

(1981) 10 KAR CK 0002
In the Karnataka High Court
Case No : WP. 13926/81

Nagesh Rao, B.S.

APPELLANT

Vs

Joint Director of Public Instruction and Another

RESPONDENT

Date of Decision : 16-10-1981

Acts Referred:

Karnataka Civil Services Rules, 1958 — Rule 100

Citation : (1982) 1 KarLJ 133

Hon'ble Judges : M. Rama Jois, J

Judgement

1. The petitioner, who is a Primary School Teacher, has presented this writ petition praying for quashing the order of the Jt. Director of Public Instruction, Bangalore Division, made on his appeal against the order of the Deputy Director of Public Instruction, Tumkur, in a disciplinary proceeding in so far it relates to the treating of the period during which the petitioner had been placed under suspension as best kind of leave to his credit.

2. Briefly stated, the facts of the case are as follows:

A departmental enquiry was instituted against the petitioner on certain charges. In connection with the departmental enquiry, he was placed under suspension with effect from 7-10-1976. Subsequently the order of suspension stood revoked and the petitioner was taken back to duty on 7-10-1977. On 12-6-1976 the second respondent made an order finding the petitioner guilty of the charges and directing recovery of a sum of Rs. 3365 out of his salary and also imposing a penalty of stoppage of four increments with cumulative effect. Aggrieved by the said order, the petitioner preferred an appeal before the 1st respondent under Rule 18 of the K.C.S. (C.C.A.) Rules. The appeal was allowed by the order of the 1st respondent dated 27-11-1980/ 2-12-1980. The operative portion of the order reads as follows:

9. "In consideration of all aspects of the issue and in exercise of powers conferred on the appellate authority under Rule 25 of C.C. and (A) Rules of 1957, as amended from time to time, I, K.K. Veerappa, Joint Director of Public

Instruction, Bangalore Division, do hereby direct and order that:

(i) The punishment inflicted on the appellant viz., stoppage of 4 (four) increments permanently be and is fully set aside. He is exonerated of the charges.

(ii) The period of his absence from 13-7-76 to 30-9-1976 and again 19-6-1978 to 23-10-1978 is treated as best kind of leave at his credit.

(iii) The period of suspension from 7-10-1976 to the date of his reporting for duty on revocation of suspension is treated as best kind of leave at his credit.

(iv) This office order dated 10-11-1978 regarding nonrecovery of the amount from the appellant is confirmed, no recovery need be made.

(v) The amount recovered from him if any should be refunded."

The grievance of the petitioner is against sub-para (iii) of para-9 in which the appellate authority directed that the period of suspension from 7-10-1976 till the date on which it stood revoked should be treated as best kind of leave at his credit. Learned counsel for the petitioner submitted that in fact the petitioner had no leave to his credit and the effect of this order would be, the whole period will have to be treated as leave without allowance. Apart from this, learned counsel contended that there was no power with the appellate authority to treat the period as leave unless the petitioner consented for it, as leave cannot be granted unless applied for.

3. The provision of the Karnataka Civil Services Rules which governs the present case is Rule 100. The relevant portions of the rule read:

"100. (3) Where the authority competent to order re-instatement is of the opinion that the suspension was wholly unjustified the Government servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

"Provided that where such authority is of the opinion that termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation, and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such proportion of such pay and allowances as it may determine."

"(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3), the Government servant shall subject to the provisions of sub-rules (8) and (9) be paid such proportion of the full pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine,

after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1), who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule (5) the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

Note-The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of extraordinary leave in excess of three months in the case of temporary Government servants.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The proportion of full pay and allowances determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 98"

4. The rule indicates that in respect of a civil servant placed under suspension pending a departmental inquiry against him, the competent authority has to make a considered order, as to how the period of suspension should be treated. The types of orders which could be made under sub-rules (3) to (7) are:

First.-That the suspension was wholly unjustified, in which event the period of suspension has to be treated as duty and the concerned civil servant would be entitled to full pay and allowance (vide sub-rule (3) read with sub-rule (4)).

Second-That delinquent official was responsible for the delay in the finalisation of the inquiry, in which event, he would be entitled to such proportion of salary and allowances as determined by the competent authority. But such reduction could be made only after giving notice to the official, of such proposal and after considering the reply if any furnished thereto (vide proviso to sub-rule (3)).

Third-(i) In cases of the types other than the two types mentioned above, the competent authority has to determine the quantum of salary and allowances payable, which shall not be less than the subsistence allowance payable, after giving opportunity to the concerned civil servant (vide sub-rule (5) read with sub-

rules (8) and (9)).

(ii) In cases falling under this category, the period cannot be treated as duty unless so directed by the authority and cannot be treated as leave unless so desired by the official (vide sub-rule (7)).

Fourth-In cases where suspension had been revoked before the finalisation of the departmental inquiry, the disciplinary authority could pass an order, either of the first type (vide sub-rule (3)) or of the third type (vide sub-rule (5)).

The present case falls under the fourth category, and the disciplinary authority was under a duty to pass an appropriate considered order having due regard to all the facts and circumstances of the case. This has not been done. In any event in view of the proviso to sub-rule (7) the period could not have been treated as leave unless consented to, by the petitioner.

5. In the result, I make the following order:

(i) Rule made absolute;

(ii) Sub-para (iii) of para-9 of the impugned order dated 27-11-1980/ 2-12-1980 (Annexure-B) is quashed. The 1st respondent is directed to make a fresh order as to the manner in which the period during which the petitioner was placed under suspension should be treated having due regard to the relevant provisions contained in Rule 100 of the Karnataka Civil Services Rules;

(iii) No costs.

6. Sri S.V. Narasimhan, learned High Court Govt. Pleader is permitted to file his memo of appearance within two weeks from today.