

(1980) 11 KAR CK 0018
In the Karnataka High Court
Case No : WP 20393/80

Subhash Narayan Rao

APPELLANT

Vs

Kar. Electricity Board and Others

RESPONDENT

Date of Decision : 04-11-1980

Acts Referred:

Karnataka Electricity Board Employees Service Regulations — Regulation 86

Citation : (1981) 1 KarLJ 242

Hon'ble Judges : M. Rama Jois, J

Judgement

1. The petitioner who is an employee of the Karnataka Electricity Board (herein after referred to as the Board) has presented this writ petition praying for quashing the Official Memorandum dated 14-10-80 issued by the Superintending Engineer (Elec), K.E.B., Gulbarga under which the petitioner has been deemed to have been kept under suspension with effect from 2-10-1980.

2. The writ petitioner came up for preliminary hearing yesterday. Having regard to the subject matter of the petition, I directed Shri B.M. Jayamahadeva Prasad, learned standing counsel for the Board to take notice and to post the case for to-day. By consent of both the counsel, the petition is taken up for final hearing.

3. The facts in brief are as follows: The Petitioner is working as a

Meter Reader in Mannekhalli in Gulbarga Circle. A criminal case is pending against him in Crime No. 56 of 1980 on a charge of assault. He was taken to custody by the Police on 1-10-1980 and released on bail on 2-10-1980.

4. The impugned order reads as follows:

Official Memorandum

Sub: Involvement in Criminal case No. 56/80 against Sri Subhash, Meter Reader, KEB, Mannaekhalli.

Ref: Telephone Message dated 3-10-1980.

Sri Subhash, Meter Reader working at Mannaekhalli, who is involved in Criminal case number cited above is deemed to have been kept under suspension with effect from 2-10-80 as per K.E.B.E.S., Regulations Nos. 86 and 87 until the proceedings taken against him are settled.

The subsistence allowance is also sanctioned to the employee as per KEB ES Regulation No. 84.

Sd/-Superintending Engineer, EI.,K.E.B., Gulbarga."

5. Shri B.M. Jayamahadeva Prasad, learned counsel for the respondents, submitted that according to Regulation No. 86 an employee of the Board has to be considered to be under suspension not only during the period in which he is under custody of the Police or under detention but also for the period during which a criminal case is pending against him.

6. Regulations Nos. 86 and 87 of the Karnataka Electricity Board Employees' Service Regulations read as follows:

"86. An employee against whom proceedings have been taken either for his arrest for debt or on a criminal charge, or who is detained under any law providing for preventive detention, should be considered as under suspension for any periods, during which he is detained in custody or is undergoing imprisonment and not allowed to draw any pay and allowances other than any subsistence allowances that may be granted in accordance with the principles laid down in the Rule 84 (for such periods until the termination of the proceedings taken against him or until he is released from detention and allowed to rejoin duty, as the case may be. An adjustment of his allowance for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the employee being acquitted of the blame, or if the proceedings taken against him were for his arrest for debt) of its being proved that the employees' liability arose from circumstances beyond his control. In cases where the arrest is for detention under a law providing for preventive detention, the full amount of allowances for the period of detention shall be given only when such detention is held by the competent authority to be unjustified. (underlining (italics) by me)

Note: Whenever an employee is judicially convicted of any offence, a copy of the decision should be communicated to the controlling authority in order that such action as may be deemed proper in the case may be taken at once.

87. An employee against whom a criminal charge of proceeding for debt is pending should also, be placed under suspension by the issue of specific orders to this effect during periods when he is not actually detained in custody or imprisoned, (i.e., whilst released on bail) if the charge made or proceedings taken against him is connected with his position as an employee; or is likely to embarrass him in the discharge, of his duties as such, or involves moral turpitude. In regard to pay and allowances for the period of suspension, the

provisions of Rule, 64 above shall apply.

Note: A subsistence allowance not exceeding the prescribed rate may, however, be granted even in cases of committals to prison at the discretion of the suspending authority."

7. As can be seen from the underlined portion of the Regulation No. 86, an employee of the Board should be considered to be under suspension only during the period in which he is detained in custody or is undergoing imprisonment. In the present case, the petitioner was taken to custody on 1-10-1980 and released on bail on 2-10-1980. Therefore, on or after 2-10-1980 he cannot be deemed to be under suspension as he was neither detained in custody of the Police nor was he undergoing imprisonment.

8. The learned counsel for the respondents, however, relied on the portion i.e., after the underlined portion, in Regulation No. 86 and submitted that those wordings lend support to his contention that an employee has to be considered to be under suspension until the criminal case if any against him comes to an end. I am unable to agree with him. The latter part of the Regulation deals with only the question of payment of subsistence allowance and does not regulate the period during which an employee has to be considered as under suspension. The earlier part of the Regulation is clear and unambiguous and it is only during the period in which an employee is actually under preventive detention or in lawful custody that he has got to be treated as under suspension.

9. Regulation No. 87 empowers the competent authority to place an employee of the Board under suspension even during the period when a criminal case is pending against an employee if the authority considers, having regard to the nature of the charges levelled against him, that it is not desirable to allow him to work until he is exonerated from the charges. In the present case, the Superintending Engineer has not exercised his powers under Rule 87 but has declared that the petitioner is deemed to be under suspension from 2-10-1980 though from 2-10-80 the petitioner was not in police custody.

10. The above view is in conformity with the view taken on the interpretation of Rules 101 and 102 of the Karnataka Civil Service Rules which are similar, in the case of *Munireddy v. Deputy Director of Public Instruction, Kolar*, ILR (1978)2 Kar. 1835. Accordingly, I make the following order:

(i) The Writ Petition is allowed.

(ii) The impugned Official Memorandum dated 14-10-80 is quashed. The petitioner shall be entitled to all consequential benefits.

(iii) The Superintending Engineer is at liberty to pass a fresh order under Regulation No. 87 if, having regard to the nature of the charges and the circumstances of the case, he considers it necessary to pass such an order in the interest of the service of the Board.

11. Shri B.M. Jayamahadeva Prasad is permitted to file his memo of appearance within two weeks