

(2000) 06 AP CK 0020

Andhra Pradesh High Court

Case No: Writ Petition No. 10626 of 2000

Sindhu

APPELLANT

Vs

Secretary, A.P. Social
Welfare Residential
Educational Institutions
Society, Hyd. and
another

RESPONDENT

Date of Decision: June 21, 2000

Acts Referred:

- Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 - Rule 11, 7, 8(5)
- Penal Code, 1860 (IPC) - Section 304

Citation: (2000) 4 ALD 270 : (2000) 4 ALT 156

Hon'ble Judges: V.V.S. Rao, J

Bench: Single Bench

Advocate: Mr. S. Satyam Reddy, for the Appellant; Mr. G. Chandraiah, SC for Social Welfare, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner is working as a Postgraduate Teacher in A.P. Social Welfare Residential School, Pochampadu, Nizambad District, it appears that on 3-5-2000 her sister-in-law (wife of the younger brother of the petitioner) committed suicide by burning herself, at Nizamabad, which is at a distance of sixty kilo meters from the place of work of the petitioner. In this connection a crime was registered being Cr.No.138 of 2000 u/s 304B IPC. In connection with the said crime, the petitioner was arrested on 4-5-2000 and was remanded to judicial custody on 5-5-2000. She was released on bail on 24-5-2000 by the competent Court. In the meanwhile, the first respondent passed the impugned order placing the petitioner under suspension in accordance with sub-rules (2) (a) of Rule 8 of

A.P. Civil Services (Classification, Control and Appeal Rules 1991 (hereinafter called as the Rules). The impugned order records that as the petitioner was in jail from 4-5-2000 onwards, exceeding forty eight hours, the provisions of sub-rules (2) and (2a) of Rule 8 of the Rules is attracted and suspension is warranted. This order is assailed in this writ petition.

2. Sri S. Satyam Reddy, learned Counsel for the petitioner places reliance on the judgment of the High Court of Punjab and Haryana in Hem Chander v. State of Haryana 1995 (5) SLR 45 and another judgment of the Allahabad High Court in Jagjeet Singh v. State of UP. 1995 (1) SLR 536 and submits that in case of "deemed suspension" on the ground of detention of an employee for more than forty eight hours, such suspension shall be coterminous with the period of detention. In other words, he submits that as soon as the petitioner is released on bail, the same results in automatic revocation of the suspension order, and therefore a mandamus can be issued to the first respondent to reinstate the petitioner forthwith.

3. Before examining the contention it is useful to extract the relevant Rules.

Rule 8(2) : A Government servant shall be deemed to have been placed under suspension by an order of the authority competent to place him under suspension,--

(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) x x x x

(4) x x x x

(5) (a) An order of suspension made or deemed to have made under this rule shall continue to remain in force until it is modified or revoked by the authority which made or is deemed to have made the order or by an authority to which that authority is subordinate.

(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.

(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.

4. In this context a reference may also be made to the Service (Discipline and Appeal) Rules of the Andhra Pradesh Social Welfare Residential Educational Institutions Society ("the Society Rules" for brevity). Sub-Rule (b) of Rule 7 of the Society Rules provides that an employee who is detained in custody, whether on a criminal charge or otherwise for a period exceeding forty eight hours, shall be deemed to have been suspended with effect from the date of detention by an order of the authority competent to impose the suspension and shall remain under suspension until further orders.

5. Rule 11 of the Society Rule provides a right of appeal to an employee, who is suspended under Rule 7 of the Society Rules. A reading of the above Rules would show that an employee of the Society shall be deemed to have been placed under suspension by the competent authority until further orders, if an employee is detained in custody on a criminal charge or otherwise for period exceeding forty eight hours. Such an order shall remain in force until it is modified or revoked by the authority which made or deemed to have been made by the such authority. Therefore, it is difficult to accept the contention that a deemed suspension is coterminous with the detention period. In such and event, the provisions of Rule 7(b) of the Society Rules and Sub-rule 5(a) of Rule 8 of the Rules would have no meaning at all, which say that the deemed suspension shall be in force until it is "revoked or modified by the authorities".

6. In Hem Chander's case (supra), the Division Bench of Punjab and Haryana High Court was dealing with the scope of Rule 7.5 of Punjab Civil Service Rules (Vol. 1, Part I) which provides that the period of suspension of an employee has to be up to the period of detention only. Therefore, the Division Bench of Punjab and Haryana High Court, referring to the earlier judgments of the same Court held that the suspension of the petitioner beyond the period of detention is illegal.

7. In Jagjeet Singh's case (supra) Rule 49-A(2) of U.P. Civil Service (Classification, Control and Appeal) Rules provided that a Government servant shall be deemed to have been placed under suspension if he is detained for a period of forty eight hours. Dealing with the said provision, a learned single Judge of Allahabad High Court held that such a provision treating the Government servant as automatically placed under suspension, just because he is in custody for forty eight hours after his arrest, itself, is violative of Articles 14 and 21 of the Constitution of India and accordingly declared Rule 49(2A) of the above Rules as null and void. The question that was raised by the learned Counsel for the petitioner that the deemed suspension is coterminous with the detention period did not arise at all in Jagjeet Singh "s case. Therefore, I am of the considered opinion that the two decisions relied upon by the learned Counsel are of no help to the petitioner.

8. As observed by me an order or deemed order placing an employee under suspension for the reason that he/she has had been in detention for a period exceeding forty eight hours has to be treated as deemed suspension which also requires modification or revocation in accordance with the Rules.

9. As submitted by Sri Satyam Reddy, the learned Counsel, the petitioner herein has been released on 24-5-2000 and there is no justification for continuing her under suspension, especially when the deceased did not mention her name in her dying declaration and considering the fact that the petitioner is working at Pochampadu, which is at a distance of sixty kilometers from Nizamabad, where the unfortunate incident occurred.

10. Learned Standing Counsel appearing for the Society relying on Rule 11 (b) submits that it is always open to the petitioner to file an appeal before the Chairman of the Society, against the order passed by the Secretary. I do not agree. We are at a stage where the first respondent is yet to reconsider the factual situation and pass orders in accordance with sub-rule 5(a) of Rule 8 of the Rules and Rule 7(b) of the Society Rules. Therefore, the petitioner may have to approach the first respondent with a representation bringing the factual situation as it exist today. On such representation being made, the first respondent shall pass necessary orders within two weeks from the date of submission of such a representation by the petitioner, for revocation of the order passed on 11-5-2000 in the light of the observations made herein above.

11. The writ petition is accordingly disposed of at the admission stage.