

(2005) 08 PAT CK 0089

Patna High Court

Case No: C.W.J.C. No. 9892 of 2005

Lal Bahadur Singh

APPELLANT

Vs

State of Bihar and
Others

RESPONDENT

Date of Decision: Aug. 19, 2005

Acts Referred:

- Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, 1935 - Rule 3A, 3A(1), 3A(2), 3A(5)
- Bihar Service Code, 1952 - Rule 100, 99
- Civil Services (Classification, Control and Appeal) Rules - Rule 49A, 49A(1), 49A(2), 49A(5)

Citation: (2005) 3 BLJR 2038 : (2005) 4 PLJR 271

Hon'ble Judges: Chandramauli Kumar Prasad, J

Bench: Single Bench

Advocate: Rupak Kumar, for the Appellant; S. Raza Ahmad, GP II and Vishwambhar Prasad, JC to GP II, for the Respondent

Final Decision: Dismissed

Judgement

Chandramauli Kumar Prasad, J.

This application has been filed for quashing the order as contained in Memo dated 7.10.2004 (Annexure 1) whereby, the petitioner has been put under suspension.

2. Short facts giving rise to the present application are that the petitioner is an accused in R.C. case No. 3 (A) of 1997 (D) popularly known as the Bitumen scam case. The said case was investigated by the Central Bureau of Investigation and ultimately petitioner was charge-sheeted. He was taken into custody in the said case on 6.1.2004 and order directing his release was passed on 9.3.2004. It is the stand of the petitioner that after he was released on bail, he submitted his joining and started discharging his duty but later on, by the impugned order dated 7.10.2004 he has been put under suspension with effect

from 5.1.2004. It is the stand of the petitioner that the State Government does not possess power to pass order of suspension with retrospective effect and in any view of the matter after the release of the petitioner on bail, the petitioner can be put under suspension only by a fresh order.

3. Mr. Rupak Kumar appearing on behalf of the petitioner draws my attention to the order of suspension and submits that the said order was passed on 7.10.2004, whereas petitioner has been put under suspension with retrospective effect i.e. 5.1.2004, which is not permissible in law. In support of his submission he has placed reliance on a Division Bench judgment of this Court on the case of Bachcho Lal Das v. State of Bihar 1983 PLJR 561, and my attention has been drawn to paragraph 9 of the judgment which reads as follows:

The learned Advocate General who appeared on behalf of the respondents also was not in a position to justify this order of suspension which was retrospective in effect.

Therefore, there is no difficulty in holding that annexure 5, suspending the petitioner retrospectively from 1st January, 1981 to 17th August, 1982, has got to be quashed and set aside.

4. Government Pleader No. II however, submits that the petitioner has been put under suspension on the ground that he was taken into custody in a criminal case and in such a situation the petitioner shall be deemed to be under suspension and hence the order of suspension cannot be held to be illegal on the ground urged by the learned counsel for the petitioner.

5. Having appreciated the rival submission, I do not find any substance in the submission of Mr. Kumar and the decision relied on is clearly distinguishable. Undisputedly petitioner was taken into judicial custody in a criminal case on 6.1.2004 and order directing for his release on bail was passed on 9.3.2004. When this fact came to the notice of the authority, in view of the provisions of the Rule 3-A (2) of the Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules 1935, it was directed that the petitioner shall be under suspension from 5.1.2004. I am of the opinion that Rule 3-A (2) of the Rule confers such power on the authority to put a person under suspension from the date he is taken into custody.

6. Now referring to the decision of this Court in the case of Bachcho Lal Das (supra), the suspension was for holding a departmental enquiry and in that context it was held that the order of suspension cannot be with retrospective effect, which is not the situation here.

7. Mr. Kumar contends that in the order impugned it has not been stated as to which provisions the State Government had invoked to put the petitioner under suspension. He draws my attention to the impugned order and submits that only Rule 3-A of the Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, hereinafter referred to as the Rules, has been mentioned in the impugned order and from that it cannot be inferred as

to whether the authority had exercised its power under Rule 3-A(1) or Rule 3-A(2) of the Rules.

8. I do not find any substance in this submission of Mr. Kumar. It is well settled that while testing the validity of the order the Court is required to see repository of the power. Mere non-mentioning or wrong mentioning of the provisions itself does not vitiate the order. Here in the present case the impugned order clearly indicates that the petitioner has been put under suspension on the ground of he being taken into custody in the criminal case. In my opinion, therefore, Rule 3-A (2) of the Rules is clearly attracted, which confers power on the authority to put a public servant under suspension, when he is taken into custody.

9. Mr. Kumar, then submits that after the release of the petitioner on bail the order of suspension loses its efficacy and in the absence of any fresh order of suspension, the petitioner cannot be allowed to continue under suspension on the basis of the impugned order. In support of his submission he has placed reliance on a Division Bench judgment of this Court in the case of [Vidya Singh Vs. The State of Bihar and Others](#), and my attention has been drawn to paragraph 3 of the judgment which reads as follows:--

The submission of the petitioner is that under Rule 99 of the Bihar Service Code, a person is deemed to be under suspension if he is taken into custody. However, after his release from detention custody, if he reports for duty, he must be allowed to join unless any other order of suspension has been passed under Rule 100 of the Bihar Service Code. In this view of the matter the respondents are directed to permit the petitioner to join his duty and to pay to him all the dues payable to him in accordance with law. This is subject to any order that the competent authority may pass under Rule 100.

10. I do not find any substance in the submission of Mr. Kumar and the decision relied on is clearly distinguishable.

Rule 3-A (2) (a) and Rule 3-A(5) (a) of Rules, which is relevant for the purpose reads as follows:

3-A. (1) *****

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

(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) ****

Explanation.--****

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.

11. From a plain reading of Rule 3-A(2) (a) of the Rules it is evident that a Government servant shall be deemed to have been placed under suspension with effect from the date of his detention, if he is detained in custody for a period exceeding forty-eight hours. Further Rule 3-A (5) (a) makes it abundantly clear that order of suspension made or deemed to have been made under this rule shall continue to remain in force until modified or revoked.

12. It is relevant here to state that a Division Bench of this Court had the occasion to consider this aspect of the matter in the case of Shailendra Kumar Kashyap v. State of Bihar and Ors. 2004 (1) PUR 526, in which while considering Rule 49-A of the Civil Services (Classification, Control and Appeal) Rules which is *pari materia* with that of Rule 3-A of the Rules, this Court had observed that Rule 49-A aforesaid shall operate to the exclusion of Rule 99 or 100 of the Bihar Service Code and the order of suspension remains in force until modified or revoked. Relevant portion of the judgment reads as follows:

7. The moot point for consideration, as indicated at the outset, is whether, the suspension under Rule 49-A (2) (a) of the Rules is co-terminus with the custody period like suspension under Rule 99 of the Service Code or the same continues even after person is released on bail or otherwise in a criminal case.

It is in this background that the question as to duration of suspension under Rule 49-A of the Rules becomes significant.

9. On a plain reading of Clause (a) of Sub-rule (5) it would be abundantly clear that any order of suspension including deemed suspension under Sub-rule (2) shall continue to remain in force until it is modified or revoked by the authority competent to do so. In other words, where a government servant is placed under suspension by specific order under Sub-rule (1) of Rule 49-A or is treated under deemed suspension under Sub-rule (2), the suspension remains in force until modified or revoked by the authority competent to do so. Sub-clause (b) empowers the competent authority to direct, for reasons to be recorded in writing, that the suspension may continue till termination of all or any of such proceedings. Clause (c) provides safeguard to the government servant against continuation of suspension by conferring power on the competent authority which has made the order or superior authority, to modify or revoke the suspension. It is relevant to mention here that executive instructions have been issued under which suspension of a Government servant on the ground of pendency of criminal case may be reviewed after two years if in the opinion of the government/competent authority there is no likelihood of the criminal case coming to an end in the near future.

11. Though we find it difficult to accept the submission of the learned Standing Counsel that Rules 99 or 100 do not confer power of suspension and that they merely deal with the question of pay/allowance, we find force in his submission that Rule 49-A would operate to the exclusion of Rules 99 or 100 of the, Service Code. It is to be kept in mind that rule 49-A was inserted in the Rules by amendment on 8.8.1973. As the said rule specifically provides for continuation of suspension "until it is modified or revoked by the authority competent to do so", under Sub-rule (5) (a), it is difficult to accept the submission of the Counsel that the petitioner's suspension came to an end on the date of his release on bail i.e. 30.1.2001 in terms of Rule 99 of the Service Code. May be, as observed above, Sub-rule (2) contains provisions which are akin to Rule 99 but in view of the provisions of Sub-rule (5) (a) the suspension has to be held as continuing until it is modified or revoked by the competent authority. By virtue of Clause (c) of the sub-rule it is open to the petitioner to apply for modification or revocation of the order in terms of the said clause read with the relevant circular on the point. It goes without saying that as and when such application is made the same will receive due consideration by the competent authority and appropriate order will be issued, in accordance with law.

13. The reasoning of this Court while interpreting Rule 49-A of the Civil Services (Classification, Control and Appeal) Rules shall apply with equal force while interpreting Rule 3-A of the Rules. Accordingly I have no manner of doubt that a public servant placed under suspension under Rule 3-A (1) of the Rules or is treated under deemed suspension under Rule 3-A (2) of the Rules, the suspension remain in force till modified or revoked by the competent authority and Rule 3-A of the Rules shall operate to the exclusion of Rules 99 and 100 of the Bihar Service Code. I am of the opinion that the suspension of the petitioner shall not be deemed to be invalid only on the ground that the fresh order of suspension has not been passed after his release.

14. Now referring to the decision of this Court in the case of Vidya Singh (supra) same is clearly distinguishable. Said judgment has been rendered without referring to the provisions of Rule 3-A of the Rules, which governs the field.

15. Mr. Kumar, lastly submits that after the petitioner was released on bail, he submitted his joining and therefore, he is entitled for the entire salary for the said period. I do not have the slightest hesitation in rejecting this submission of the learned counsel. There is nothing on the record to show that any order revoking the order of suspension has been passed. In that view of the matter, petitioner shall be deemed to be under suspension till fresh order revoking the order of suspension is passed.

16. Needless to state that in case the petitioner files application for modification or revocation of the order in terms of Rule 3-A (5) (c) of the Rules, the authority concerned shall consider the same in accordance with law.

Application stands dismissed with the observation aforesaid.