

(1966) 03 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : C.W. No. 183-D of 1964

R.P. Kapur

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 08-03-1966

Acts Referred:

All India Services (Discipline and Appeal) Rules, 1955 — Rule 3, 9, 9(1), 9(2)

Citation : AIR 1967 P&H 417

Hon'ble Judges : S.S. Dulat, J;S.K. Kapur, J

Bench : Division Bench

Advocate : Party in person, for the Appellant; S.N. Shanker and Srinivasa Rao, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner in this Court is a member of the Indian Civil Service By order dated 18th July, 1959, the petitioner was suspended with immediate effect by the Governor of Punjab on the ground that a criminal case was pending against him. The order also provided that for the period of suspension the petitioner shall be paid subsistence allowance equal to leave salary which he would have drawn under the leave rules applicable to him if he had been on leave on half average pay.

This order appears to have been passed under Rule 7(3) of the All India Services (Discipline and Appeal) Rules, 1955, hereafter referred to as the Discipline Rules. On 26th May, 1961, the Government of Punjab ordered an enquiry against the petitioner u/s 2 of the Public Servants (Inquiries) Act, 1850.

Another order of suspension was passed on 5th of April, 1963. (Annexure III to the petition). The said order, inter alia, recites, Now, therefore, under Rule 7 of the All India Services (Discipline and Appeals) Rules, 1955, and in exercise of all other powers, the Governor of Punjab hereby orders suspension of the said Shri R. P. Kapur pending passing of final orders in the said enquiry and further directs

that the said Shri R. P. Kapur shall continue to remain under suspension and shall be paid subsistence allowance as admissible under the rules."

Another order was passed on 11th September, 1963, directing, inter alia, that"... R. P. Kapur shall be deemed to have been reinstated for the period from the 18th July, 1959, to 4th April, 1963. Further, under Rule 9 (2) (a) of the All India "Services (Discipline and Appeal) Rules, R. P. Kapur is granted the full pay to which he would have been entitled, had he not been suspended, together with any allowances of which he was in receipt immediately prior to his suspension. The aforesaid period from the 18th July, 1959, to the 4th April, 1963. shall be treated as a period spent on duty. This order shall not affect the subsequent suspension of R. P. Kapur ordered on the 5th April, 1963.

The order of suspension dated 5th April, 1963, was again rescinded on 25th February, 1964. The ground given for rescission of the said order of suspension is that the Supreme Court has held vide its judgment dated the 19th November, 1963, that Rule 7 of the Discipline Rules is ultra vires in so far as it permits any authority other than the Government of India to suspend, pending a departmental inquiry or pending a criminal charge, a public servant who was a member of the former Secretary of State's Service. It is also recited in the said order that the petitioner will be deemed to have been reinstated for the period from the 5th April, 1963, to the 17th February, 1964, and he shall be allowed full pay and allowances to which he would have been entitled, had the said order of suspension not been passed.

In the meantime, an order suspending the petitioner had been passed on 18th February, 1964 (Annexure VI to the petition) by the Government of India placing the petitioner under suspension with immediate effect and directing that during the period of suspension he be paid such subsistence allowance as was admissible under the rules. In the aid order, it is stated:--"And Whereas the President, after carefully considering the available material, and having regard to the nature of the charges and the circumstances of the case, is satisfied that it is necessary and desirable to place the said Shri R. P. Kapur under suspension.

The last in the series is the order dated 14th May, 1965, (Annexure "S" to the petition), passed by the President of India saying: --

"The President is pleased to revoke with immediate effect order . . . dated 18th February, 1964, placing Shri R. P. Kapur I C S (Punjab) under suspension." For completeness, it may be necessary to point out that the Supreme Court decided the Civil Appeal No. 75 of 1963, R. P. Kapur Vs. Pratap Singh Kairon and Others, in which their Lordships observed, "while, therefore, we have come to the conclusion that the High Court has rightly refused to issue to the appellant writs prayed for to quash the Government's order for enquiry against him and the other prayers mentioned in the petition, we direct that the enquiry should not take place so long as the appellant's complaint against Dhingra is not finally disposed of .

2. The dispute basically revolves round the question whether the petitioner is entitled to his full pay and allowances of which he has been deprived by virtue of the suspension order dated 18th February, 1964, revoked on 14th May, 1965. The petitioner has challenged the validity and/or legality of the said orders on various grounds. He says that the suspension order is bad in law and illegal being in contravention of Rule 7 of the Discipline Rules. According to him, under Rule 7, it is only the Government which initiates any disciplinary proceedings which can order the suspension of a member of the service against whom proceedings are started and in the instant case the Government initiating disciplinary proceedings being the Punjab Government, no power vests in the Central Government or the President to pass a suspension order.

The answer to this contention is furnished by the decision of their Lordships of the Supreme Court in *R.P. Kapur Vs. Union of India (UOI) and Another*, . It was, there, decided that the employer in such circumstances had an inherent power to pass an interim suspension order while enquiry was pending into his conduct and that in such a case the employee would be entitled to his remuneration for the period of interim suspension, if there is no statute or rule under which it could be withheld. It must, therefore, be held that the order of suspension was properly made by the President of India. So far as the withholding of remuneration is concerned, the matter is governed by Rule 8, under which the employee in such circumstances would be entitled to subsistence allowance.

3. The next contention of Mr. Kapur is that the second order of suspension was rescinded on 25th February, 1964, and, therefore, he could not be suspended again on 18th February, 1964, when he was already under suspension. There is no merit in this contention. As held by their Lordships of the Supreme Court in *R.P. Kapur Vs. Union of India (UOI) and Another*, , the order of suspension dated 5th April, 1963, by the Punjab Government was illegal. That being so, no notice can be taken of the said order of suspension.

4. Mr. Kapur next contends that the suspension order suffers from illegality, as it has been passed without the President applying his mind to the same. In support of this plea, he has relied on certain answers given by Mr. Hajarnavis, Minister in the Ministry of Home Affairs, in the Rajya Sabha. Mr. Hajarnavis, in answer to a question whether Mr. Kapur had been given a charge-sheet before he was suspended, said, "I wonder whether a charge-sheet as been given. We have taken into consideration the allegations against him". When asked whether there were any fresh charges against Mr. Kapur beyond those on which he was earlier suspended by the Punjab Government, Mr. Hajarnavis said that the Punjab Government's suspension order had been set aside by the Supreme Court and he could not say whether the same material against Mr. Kapur, when the State Government passed the order, was there or some further charges had been added and that the Central Government had taken into account the allegations in passing the suspension order, but it would be improper for him to express any views on the merits of the case, as a quasi judicial enquiry was going to be held.

The petitioner says that the President never applied his mind. In paragraph 23 of the affidavit of Mr. K. Sivraj, Deputy Secretary, Ministry of Home Affairs, it has been averred that the substance of the imputation and mis behaviour by the petitioner had been carefully considered by the President and it was thereupon that the decision to suspend him was taken by an authority competent to institute proceedings and impose penalty against the petitioner. Again, in paragraph 26, it is said.

"The order of suspension has been made after a careful consideration of the facts and circumstances of the case and after the President was satisfied that it was necessary and desirable to place the petitioner under suspension. . . . "

5. The matter came up for hearing before this Court on an earlier occasion and the petitioner was allowed, in the circumstances set out in the order dated 11th November, 1965, passed by this Court, to amend his petition so as to enable him to ask for a direction that the Government of India must decide the question of his emoluments for the period of suspension from 18th February, 1964, to 14th May, 1965, and to incorporate the necessary facts for the purpose. Mr. Kapur accordingly filed an amended petition dated 15th November, 1965 praying, inter alia, for a writ, order or direction in the nature of mandamus directing the respondents Nos. 1 and 2 to allow full pay and allowances to him.

In the reply affidavit filed to the amended petition by Mr. A. P. Veera Raghavan, Deputy Secretary to the Government of India, it has again been reiterated that the order of suspension was passed by the President against the petitioner on 18th February, 1964, after a very careful consideration of the material on the record and having regard to the nature of charges and the circumstances of the case and after he was satisfied that it was necessary and desirable in the instant case to place him (the petitioner) under suspension. The materials before us are not sufficient to enable me to conclude that the President did not apply his mind before passing the suspension order. It must, in the circumstances, be held that the order does not suffer from the vice of lack of application of mind by the President.

6. It is then said by the petitioner that on the true construction of the order dated 14th May, 1965, we are obliged to hold that the suspension order dated 18th February, 1964, has been completely recalled. His emphasis is on the words "revoke with immediate effect". He submits that "revoke" means "recall", "rescind", "cancel" or "withdraw", and consequently this Court must proceed on the assumption that there never was any suspension order made. That being so, says the petitioner, there is no occasion for any decision by any authority under Rule 9 of the Discipline Rules to determine the matter of petitioner's eligibility to pay) and allowances during the said period. In paragraph 9 of the amended writ petition, the petitioner says: -- "That the order at Annexure VI having been revoked or rescinded or cancelled or withdrawn by respondent, the position operative in law would be the position as on 17-2-1964 when the petitioner was entitled to and drawing full pay and allowances".

Not much light has been thrown by the respondent's affidavits on the construction of the language used in the order dated 14th May, 1965. It would be pertinent to read paragraph 9 of the affidavit of Mr. Veera Raghvan filed in reply to the amended writ petition. It says. "Para 9 of the petition is denied except that the order of suspension has simply been revoked for administrative reasons and not because the petitioner has been exonerated. After the order of the Supreme Court directing the enquiry against the petitioner not to be proceeded with so long as the petitioner's complaint against Dhingra was not finally disposed of, it was considered proper that the petitioner may not be kept under suspension for such a length of time. The position in regard to the criminal complaint filed by the petitioner against Shri Dhingra is that Shri Dhingra has gone in appeal against the judgment of the Additional District Magistrate (Judicial), Saharanpur, convicting Shri Dhingra and sentencing him to terms of imprisonment and fine".

We are, therefore, driven to construe the order in the light of the language used therein. True, that etymologically "revoke" means "to recall, call back: to withdraw:", but the order has to be construed reading it as a whole. If "revoke" was intended to convey the meaning of "completely nullifying the suspension "ab initio", it appears that there was no necessity to follow it up with the words "with immediate effect". Once the suspension order is revoked in the sense urged by the petitioner, it would automatically disappear and the addition of the words "with immediate effect" would hardly be necessary. On the reading of the entire order, it appears that it intended to revoke the suspension from the date thereof and did not mean to destroy it completely.

7. There remains to consider the most formidable argument of the petitioner. He says that he has been reinstated within the meaning of Rule 9 (1) of the Discipline Rules, in any case, with effect from the 14th May, 1965, and, therefore, the authority competent to order the reinstatement must consider and make an order as to (a) the pay and allowances which shall be paid to the petitioner for the period of his absence from duty, and (b) whether or not the said period shall be treated as a period spent by him on duty. He further says that such competent authority must also consider whether or not the suspension order was justifiable, as contemplated by Rule 9 (2) of the Discipline Rules, and if it comes to the conclusion that the suspension was unjustified, he should be granted full pay to which he would have been entitled, had he not been suspended, together with allowances mentioned in the said Rule 9 (2).

8. The respondents, on the other hand say that they cannot take a decision unless the enquiry against the petitioner is completed, which enquiry cannot be held in view of the stay order issued by the Supreme Court mentioned above. It is further said on behalf of the respondents that the petitioner has not been reinstated by the Order dated 14th May, 1965, within the meaning of the said Rule 9 (1), as reinstatement there must mean reinstatement after a member of the Service has been exonerated. To my mind, there appears to be no logic in any of the two contentions raised by the respondents. Suspension is not one of

the punishments prescribed by rule 3 of the Discipline Rules. Consequently, the suspension contemplated by Rule 9 must mean suspension otherwise than by way of penalty. Moreover, it is not necessary that a person against whom an enquiry has been order ed must invariably be suspended. Mr. Shankar, learned counsel for the respondents, does not dispute that if a member of the Service is ultimately fully exonerated he would, at all events, be entitled to full pay and allowances even for the period during which the was under suspension by virtue of Rule 9 (2). Is it then legitimate to restrict the scope of the word "reinstated" in Rule 9(1) as canvassed by the respondents? I think, the answer is "no". If suspension, as contemplated by Rule 9, is not a punishment, then "reinstated" must necessarily include reinstatement as a result of rescission of the suspension order. I am further of the opinion that justifiability of suspension order in Rule 9 (2) must be determined irrespective of the result of enquiry and not necessarily after the conclusion thereof. As a matter of fact, on the earlier occasions, orders were passed giving the petitioner full pay and allowances in spite of the pendency of the enquiry. What Rule 9(2) requires is that the concerned authority must consider whether or not there was justification for suspending the member of the Service on the facts and circumstances as obtained on the date of suspension and "irrespective of the pendency or result of the enquiry. In this view, it follows that the competent authority, namely respondent No. 1, must decide and make an order as to whether the suspension of the petitioner was justified or not and" to allow the petitioner the consequential relief in terms oil Rule 9 depending on the decision of the said respondent No. 1. The respondents are not justified in their stand that they can decide this question only at the conclusion of the enquiry, which, according to them, can take place only after Dhingra"s case has been finally decided and which may take years.

9. In the result, the petition is allowed to the extent that a writ, order and direction in the nature of mandamus be issued to respondent No. 1 that they must consider and decide the question of the petitioner"s emoluments during the period of suspension, that is 18th February, 1964, to 14th May, 1965. There would, in the circumstances, be no order as to costs.