

Government of A. P.

Vs

V. Sivaraman

Civil Appeal No. 1064 of 1990

(K. Jagannatha Shetty, V. Ramaswami-II JJ)

12.01.1990

JUDGMENT

K. JAGANNATHA SHETTY, J. -

1. Special leave granted.
2. The State of Andhra Pradesh has challenged the validity of the order of the A.P. Administrative Tribunal which allowed the petition of the respondent and revoked his suspension order with a direction to reinstate him with full salary from October 6, 1988.
3. The matter arises in this way :

The respondent was an Assistant Labour Officer. He was trapped by Anti-Corruption Bureau for demanding and accepting a bribe of Rs. 300 for doing an official favour to a bus operator of Nellore District. The Anti-Corruption Bureau submitted a report to the Labour Commissioner about the involvement of the respondent in the corruption charges. On March 21, 1988, the Commissioner placed the respondent under suspension under Rule 13(1) of the A.P. Civil Service (CCA) Rules pending investigation of the case. The respondent challenged the order of suspension before A.P. Administrative Tribunal in Representation Petition No. 2161 of 1988. On October 31, 1988, the Tribunal without disturbing the suspension order directed the government to review the case of respondent as per rules. On December 6, 1988, the government reviewed the case of respondent and issued an order extending his suspension. Earlier to that on August 23, 1988, the Anti-Corruption Bureau submitted its final report to the government seeking permission to prosecute the respondent. On November 2, 1988 the sanction was accorded. On February 15, 1989 the charge-sheet was filed against the respondent in the Special Court at Hyderabad and the same is pending trial. In the meantime the respondent moved the A.P. Administrative Tribunal under Representation Petition No. 7329 of 1988 seeking revocation of the suspension order and claiming full salary from October 6, 1988. The Tribunal by the judgment dated March 31, 1989 which is impugned in this appeal has allowed that petition. The operative portion of the order reads :

"In the result, RP is allowed. The impugned order of suspension is revoked pending filing of the charge-sheet and trial in the competent court. However, it is open for the respondent to transfer the petitioner to any non-focal post. CMP No. 12 of 1989 seeks for a direction to the respondent to pay the full salary from October 6, 1988 on

the ground that there is no extension of suspension order. As I have already held that no valid orders extending the suspension orders were issued beyond October 6, 1988, he shall be deemed to be in service, as such, he is entitled for the salary from October 6, 1988 onwards."

4. The case of the respondent before the Tribunal was that the suspension order dated March 21, 1988 was served on him on April 6, 1988 and it could be operative only for 6 months i.e. up to October 6, 1988. The government has not reviewed his suspension nor continued by a fresh order and as such he should be deemed to be in service from October 6, 1988. The Tribunal has accepted that case with an observation :

"Failure on the part of the government to review the order within six months period as required under Instruction 18 in Appendix VI to the APCA (CCA) Rules rendered the suspension order non est after six months. The government has limited powers to extend the suspension period but that has to be done during the period of suspension being in force and any order issued subsequent to the expiry of six months cannot have retrospective effect since the rule does not permit for extending suspension with retrospective effect."

Before us, counsel for the State contended, and in our opinion very rightly that the view taken by the Tribunal is plainly erroneous and unsustainable. First, the government instructions on which the Tribunal rested its conclusion, do not seem to have any statutory force; second the order of suspension after a period of six months would not become non est giving an automatic right to reinstatement in service. Our attention has not been invited to any provision of law conferring such right on a government servant who has been placed under suspension pending enquiry of a case against him. Where the rules provide for suspending a civil servant and require thereof to report the matter to the government giving out reasons for not completing the investigation or enquiry within six months, it would be for the government to review the case but it does not mean that the suspension beyond six months becomes automatically invalid or non est. The only duty enjoined by such a rule is that the officer who made the order of suspension must make a report to the government and it would be for the government to review the facts and circumstances of the case to make a proper order. It is open to the government to make an order revoking the order of suspension or further continuing the suspension. The order of suspension however, continues until it is revoked in accordance with the law. In the present case, on December 6, 1988, the government has made the order as follows :

"Government have examined the case of Sri V. Sivaraman, Assistant Labour Officer, Nellore, who is under suspension pending finalisation of the ACB case against him and have decided that he shall continue to be under suspension in public interest.

The next review will be taken up at the end of six months from the date of issue of this memo or until the finalisation of the ACB case against him, whichever is earlier."

5. This is not a retrospective suspension order but an order further continuing the suspension. The conclusion of the Tribunal to the contrary proceeds on the wrong assumption that the first order of suspension has come to an end by the expiry of six months. Such an assumption is apparently unsustainable. There was no prescribed period of suspension in the first order. As we have already indicated it does not come to an end after six months. It continues till it is revoked, though it is

necessary to review the case once in six months in the light of the Instruction 18 contained in Appendix VI of the APCS (CCA) Rules and the circular of the Chief Secretary dated February 13, 1989.

6. In the result, the appeal is allowed, and the order of the Tribunal is set aside. In the circumstances of the case, we make no order as to costs.

7. Before parting with the case, we may, however, observe that if the case of respondent has not been reviewed as stated in the order dated December 6, 1988 it will be open to him to approach the government for review of his case and if there is any such request, the government will dispose it of expeditiously. It is needless to state that the respondent shall be paid current subsistence allowance arrears.

</html