
(1976) 01 AHC CK 0033

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10702 of 1975

Ramesh Chandra Srivastava

APPELLANT

Vs

State of U.P.and another

RESPONDENT

Date of Decision : 12-01-1976

Acts Referred:

Uttar Pradesh Subsidiary Rules — Rule 199

Citation : (1976) 01 AHC CK 0033

Hon'ble Judges : K.N.Singh, J

Final Decision : Allowed

Judgement

K.N. Singh, J.

This petition is directed against the order of the Deputy Director of Education, Varanasi, dated September 24, 1975 placing the petitioner under suspension pending a criminal case against him under Section 161 of the Indian Penal Code read with Section 5 of the Prevention of Corruption Act.

Ramesh Chandra Srivastava, the petitioner was working as Stenographer to the District Basic Education Officer, Ghazipur. While he was working in his office he was arrested by the police on September 8, 1975 on charge of accepting illegal gratification. A case was registered against him by the police under Section 16], I.P.C. read with Section 5 of the Prevention of Corruption Act. After his arrest he was sent to Jail. On September 10, 1975 the petitioner applied for bail before the Special Judge, AntiCorruption, and he was enlarged on bail on that very day. He was released from the jail custody same evening. Thereafter the petitioner resumed, his duties in the office. On September 24, 1975 the Deputy Director of Education, Varanasi, passed the impugned order placing the petitioner under suspension pending criminal prosecution.

Learned counsel for the petitioner urged that under Subsidiary Rule the petitioner could not be suspended during the investigation of Criminal case against him. I find considerable force in this contention. Under Subsidiary Rule

199, no Government servant can be suspended pending investigation of a criminal case by the police. The stage for suspension of Government servant arises only after the charges sheet is submitted to the Court. There is no dispute that in the instant case no chargesheet has been submitted to the Court as yet, hence the petitioner could not be suspended under Subsidiary Rule 199.

Learned Standing Counsel has contended that the impugned order of suspension is sustainable under Rule 49A (2) (a) of the Civil Services (Classification, Control and Appeal) Rules. Rule 49A (2) lays down that a Government servant shall be deemed to have been placed, or as the case may be continued to be placed under suspension by the appointing authority with effect from the date of his detention, if he is detained in custody, whether the detention is on criminal charge or otherwise, for a period exceeding fortyeight hours. Clause (2) (a) of Rule 49A contemplates that if a Government servant is detained in custody on a criminal charge or otherwise, then he shall be deemed to be under suspension with effect from the date of his detention provided he remains in detention for a period of more than 48 hours. The emphasis is on the period of detention after arrest, if it exceeds 48 hours, then suspension is permissible, but if it does not exceed 48 hours then the Government servant cannot be placed under suspension under that Rule. It is thus clear that the jurisdiction to place a Government servant under suspension under the aforesaid Rule is circumscribed by a condition precedent, viz., that the Government must have been in detention for a period exceeding 48 hours. If this condition precedent is not satisfied, the Government servant cannot be deemed under suspension nor the appointing authority would have jurisdiction to place the Government servant under suspension. If the condition precedent is not satisfied the order of suspension would be invalid.

In paragraph 10 of the counter affidavit of Udai Narain filed on behalf of the respondents, it is asserted that the petitioner was arrested on September 8, 1975 at about 5.45 p.m. and kept in detention, he was released from jail custody on September 10, 1975 at about 5.55 p.m. Thus according to the respondents the petitioner remained in custody for 48.15 hours. The detention exceeded 48 hours by 15 minutes only. There is no positive assertion that the petitioner was in fact arrested exactly at 17.40 hours. The use of expression "about 5.45 p.m." makes the statement vague. Udai Narain has not stated that he was present on the spot at the time of arrest nor he has annexed any document to show the exact time of arrest. The respondents have further filed no affidavit of the police officer who arrested the petitioner. In the absence of this evidence, a vague assertion by a clerk of the office of the Zila Basic Shiksha Adhikari, cannot be accepted to be correct. The petitioner was arrested at about 5.45 p.m. means both ways. It may be 6.00 p.m. or it may be 5.30 p.m. The assertion does not refer to any exact point of time. In the circumstances the respondents have failed to show that the petitioner continued to remain in detention for a period exceeding 48 hours.

In the result I allow the petition and quash the impugned order of suspension.

The petitioner is entitled to his costs.