

S.V.G. Iyengar Vs State of Mysore**Writ Petition No. 52 of 1959**

Court: Mysore High Court**Date of Decision:** March 17, 1959**Acts Referred:**

Mysore Civil Services (Classification, Control and Appeal) Rules, 1957 " Rule 10 (4), 16, 16 (1)#States Reorganisation Act, 1956 " Section 115 (7)

Citation: AIR 1961 Kar 26**Hon'ble Judges:** S.R. Das Gupta, C.J; A.R. Somnath Iyer, J**Bench:** Division Bench**Advocate:** S.K. Venkataranga Iyengar, for the Appellant; A.G., for the Respondent

Judgement

A.R. Somnath Iyer, J.

The petitioner before us was appointed as a probationary Assistant Engineer by the erstwhile State of Hyderabad in

the year 1926. In June 1949, he was posted as Executive Engineer for the Bandsura Project Division in that State. In that division, he was in

charge of a project known as the Khasapur Project.

2. In 1951, the petitioner was called upon by the Government of the erstwhile State of Hyderabad to explain some irregularities said to have been

committed by him while he was in charge of that project. On 16-3-1955 he was asked by a notice to show cause why action should not be taken

in regard to four charges which had been framed against him.

3. In 1956, after an enquiry was held into that matter, charges 1 and 2 were dropped. In respect of the third charge, the petitioner was exonerated

but the fourth charge was held to have been proved and it was decided by the Government of the erstwhile State of Hyderabad that the petitioner

should be compulsorily retired and that he should further be called Upon to reimburse a sum of Rs. 4,576 to the Government.

4. Before this punishment was actually inflicted, there was the reorganisation of the States. The area, in which the Khasapur Project was situate,

became part of the State of Bombay as a result of such reorganisation.

5. The petitioner, who was then an employee in the erstwhile State of Hyderabad, was by an order made under the provisions of the State

Reorganisation Act, required to serve provisionally in connection with the affairs of the new State of Mysore. But he continued to work, however,

in a project called the Nagarjuna Sagar Project situated in the State of Andhra Pradesh until he was appointed Deputy Chief Engineer by the new

State of Mysore in February 1958.

6. Sometime after he was so appointed, the proceedings against the petitioner which had been interrupted by the reorganisation of the States were

continued by the new State of Mysore which, by an order made by it on October 14, 1958, compulsorily retired the petitioner. That order made

by the new State of Mysore was challenged by the petitioner in this Court in Writ Petition No. 424 of 1958. On the State consenting to the order

being set aside, by an order made by this court on December 9, 1958, the order of compulsory retirement made by the new State of Mysore was

quashed. The memo filed by the learned Advocate General, on the basis of which the order was made, reads as follows :

As a fresh show cause notice as contemplated by Article 311(2) of the Constitution was not given to the petitioner after the Chief Engineer of the

then State of Hyderabad held a fresh enquiry, the respondent does not oppose the impugned order of compulsory retirement of the petitioner being

set aside, without prejudice to the right of the petitioner to put forward his contentions if and when the State should take further or fresh

proceedings according to law.

The Hon"ble Court may be pleased to allow the writ petition with no order as to costs.

7. After an order was made as aforesaid by this Court, the Government of Mysore made the following order on 16-1-1959, which is impugned by

the petitioner in this writ petition. That order reads as follows :

On a consideration of the circumstances of the case, Government has decided to hold a further enquiry against Sri S. V. G. Iyengar in respect of

the allegations made against him. As he is deemed to be under suspension with effect from 14-10-1958 under Sub-rule (4) of Rule 10 of the

Mysore Civil Services (Classification, Control and Appeal) Rules, 1957, he shall be paid subsistence allowance admissible under Rule 98 of the

Mysore Civil Services Rules, 1958, until further orders"".

Sri S. V. G. Iyengar referred to in that order is the petitioner before us.

8. The petitioner assails this order in this writ petition on various grounds. The first contention urged on his behalf by his learned Advocate Mr.

Venkataranga Iyengar is that the Government of Mysore had no jurisdiction to hold a further enquiry as proposed in the impugned order for the

reason that the Khasapur Project, in connection with which the petitioner was said to have committed the irregularities which were the subject

matter of charge four, had, after the reorganisation of States become part of the State of Bombay. The argument advanced by Mr. Venkataranga

Iyengar was that any action which could be taken with respect to that charge could be taken only by the State of Bombay.

9. The second contention urged on behalf of the petitioner was that three of the charges in respect of which the State of Mysore proposed to hold

the further enquiry, referred to in the impugned order, could not be made the subject matter of any fresh enquiry since in respect of those charges

the petitioner had already been exonerated by the Government of the erstwhile State of Hyderabad, charges 1 and 2 having been dropped and the

petitioner having been exonerated in respect of charge 3.

10. The learned Advocate General, appearing on behalf of the State, stated before us that if the petitioner urged these two objections before the

officer holding the proposed enquiry, those objections would be considered on their merits.

11. In the light of this statement made by the learned Advocate General, Mr. Venkataranga Iyengar stated to us that he would not press these

contentions at this stage.

12. Mr. Venkataranga Iyengar next questioned the validity of that part of the impugned order which directed the payment to the petitioner of a

mere subsistence allowance as he must be deemed to be under suspension with effect from 14-10-1958, under Sub-rule (4) of Rule 10 of the

Mysore Civil Services (Classification, Control and Appeal) Rules, 1957. These rules will hereafter be referred to as the Mysore Rules.

13. Mr. Venkataranga Iyengar urged that the view taken by the Government that the petitioner must be deemed to be under suspension from

October 14, 1958, was opposed to the proviso to Section 115(7) of the States Reorganisation Act, He urged that when the petitioner was an

employee of the erstwhile State of Hyderabad before he was allotted to the new State of Mysore, the conditions of his service were those

contained in the Hyderabad Civil Services (Classification, Control and Appeal) Rules which came into force in that State on March 17, 1952.

These rules will hereafter be referred to as the Hyderabad Rules of 1952. He further urged that even after the petitioner's allotment to the new

State of Mysore, and his appointment as Deputy Chief Engineer therein any variation of those conditions of service to his disadvantage was

forbidden by the proviso to Section 115(7) of the States Reorganization Act. That being so, it is contended that the provisions of Rule 10 (4) of

the Mysore Rules were inapplicable to the petitioner, since the Hyderabad Rules of 1952 contain no provision for the suspension of a Government

servant and do not also contain any provision corresponding to Rule 10 (4) of the Mysore Rules, providing for retrospective suspension.

14. It is undisputed that after the reorganization of States, by an order made by the Central Government the petitioner was required to serve

provisionally in connection with the affairs of the new State of Mysore.

15. Part X of the States Reorganization Act regulates the services of a person who immediately before 1-11-1956, was serving in connection with

the affairs of an existing State.

16. Section 115(2) of the Act provides that as from that date, such person shall provisionally continue to serve in connection with the affairs of the

principal successor State to that existing State, unless he is required by general or special order of the Central Government to serve provisionally in

connection with the affairs of any other successor State.

17. In this case, if no special or general order had been made by the Central Government under Sub-section (2) of Section 115 of the States

Reorganization Act requiring the petitioner to serve provisionally in connection with the affairs of the new State of Mysore, he would have

provisionally continued to serve in connection with the affairs of the State of Andhra Pradesh which was the principal successor State to the

erstwhile State of Hyderabad which became disintegrated on 1st November 1956.

18. Sub-section (7) of Section 115 of the States Reorganisation Act reads as follows :

Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the

Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in Sub-section (1) or

Sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government.

19. The Mysore Rules to which I have referred, were rules that were framed by the Governor of the new State of Mysore under Article 309 of

the Constitution, which is contained in Chapter I of Part XIV of the Constitution. But for the proviso to Sub-section (7) of Section 115 the

Governor of the new State of Mysore would have had the power to determine the conditions of service of persons who were referred to in

Section 113 of the States Reorganization Act and those persons, who were allotted to the State of Mysore, would have been ordinarily governed

by the conditions of service determined by the Governor, of the new State of Mysore under Article 309 of the Constitution.

20. It is however seen from the proviso to Sub-section (7) of Section 115 that the conditions of service applicable immediately before the

appointed day to the case of any person referred to in Sub-section (1) or Sub-section (2) cannot be varied to his disadvantage except with the

previous approval of the Central Government. The petitioner is a person who is referred to in Sub-section (2) of Section 115. If the conditions of

service applicable to him immediately before the appointed day had to be varied to his disadvantage, it could have been done only with the

previous approval of the Central Government. It is not disputed that the Mysore rules were not made with the previous approval of the Central

Government.

21. The question that next arises is whether there is anything in Rule 10(4) of the Mysore Rules under which it is stated in the impugned order that

the petitioner must be deemed to have been under suspension with effect from 14-10-1958, which amounts to a variation to the disadvantage of

the petitioner, of the conditions of service applicable to him immediately before the appointed date. If there is such a variation, it is clear that since

such variation was not made with the previous approval of the Central Government, it cannot affect the petitioner and would not apply to him.

22. Mr. Venkataranga Iyengar urges that the conditions of service applicable to the petitioner immediately before the appointed date were those

contained in the 1952 rules of the State of Hyderabad. Those rules do not contain any provision for the suspension of a servant of the State against

whom an enquiry in regard to his conduct is contemplated or is pending. But Rule 16 of the Hyderabad Civil Services (Classification, Control and

Appeal Rules) 1955, which superseded the 1952 rules and came into force on November 24, 1955, provides that the appointing authority or any

authority to which it is subordinate or any other authority empowered by the Government in that behalf may place a Government servant under

suspension where an enquiry into his conduct was contemplated or was pending.

23. Mr. Venkataranga Iyengar urged that the conditions of service applicable to the petitioner, were those contained in the 1952 rules and that the

Rajpramukh of the State of Hyderabad could not, with respect to the petitioner, vary those conditions of service by the rules which were framed in

that regard in the year 1955. His contention was that the 1955 rules did not govern the petitioner's employment and the conditions of service

contained therein were not applicable to him.

24. It is, I think, unnecessary for us to express any opinion on the question whether the 1955 rules were applicable to the petitioner or whether the

1952 rules alone governed his employment. It seems to me that in this case, even on the assumption that the conditions of service contained in the

1955 rules were applicable to the petitioner, the impugned order, to the extent to which it states that the petitioner must be deemed to have been

under suspension from 14-10-1958 cannot be sustained.

25. As I have already mentioned, the petitioner, having been required by the Central Government to serve provisionally in connection with the

affairs of the new State of Mysore, is a person referred to in Section 115(2) of the States Reorganization Act. That being so, the proviso to Sub-

section (7) of that section applied to the petitioner, the result being that if the conditions of service applicable to the petitioner before the 1st of

November 1956 are those contained in the 1955 rules, those conditions could not have been varied to the disadvantage of the petitioner except

with the previous approval of the Central Government.

26. Now, it is clear, and the learned Advocate-General appearing on behalf of the State does not dispute, that the provisions contained in Rule 10

of the Mysore Rules relating to suspension of a Government servant must be regarded as conditions of service.

27. Rule 10 (4), which is referred to in the impugned order, reads-

Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or

reordered 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"".

In the present case, if Sub-rule (4) is applicable to the petitioner, the moment the Disciplinary Authority, on a consideration of the circumstances of

the case, decided to hold a further enquiry against him on the allegations on which he had been compulsorily retired, the petitioner shall be deemed

to have been placed under suspension by the Appointing Authority from the date of the original order by which he was compulsorily retired. That is

exactly what is stated by the Government in the impugned order.

28. Now it is seen that Rule 16 of the 1955 rules, assuming that these rules contain the conditions of service applicable to the petitioner, do not

contain a provision similar to that contained in Sub-rule (4) of Rule 10 of the Mysore Rules. All that is provided by Rule 16 of the 1955 rules is

that a Government servant may be placed under suspension where an enquiry into his conduct is contemplated or is pending, or a complaint against

him or any criminal offence is under investigation or trial.

Those rules do not contain a provision that where a Government servant had been dismissed, removed or compulsorily retired and that order of

dismissal, removal or compulsory retirement had been set aside or declared or rendered void in consequence of or by a decision of a Court of law,

and the Disciplinary Authority decides to hold a further enquiry against that servant on the same allegations on which he had been dismissed,

removed or compulsorily retired, he should be deemed to have been placed under suspension from the date of the original order of dismissal,

removal or compulsory retirement.

29. There can be no doubt that the conditions of service such as are referred to in Rule 10(4) of the Mysore Rules are clearly a variation from the

conditions of service contained in Rule 16 of Hyderabad Rules, 1955, and certainly to the disadvantage of the petitioner. The Hyderabad Rules of

1955 do not provide for what may be described as retrospective suspension such as what is provided for by Rule 10 (4) of the Mysore Rules.

If, therefore, Rule 10 (4) of the Mysore Rules is regarded, as it has been done, as one of the conditions of service applicable to the petitioner after

he was provisionally allotted to the new State of Mysore it is plain that the Hyderabad Rules of 1955, which were applicable to him, must be

regarded to have been to that extent varied to the disadvantage of the petitioner. This not having been done with the previous approval of the

Central Government, it is clear that Rule 10 (4) of the Mysore Rules became inapplicable to the petitioner and the provisions contained in those

rules did not apply to him.

30. It is however urged by the learned Advocate General that Rule 10 (4) did not vary to the disadvantage of the petitioner the conditions of his

service since the conditions of service contained in the Hyderabad Rules of 1955, also provide for the suspension of a Government servant. His

argument is that Sub-rule (5) when read with Sub-rule (4) of Rule 10 of the Mysore Rules made it clear that when the Government stated in its

impugned order that the petitioner must be deemed to have been under suspension from October 14, 1958, it, in effect, states that it had

suspended the petitioner under Rule 10 (1) of the Mysore Rules, which corresponds to Rule 16 (1) of the Hyderabad Rules of 1955.

The learned Advocate General urged that while the statutory effect of Rule 10 (4) was that the petitioner must be deemed to have been placed

under suspension from October 14, 1958, Sub-rule (3) empowered the Government to revoke that order of suspension and if the Government

chose not to revoke the order of suspension, as it has done in this case, the effect of the Government refraining from acting under Sub-rule (5) was

that it made an order of suspension under Sub-rule (1) of Rule 10.

It is dear that this contention cannot be sustained, for the reason that the omission by the Government to revoke the suspension cannot alter the

character of the statutory suspension under Rule 10 (4) and make it one under Rule 10 (1). A suspension under Rule 10 (1) is a suspension made

by the suspending authority after the application of his mind to the question whether such suspension should be made, which, as disclosed by the

impugned order, was not in this case done. It is clear that the Government did not apply its mind to the question whether the petitioner should be

placed under suspension under Rule 10 (1) and did not make any order so suspending him.

31. It must, therefore, be held that Rule 10 (4) of the Mysore Rules was inapplicable to the petitioner's case and that the view taken by the

Government that it did, is unsupportable. The impugned order to the extent that it directs the payment of a subsistence allowance to the petitioner

on the ground that the petitioner must be deemed to have been under suspension from October 14, 1958, clearly violates the protection afforded

to the petitioner by the proviso to Sub-section (7) of Section 115 of the States Reorganization Act.

32. In the view that we take on this question, it becomes unnecessary for me to refer to the other contention urged by Mr. Venkataranga Iyengar

as to the validity of Rule 10 (4) of the Mysore Rules, even if it was applicable to the petitioner.

33. The order of the Government dated 16-1-1959, that the petitioner must be deemed to be under suspension with effect from 14-10-1958

under Sub-rule (4) of Rule 10 of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957, and that he shall be paid subsistence

allowance admissible under Rule 98 of the Mysore Civil Services Rules, 1958, is liable to be quashed, and it is quashed only to that extent.

34. The petitioner is entitled to get the costs of this writ petition from the respondent. Advocate's fee Rs. 100/-.

S.R. Das Gupta, C.J.

35. I agree.

36. Petition allowed.