sub-rule (3) of the said Rule makes it clear that the power of revocation of suspension vests in the authority making the order or the authority to which it is subordinate. In other words, when the appointing authority is deemed to have suspended in terms of mandate of Sub-rule (2) of the said Rule, the said authority in terms of mandate of Sub-rule (3) of the said Rule, is the authority competent to revoke the suspension.

Whereas deemed suspension under Sub-rule (2) of Rule 31 of the said Rules is by the appointing authority; the said authority in terms of Sub-rule (3) of the said Rule is competent to revoke the said suspension. Furthermore,

Sub-rule (2) of the said Rule only talks about the starting of deemed suspension but does not say till when suspension will continue. It does not deal with revocation either automatic or otherwise. On the other hand,

by reason of mandate contained in Sub-rule (3) of the said Rule, such deemed suspension is also required to be revoked.

5. When a Government servant is detained in custody for a period longer than 48 hours, an information pertaining thereto must reach the

appointing authority and it is required to satisfy itself that the Government servant, in fact, remained in custody for a period in excess 48 hours. The

moment he satisfies himself as regards such detention, he simply informs the Government servant concerned that, by a fiction of law, he has been

suspended. There is, therefore, no retrospective suspension.

6. Learned Counsel appearing in support of appeal cited a judgment of a learned Single Judge of this Court in the case of Bachhitar Singh v. State

of J&K and Ors. reported in 1996 SLJ 122. The learned Counsel submitted that the learned Judge in the said case held that there is no automatic

suspension.

7. We think that the learned Judge correctly held that whether a Government servant was or was not in custody for more than 48 hours, is a fact

required to be determined and only when such fact is determined by the appointing authority, the Government servant is required to be informed in

relation thereto and when such information is given, the Government servant is deemed to be under suspension.

8. The writ petition having been dismissed on the same or similar reasons, we find no reason to admit the appeal.