

(2010) 07 PAT CK 0173
In the Patna High Court

Ram Binod Singh

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Citation : (2010) 07 PAT CK 0173

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the petitioner and learned Counsel for the Respondents No. 2 to 5, the authorities of Kendriya Vidyalaya Sangathan.

2. Petitioner is a primary teacher in Kendriya Vidyalaya, Nalanda, Rajgir. On the basis of serious allegations relating to minor girl students against the petitioner, departmental proceeding was contemplated and admittedly he was placed under suspension by an order dated 29.04.2009 contained in Annexure-1.

3. Against continuance of such order of suspension beyond 90 days without there being any extension or review, the petitioner approached the Central Administrative Tribunal, Patna Bench, Patna through O.A. No. 543 of 2009 which has been dismissed by the impugned order dated 30.04.2010 contained in Annexure-8.

4. Learned Counsel for the petitioner has placed reliance upon Rule 10(7) of the CCS (CCA) Rules (hereinafter referred to as the "Rules") for submitting that the order of suspension, on account of aforesaid provision in the Rules cannot be valid after the period of 90 days unless it is extended after review for a further period before expiry of 90 days. The relevant Rule has been extracted by the Tribunal in paragraph-11 of the impugned order. It appears from the discussions made by the Tribunal that the Tribunal accepted the legal position which required extension after review within 90 days of the order of suspension but it held on facts that the order of suspension was reviewed within 90 days on 22.07.2009 and was extended further.

5. Learned Counsel for the petitioner has annexed the written statement filed

before the Tribunal as Annexure-6 to the writ petition to show that the only relevant paragraph of the written statement is paragraph-14 and in that paragraph the concerned Respondents did not give date of review but simply mentioned the fact that the order of suspension was due for a review w.e.f. 27.07.2009 after completion of 90 days and a further averment was made that the Committee decided to continue the suspension of the applicant for a further period of 90 days because the enquiry could not be completed earlier. It was shown that the actual date of review was not mentioned in the written statement and simply on account of confusion or misreading, the Tribunal held that the order of suspension was reviewed within 90 days on 22.07.2009. The petitioner has annexed a communication dated 07.09.2009 as Annexure-7 to show that the Regional Suspension Review Committee admittedly reviewed the suspension of the petitioner for its extension in the meeting held on 07.09.2009 which was much after the permissible period of 90 days.

6. Learned Counsel for the respondents could not refute the aforesaid factual situation emerging from the record. As a result, we have no option but to hold that the petitioner's suspension was not reviewed within the period of 90 days for the purpose of extension and hence it became invalid after 90 days.

7. On behalf of the respondents it was submitted that in the light of order contained in Annexure-7, dated 07.09.2009 this Court should hold that petitioner's suspension became valid on account of order of extension at least from 07.09.2009 and therefore since then his suspension which has been extended from time to time is valid. This submission was countered by learned Counsel for the petitioner and our attention was drawn to a recent judgment of the Apex Court in the case of Union of India (UOI) and Others Vs. Dipak Mali, wherein a similar issue arose and the Court held in paragraph-11 that "subsequent review and extension, in our view, could not revive the order which had already become invalid after expiry of 90 days from the date of suspension".

8. In view of the aforesaid settled law and the factual position, we have no option but to hold that after expiry of 90 days from the initial order, suspension against the petitioner became invalid and on that account he is entitled to the difference of salary between the subsistence allowance which he has received during the aforesaid period and his full salary and allowances.

9. Considering nature of allegations which are subject matter of a departmental proceeding still pending against the petitioner, we have no hesitation in making it clear that the respondents would always have liberty to issue a fresh order of suspension but till such fresh order of suspension is issued, as held earlier petitioner would be entitled to reinstatement or to get difference of salary between subsistence allowance and his normal salary, in the light of appropriate decision to be taken by the concerned respondent.

10. The writ petition is allowed to that extent.