
(2009) 12 AHC CK 0339
In the Allahabad High Court

Union of India (UOI) and Others

APPELLANT

Vs

Ishwari Narayan Singh

RESPONDENT

Date of Decision : 18-12-2009

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Penal Code, 1860 (IPC) — Section 120, 409

Citation : (2010) 2 AWC 1761

Hon'ble Judges : Kashi Nath Pandey, J;Ashok Bhushan, J

Bench : Division Bench

Judgement

Ashok Bhushan, J.—Heard Dr. Ashok Nigam, learned Additional Solicitor General of India, assisted by Sri Ajay Bhanot for the petitioners and Sri Avnish Tripathi, learned Counsel appearing for the respondent.

2. Counter and rejoinder-affidavits having been exchanged between the parties, with the consent of the learned Counsel for the parties, the writ petition is being finally decided.

3. By means of present writ petition, the Union of India has challenged the order dated 6.3.2009 of the Central Administrative Tribunal allowing the Original Application No. 1561 of 2008 filed by Ishwari Narayan Singh challenging his suspension order dated 21.1.2004 as well as the order dated 9.9.2005, rejecting the representation of the respondent for revocation of his suspension order.

4. Brief facts necessary for deciding the issues raised in the writ petition are that ; the respondent, while was working as Sub Post Master at Teliabagh, Post Office West Division, Varanasi, complaints were received in October, 2004 that at Sub-Post Office, Teliabagh there was embezzlement of crores of rupees. The Sub Post Master, Kashi Vidyapith wrote a letter to the higher authorities on 3.12.2009, making serious allegations. An order dated 3.12.2004 was passed by the Superintendent of Post Office West Division, Varanasi placing the petitioner under suspension in exercise of power under sub-rule (1) of Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter

referred to as "1965 Rules") in contemplation of disciplinary inquiry. The Director, Postal Services, Allahabad Region sent a letter to the D.I.G., C.B.I, requesting for lodging a first information report and to inquire into a fraud case committed at Teliabagh post office, Varanasi. The C.B.I, conducted an investigation and lodged a first information report on 4.3.2005 u/s 120 read with Section 409, I.P.C. and Sections 13 (2) and 13 (i) of Prevention of Corruption Act, 1988. The respondent was also arrested by the C.B.I, on 6.4.2005 and was released on bail by order of Special Judge, Anti-Corruption Act, Lucknow dated 6.7.2005. A charge-sheet dated 31.8.2005 was issued to the respondent, which could be delivered on 13.9.2005. The respondent after being released from detention on 6.7.2005, appears to have submitted a representation on 20.7.2005 against the suspension order. Again he submitted a further representation for revocation of suspension on 22.8.2005. The representation dated 22.8.2005 of the respondent was rejected. The Review Committee met on 5.9.2005 to review the suspension of the respondent and took the view that the suspension continue in view of the C.B.I. inquiry being continuing, letter dated 9.9.2005 was sent to the petitioner informing continuance of his suspension by Superintendent of Post Office, West Division Varanasi. Another letter dated 8.9.2009 was sent to the petitioner by Post Master General, Allahabad informing that his representation dated 22.8.2005 has been rejected and the review committee decided to continue the suspension. The respondent filed an original application u/s 19 of the Administrative Tribunals Act, 1985 before the Central Administrative Tribunal, Allahabad praying for following reliefs:

In view of the facts and reasons mentioned in paragraph No. 4 above, it is therefore, most respectfully prayed that this Hon''ble Tribunal may graciously be pleased to grant the following reliefs:

(i) to issue an order, rule or direction for quashing and setting aside the impugned order dated 21.12.2004 passed by the respondent No. 3 placing the applicant under suspension (Annexure-A1 in compilation No. Part I).

(ii) to issue an order, rule or direction for quashing and setting aside the impugned order dated 9.9.2005 passed by the respondent No. 2 communicated by the respondent No. 3 rejecting the representation/appeal of the applicant for revocation of suspension order passed by the respondent No. 3 (Annexure-A2 in compilation No. and Part I).

(iii) to issue an order, rule, or direction in the nature of mandamus directing the respondent No. 5 to revoke the suspension of the applicant and reinstate him on his post.

(iv) to issue any other order, rule or direction as this Hon''ble Tribunal may deem fit and proper in the circumstances of the case.

5. A counter-affidavit was filed by the petitioner refuting the claim of the respondent. It was stated by the petitioner that the respondent was suspended on the allegation of misappropriation of huge amount of sale proceeds of Kisan

Vikas Patra and N.S.C. by the respondent. It was further stated that representation of the respondent for revocation of suspension was rejected and decision was intimated to him vide letter dated 9.9.2005. It was stated that charge-sheet had already been served and departmental inquiry was proceeding. It was also stated that the suspension of the respondent was required to be extended as such it was reviewed regularly by the competent authority from time to time.

6. The Tribunal vide its judgment and order dated 6.3.2009 allowed the application quashing the suspension order dated 21.12.2004 and order dated 9.9.2005 (rejecting the request of the respondent for revocation of the suspension). The petitioners have come up in this Court challenging the order of the Tribunal dated 6.3.2009. The Tribunal gave the following reasons for quashing the suspension order in paragraph 10 of the judgment:

(i) The order of suspension passed against the respondents has not at all been reviewed by the competent authority before expiry of the 90 days and as such the same should be treated as null and void.

(ii) The reason assigned by the Superintendent of Post Offices, West Division, Varanasi for non-holding review, in its order dated 9.9.2005, is also wholly non-speaking and cryptic. A perusal of the letter clearly indicates that there is no mention as to when the review had taken place.

(iii) Under Rule it is clearly provided that extension of suspension shall not be for a period extending 180 days at a time.

(iv) "As discussed above, first review has been prescribed to be undertaken at the end of three months from the date of suspension which has not at all been done in the present case. It is also seen from the record that the suspension order has been passed without taking any follow up action either to complete the departmental/C.B.I. enquiry and the applicant has been put under suspension for indefinite period.

Dr. Ashok Nigam, Additional Solicitor General of India challenging the order of Central Administrative Tribunal dated 6.3.2009 has made following submissions:

(i) The sub-rule (6) and sub-rule (7) of Rule 10 of 1965 Rules which require review by the authority concerned before expiry of 90 days from the effective date of suspension, is not mandatory and is directory. The intent of rule is only to impress the authorities that review of suspension be done within the time limit and failure to review within 90 days does not vitiate the suspension.

(ii) The review of the suspension having been made after expiry of 90 days deciding to continue the suspension the suspension shall revive in view of the law laid down by the Full Bench of this Court in Chandra Bhushan Misra v. District Inspector of Schools, Deoria and Ors. (1995) 1 UPLBEC 460 : 1995 (2) AWC 749 (FB).

(iii) There being serious allegations of misappropriation against the respondent and a first information report having already been lodged by the C.B.I. as well as departmental inquiry having been under process, the Tribunal erred in setting aside the suspension order.

7. Sri Avnish Tripathi, learned Counsel for the respondent refuting the submissions of learned Counsel for the petitioner contended that the requirement of review of suspension within 90 days under sub-rules (6) and (7) of Rule 10 of 1965 Rules is mandatory and non-review of such suspension within 90 days would invalidate the suspension. It is contended that no details of the review were brought on record before the Tribunal and the application dated 6.3.2009 and the affidavit dated 5.3.2009 filed in support thereof which have been filed alongwith writ petition as Annexure-11 to the writ petition, were never filed before the Tribunal. There being no details of the review of the suspension, the Tribunal was not obliged to consider the submission, which are now sought to be raised before this Court.

8. Learned Counsel for the parties placed reliance on several judgments of this Court as well as of the Apex Court in support of their submissions, which shall be referred to, while considering their submissions in details.

9. The first issue which has arisen in this case is as to whether the requirement of review of suspension order within 90 days from the effective date of suspension, is a mandatory requirement or a directory. For appreciating the above submission, it is necessary to consider the reason for bringing the amendments in the rule by which sub-rules (6) and (7) were added in Rule 10 of 1965 Rules. Rule 10 of 1965 Rules before its amendment was as follows:

Rule 10. Suspension.--(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authorities empowered in that behalf by the President, by general or special order, may place a Government servant under suspension:

(a) where a disciplinary proceeding against him is contemplated or is pending ; or

(aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State ; or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, except in the case of an order of suspension made by the Comptroller and Auditor General in regard to a member of the Indian Audit and Accounts Services and in regard to an Assistant Accountant-General or equivalent (other than a regular member of the Indian Audit and Accounts Services), where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority:

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty eight hours ;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation.--The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority. On a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.

5 (a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

5 (b) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.

5 (c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

10. In context of unamended rule, the question of interpretation of Rule 10 (2) which provided for deemed suspension of a Government servant, came for consideration before the Apex Court in Union of India (UOI) Vs. Rajiv Kumar, In the said case, the Government servant was arrested on 26.3.1998 and was released on bail on 2.4.1998. It was contended for the employee that after release of the Government servant, the deemed suspension under Rule 10(2) automatically came to an end. Rule 10 (5)(a) also fell for consideration which provided that an order of suspension made or deemed to have been made shall continue to remain in force until it is modified or revoked by the authority competent to do so. The Apex Court in the said judgment considered rules of statutory interpretation and laid down following in paragraph 15:

Thus, it is clear that the order of suspension does not lose its efficacy and is not automatically terminated the moment the detention comes to an end and the person is set at large. It could be modified and revoked by another order as envisaged under Rule 10 (5)(c) and until that order is made, the same continues by the operation of Rule 10 (5) (a) and the employee has no right to be reinstated to service. This position was also highlighted in Balvantrai Ratilal Patel v. State of Maharashtra AIR 1968 SC 880. Indication of expression "pending further order" in the order of suspension was the basis for aforesaid view.

11. The Apex Court took the view that suspension does not lose its efficacy the moment detention comes to an end and until an order is passed under Rule 10(5)(c), the suspension continues. The Apex Court in the said judgment held that Court cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous.

12. It appears that after the aforesaid judgment, the Government decided to amend Rule 10. Rule 10 was amended by O.M. dated 19.3.2004 by adding sub-rules (6) and (7) which are quoted as below:

(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety days from the effective date of suspension, on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

(7) An order of suspension made or deemed to have been made under Sub-rules (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days:

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days period in such case will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later.

13. The clear intendment of the amendment in Rule 10 by adding Sub-rules (6) and (7) was to limit the suspension order or a deemed suspension order for a fixed period and to necessitate review of such suspension within 90 days of the suspension with a further requirement that suspension could not by one stretch be continued for more than 180 days. The Apex Court in *Union of India v. Rajiv Kumar* (supra), while considering the same Rule 10 laid down following principles for interpretation of statutes. Paragraphs 18, 19, 22, 23 and 24 being relevant are quoted as below:

18. It is well-settled principle in law that the Court cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute or any statutory provision is the determinative factor of legislative intent of policy makers.

19. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute or any statutory provision is to ascertain the intention of the Legislature or the Authority enacting it. [See *Institute of Chartered Accountants of India v. Price Waterhouse and Anr.* AIR 1998 SC 74]. The intention of the maker is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in *Crawford v. Spooner* 1846 (6) M PC 1, Courts, cannot aid the Legislatures, defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. [Also see *State of Gujarat and Others Vs. Dilipbhai Nathjibhai Patel and Another*, . It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [See *Stock v. Frank Jones (Liptan) Ltd.* (1978) 1 All ER 948 . Rules of interpretation do not permit Courts to do so, unless the provisions as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. [Per Lord Loreburn L.C. in *Vickers Sons and Maxim Ltd. v. Evans*, quoted in *Jamma Masjid, Mercara v. Kodimaniandra Deyiah*].

22. While interpreting a provision, the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the Legislature to amend, modify or repeal it, if deemed

necessary. [See M/s. Rishabh Agro Industries Ltd. Vs. P.N.B. Capital Services Ltd., The legislative casus omissus cannot be supplied by judicial interpretative process.

23. Two principles of construction--one relating to casus omissus and the other in regard to reading the statute/statutory provision as a whole--appear to be well-settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself. But, at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J. in *Artemiou v. Procopiou*, (All ER p. 544), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in *Luke v. I.R.C.*), where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".

24. It is then true that, "when the words of a law extend not to an inconvenience rarely happening, but do to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt."

"But, on the other hand,

it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (See *Fanton v. Hampton*).

A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the Legislature, or on the principle *quod semel aut bis existit proetereunt leges*, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute--*Casus omissus et oblivioni datus dispositioni communis juris relinquitur* ; "a casus omissus," observed Buller, J. in *Jones v. Smart*, "can in no case be supplied by a Court of law, for that would be to make laws."

14. Learned Counsel for the respondent has also placed reliance on a Full Bench judgment of Central Administrative Tribunal New Delhi in *D.R. Rohilla v. Union of India and Ors.* 2006 (3) ATJ 11, in which case amended sub-rules (6) and (7) fell for consideration and the Full Bench of the Tribunal took the view that the

suspension, if not reviewed within 90 days, shall become invalid.

15. The object and purpose of amending Rule 10 by adding Sub-rules (6) and (7) is apparent from the Rule itself. Sub-rule (6) uses the words "shall be reviewed by the authority competent to modify or revoke the suspension before expiry of ninety days". Further Sub-rule (7) lays down that an order of suspension "shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days".

16. The use of word "shall" raises a presumption that a particular provision is imperative as laid down by the Apex Court in *State of U.P. v. Manbodhan Lal Srivastava* AIR 1957 SC 917. A perusal of the above rule indicates that Sub-rule (6) provides review before expiry of 90 days from the suspension and Sub-rule (7) provides the consequence of not being reviewed within 90 days. The Apex Court in *Rajeseckhar Gogoi v. State of Assam* 2001 (6) SCC, laid down that consequence of nullification or failure to apply within a prescribed requirement provided by statute there can be no manner of doubt that such statutory requirement must be interpreted as mandatory. Following was laid down by the Apex Court in paragraph 11:

...We do not agree with the observations of the High Court that Rule 206 is not mandatory. The language of the said rule is clear and unambiguous. It not only says that the tenders must be in their required Form but also stipulates the consequences of non-compliance thereto, the consequence being that the tenders not containing all the particulars "shall be liable to be rejected."

17. The submission of Dr. Ashok Nigam, learned Additional Solicitor General of India is that requirement of review within 90 days is to be taken only as directory since the only intendment of rule was to impress the authority to carry on review within 90 days. Reliance has been placed by learned Counsel for the petitioner on the judgment of the Apex Court in *T.V. Usman Vs. Food Inspector, Tellicherry Municipality, Tellicherry*, In the said case, Rule 7(3) of Prevention of Food Adulteration Rules came up for consideration which required sending of the report within period of 45 days. The Apex Court laid down following in paragraphs 11 and 12:

11. In Rule 7(3) no doubt the expression "shall" is used but it must be borne in mind that the Rule deals with stages prior to launching the prosecution and it is also clear that by the date of receipt of the report of the Public Analyst the case is not yet instituted in the Court and it is only on the basis of this report of the Public Analyst that the concerned authority has to take a decision whether to institute a prosecution or not. There is no time limit prescribed within which the prosecution has to be instituted and when there is no such limit prescribed then there is no valid reason for holding the period of 45 days as mandatory. Of course that does not mean that the Public Analyst can ignore the time limit prescribed under the Rules. He must in all cases try to comply with the time limit. But if there is some delay, in a given case, there is no reason to hold that

the very report is void and on that basis to hold that even prosecution cannot be launched, may be, in a given case, if there is inordinate delay, the Court may not attach any value to the report but merely because the time limit is prescribed, it cannot be said that even a slight delay would render the report void or inadmissible in law. In this context it must be noted that Rule 7(3) is only a procedural provision meant to speed up the process of investigation on the basis of which the prosecution has to be launched. No doubt, Sub-section (2) of Section 13 of the Act confers valuable right on the accused under which provision the accused can make an application to the Court within a period of 10 days from the receipt of copy of the report of Public Analyst to get the samples of food analysed in the Central Food Laboratory and in case the sample is found by the said Central Food Laboratory unfit for analysis due to decomposition by passage of time or for any other reason attributable to the lapses on the side of prosecution, that valuable right would stand denied. This would constitute prejudice to the accused entitling him to acquittal but mere delay as such will not per se be fatal to the prosecution case even in cases where the sample continues to remain fit for analysis in spite of the delay because the accused is in no way prejudiced on the merits of the case in respect of such delay. Therefore it must be shown that the delay has led to the denial of right conferred u/s 13(2) and that depends on the facts of each case and violation of the time limit given in Sub-rule (3) of Rule 7 by itself cannot be a ground for the prosecution case being thrown out.

12. In this context it is useful to refer to the judgment of this Court in *Dalchand Vs. Municipal Corporation, Bhopal and Another*, wherein the question was whether Rule 9(j) of Prevention of Food Adulteration Rules under which report of the public analyst has to be supplied within ten days, is mandatory or directory and it was held as under (para 1):

There are no ready tests or invariable formulas to determine whether a provision is mandatory or directory. The broad purpose of the statute is important. The object of the particular provision must be considered. The link between the two is most important. The weighing of the consequence of holding a provision to be mandatory or directory is vital and, more often than not, determinative of the very question whether the provision is mandatory or directory. Where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat that design, the provision must be held to be directory, so that proof of prejudice in addition to noncompliance of the provision is necessary to invalidate the act complained of. It is well to remember that quite often many rules, though couched in language which appears to be imperative, are no more than mere instructions to those entrusted with the task of discharging statutory duties for public benefit. The negligence of those to whom public duties are entrusted cannot be statutory interpretation be allowed to promote public mischief and cause public inconvenience and defeat the main object of the statute. It is as well to realise that every prescription of a period within which an act must be done, is

not the prescription of a period of limitation with painful consequences if the act is not done within that period.

In this view of the matter this Court held that Rule 90(j) is only directory and not mandatory. Regarding the effect of noncompliance of Rule 9(j) it was further held that:

Where the effect of noncompliance with the rule was such as to wholly deprive the right of the person to challenge the Public Analyst's Report by obtaining the report of the Director of the Central Food Laboratory, there might be just cause for complaint, as prejudice would then be writ large. Where no prejudice was caused there could be no cause for complaint. I am clearly of the view that Rule 9(j) of the Prevention of Food Adulteration Rules was directory and not mandatory.

18. In the present case, the obligation for reviewing the suspension within 90 days, has been placed on the public authority and if it is held that such requirement is only directory, the purpose and object for which the rule was amended shall be defeated and cause prejudice to the person for whose benefit the rule was amended. The judgment of the Apex Court in the case of T.V. Usman (supra) was in the background of a particular purpose in which the report had to be analysed and was required to be submitted within 45 days. The said case is clearly distinguishable and has no application in the present case.

19. In view of the foregoing discussions, we are satisfied that requirement of review within 90 days as required by Sub-rule (6) and the provisions that the suspension order shall not be valid after a period of 90 days unless it is extended for a further period before expiry of 90 days, clearly makes the requirement of review mandatory and in breach of which the suspension becomes invalid.

20. The judgment of Full Bench of this Court in Chandra Bhushan Misra (supra) also needs to be considered. In the aforesaid case, Section 16G (7) of U.P. Intermediate Education Act, 1921 fell for consideration. Section 16G (7) provides as under:

16G(7). No such order of suspension shall, unless approved in writing by the Inspector, remain in force for more than sixty days from the date of commencement of Uttar Pradesh Secondary Education Laws (Amendment) Act, 1975, or as the case may be, from the date of such order, and the order of the Inspector shall be final and shall not be questioned in any court.

21. The Full Bench judgment considered the statutory provisions which uses different expression, i.e., "in force", whereas Sub-rule (7) of Rule 10 clearly contemplates that suspension shall not be valid after period of 90 days unless it is extended before expiry of 90 days. However, in view of the fact of the present case, we do not consider it necessary to express any concluded opinion on the submission that after review of the suspension even after expiry of 90 days, the suspension revives and continues. In view of the facts of the present case, it can

be decided leaving the above issue.

22. One of the submissions of the learned Counsel for the respondent is that the details of the review of suspension was not on the record before the Tribunal hence, Tribunal was not required to consider the review of the submission. It is emphatically submitted that application dated 6.3.2009 supported by affidavit of Kameshwar Prasad Pandey dated 5.3.2009, filed as Annexure-11 to the writ petition was never filed before the Tribunal. Although in the main counter-affidavit, no specific denial was made to the filing of the application dated 5.3.2009 but the respondent has subsequently filed an affidavit stating therein that said application and affidavit were not on record before the Tribunal. The petitioner has filed the copy of the order dated 9.9.2009 as Annexure-7 to the writ petition which order was issued by Superintendent Post Office informing the respondent that the Review Committee in its meeting dated 5.9.2005 has continued the suspension. The said order dated 9.9.2005 was also challenged before the Tribunal. The decision of the Review Committee dated 5.9.2005 to continue the suspension was communicated to the respondent and the said decision dated 5.9.2005 was also under challenge before the Tribunal. Thus, it cannot be said that review of suspension dated 5.9.2005 was not an issue. In so far as proceedings of the Review Committee which are said to be brought on record before the Tribunal by application dated 6.3.2009, which is being disputed by the respondent, suffice it to say that alongwith supplementary affidavit dated 18.11.2009, which has been filed in the writ petition all the proceedings from 5.9.2005 till 20.10.1999 has been brought on record which has been looked into and perused by us. As noticed above, the Tribunal held that suspension of the applicant had not been reviewed before expiry of 90 days hence, the same has become null and void. It is further observed by the Tribunal in paragraph 10 that a perusal of the letter dated 9.9.2005 does not indicate any mention of the date when the review had taken place. We have perused the letters filed as Annexures-7 and 8. Both the letters, which were communication sent to the respondent mentions rejection of the representation dated 22.8.2005 and the date of the review committee which was held on 5.9.2005. Thus, the Tribunal has committed error in observing that no date of the review of suspension has been given.

23. From the papers brought on record, it is clear that suspension dated 21.12.2004 was required to be reviewed within 90 days, i.e., before 21.3.2005 which was not done. Suspension thus, in view of what we have said above, became invalid after 21.3.2005.

24. One relevant fact, which escaped notice of the Tribunal is how to be noted. The respondent was arrested by the C.B.I. on 6.4.2005 and was released from detention on 6.7.2005. By virtue of Rule 10 (2), the respondent shall be deemed to have been placed under suspension w.e.f. the date of detention, even though earlier suspension dated 21.12.2004 had come to an end. The petitioner according to his own case has submitted representation on 22.7.2005 and

thereafter on 22.8.2005 for revocation of suspension. The proviso to sub-rule (7) of Rule 10 provides as follows:

Provided that no such review of suspension shall be necessary in the case of deemed suspension under Sub-rule (2), if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days period in such case will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later.

25. According to the proviso, the 90 days period in the case of deemed suspension due to detention will count from the date the Government servant is released from detention or from the date on which the fact of his release is intimated, whichever is later. In the present case, the date of the release of the respondent was dated 6.7.2005. Counting 90 days from the date of his detention, the suspension could have been reviewed up to 5.10.2005. The Review Committee reviewed the suspension in its meeting dated 5.9.2005, which is clearly mentioned in Annexure-7 to the writ petition. Thus, the letter dated 9.9.2005 communicating the continuance of suspension does not suffer from any error and the Tribunal committed error in quashing the order dated 9.9.2005 by which the respondent was continued under suspension. The order of the Tribunal in so far as it quashes the order dated 9.9.2005 deserves to be and is hereby set aside.

26. The submission has also been made by learned Counsel for the respondent that even according to the proceedings of the Review Committee, which has been brought on the record by the respondent, it is not established that the review was made as required by Sub-rules (6) and (7) of Rule 10 subsequent to 5.9.2005. The issue as to whether the respondent is still continuing under suspension and whether the review was made as per sub-rules (6) and (7) of Rule 10 does not fall for consideration before us since the main issue before us is with regard to correctness of the order of the Tribunal by which suspension dated 21.12.2008 and the order dated 9.9.2005 were quashed. It shall be open for the respondent to represent to the competent authority with regard to his period during which he is to be treated as suspended and as to whether he is still validly continuing under suspension and it is for the competent authority to take appropriate decision thereon.

27. In the result, the writ petition is partly allowed. The order of the Tribunal dated 6.3.2009 insofar as it quashes the order dated 9.9.2005, passed by the Director, Postal Services, Allahabad informing the respondent that his suspension has been continuing, is set aside. The respondent is at liberty to represent to the competent authority with regard to his continuance under suspension and different periods of suspension which may be considered by the competent authority in accordance with law.