

Director General And Inspector General ... vs K. Ratnagiri on 30 March, 1990

Equivalent citations: 1990 AIR 1423, 1990 SCR (2) 233, AIR 1990 SUPREME COURT 1423, 1990 (3) SCC 60, 1990 LAB IC 1240, (1990) 3 JT 379 (SC), (1990) 2 LBLJ 388, (1991) 3 SERVLR 41, 1990 UJ(SC) 2 217, (1990) 14 ATC 655, (1990) 2 LAB LN 1016, 1990 SCC (L&S) 438

Author: K.J. Shetty

Bench: K.J. Shetty, M. Fathima Beevi

PETITIONER:

DIRECTOR GENERAL AND INSPECTOR GENERAL OF POLICE, ANDHRA P

Vs.

RESPONDENT:

K. RATNAGIRI

DATE OF JUDGMENT 30/03/1990

BENCH:

SHETTY, K.J. (J)

BENCH:

SHETTY, K.J. (J)

FATHIMA BEEVI, M. (J)

CITATION:

1990 AIR 1423	1990 SCR (2) 233
1990 SCC (3) 60	JT 1990 (3) 379
1990 SCALE (1) 625	

ACT:

Civil Services: A.P. Civil Service (CCA) Rules, 1963: Rule 13(1) and Proviso-Scope of--Order of suspension pending investigation-Whether limited to six months--Whether invalid for using a wrong word.

HEADNOTE:

The first appellant made an order under Rule 13(1) of the A.P. Civil Service (CCA) Rules, 1963 keeping the respondent, a Police Inspector, under suspension pending prosecution against him in the case of death of a person in lock-up in the Police Station to which the respondent was attached. The respondent challenged the order before the

State Administrative Tribunal. The Tribunal set aside the suspension order, holding that the order became invalid after six months since the Government had not made a fresh order extending the period of suspension, and that the first appellant had no power to suspend the respondent pending prosecution against him. Hence the appeal, by Special Leave. Allowing the appeal, this Court,

HELD: 1.1 Rule 13(1) of the A.P. Civil Service (CCA) Rules, 1963 provides power to keep an officer under suspension from service pending investigation or enquiry into grave charges, where such suspension is necessary in the public interest. Proviso thereunder requires the authority who made the order of suspension to report to the Government where the investigation into the charges and the action proposed to be taken against the officer has not been completed within the period of six months from the date of suspension. Upon receipt of the report, the Government may make such orders as they deem fit having regard to the circumstances or development in the case. Proviso thus imposes only an obligation on the authority to report to the Government, but it does not limit the period of suspension. It does not state that the suspension order comes to an end by the end of six months. The suspension order is not an interim suspension. Nor Rule 13(1) limits its operation only for six months. The order of suspension once made will continue

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till it is revoked by an appropriate order under Rule 13(5). [236B-D]

Government of A.P.v. Sivaraman, Civil Appeal No. 1064 of 1990, decided on January 12, 1990, referred to.

1.2 It is a well-accepted principle that a wrong wording in the order does not take away the power if it is otherwise available. [238E]

Rule 13(1) empowers the authority to keep the respondent under suspension pending investigation or enquiry into the criminal charges. When the First Information Report was issued registering the offence of murder, names of the accused could not be mentioned since there was no authentic information as to how the death occurred and who were responsible for it. However, after the Commission of Inquiry submitted its report, indicting certain police officials including the respondent, the State Government decided to initiate prosecution against the officers and asked the first appellant to take immediate action in that regard. Thus, the first appellant made the order keeping the respondent under suspension pending prosecution against him. Merely because the word 'prosecution' has been used instead of 'investigation', the order of suspension cannot be said to be beyond the scope of Rule 13(1). The investigation commenced when the First Information Report was issued, and indeed it has commenced when the respondent was kept under suspension. [237G-H; 238B, C-D]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1659 of 1990.

From the Judgment and Order dated 31.12. 1987 of the Andhra Pradesh Administrative Tribunal, Hyderabad, in Representation Petition No. 3339 of 1987.

K. Madhava Reddy, T.V.S.N. Chari, Ms. Sunita Rao and Ms. Manjula Gupta for the Appellants.

H.S. Guru Raja Rao, Vimal Dave and B. Rajeshwar Rao for the Respondent.

The Judgment of the Court was delivered by K. JAGANNATHA SHETTY, J. Special leave granted. The respondent in this appeal--K. Ratnagiri was at the material time Circle Inspector of Police attached to Sanjeeva Reddy Nagar Police Station, Hyderabad. In that police station one U. Narasimha died in Police lock up. Pending prosecution with regard to that offence, the Director General of Police made an order keeping the respondent under suspension. The order reads:

"Shri K. Ratnagiri, Circle Inspector of Police, Sanjiva Reddy Nagar P.S. Hyderabad is placed under suspension with immediate effect in public interest until further orders pending prosecution against him in the case of death of U. Narasimha in Police lock-up".

The respondent appealed to the Andhra Pradesh Administrative Tribunal. The Tribunal has set aside the suspension order holding that the respondent shall be deemed to be in service from the date of issue of suspension order. The Tribunal, however, has reserved liberty to the Government to transfer him to any other Police Station. It has been held that the order of suspension becomes invalid after the period of six months since the Government did not make a fresh order extending the period of suspension. It has been further stated that the Director General has no power to keep the respondent under suspension pending investigation of the case against him. Both these conditions are rested solely on the scope of Rule 13(1) of the A.P. Civil Service (CCA) Rules, 1963. For immediate reference we may set out the Rule hereunder:

13(1) A member of service may be placed under suspension from service pending investigation or enquiry into grave charges, where such suspension is necessary in the public interest.

Provided that where a member of a service has been suspended by an authority other than the Government and the investigation has not been completed and the action proposed to be taken in regard to him has not been completed within a period of six months of the date of suspension, the fact shall be reported to the Government, for such orders as they may deem fit.

13.2 to 13.4 xxx xxx xxx 13(5) An order of suspension made or deemed to have been made under this rule may, at any time, be revoked by the authority which made or is deemed to have been made the order or by any authority to which that authority is subor-

dinate."

Rule 13(1) provides power to keep an officer under suspension from service pending investigation or enquiry into grave charges, where such suspension is necessary in the public interest. Proviso thereunder requires the authority who made the order of suspension to report to the Government where the investigation into the charges and the action proposed to be taken against the officer has not been completed within the period of six months from the date of suspension. Upon receipt of the report, the Government may make such orders as they deem fit having regard to the circumstances or development in the case. Proviso thus imposes only an obligation on the authority to report to the Government, but it does not limit the period of suspension. It does not state that the suspension order comes to an end by the end of six months. It may be noted that the suspension order is not an interim suspension. Nor the Rule 13(1) limits its operation only for six months. Rule 13(5) provides that the order of suspension may, at any time, be revoked by the authority who made or is deemed to have been made the order or by any authority to which that authority is subordinate. That apparently suggests that the order of suspension once made will continue to operate till it is revoked by an appropriate order. Therefore, there appears to be no justification to contend that the order of suspension would not last beyond six months. It has been passed by the competent authority who shall report to the Government if the action is not completed within six months. The Government may review the case and make further or other order but the order of suspension will continue to operate till it is rescinded by an appropriate authority.

Similar was the view expressed by this Court in Civil Appeal No. 1064 of 1990 in Government of A.P.v.V. Sivaraman, disposed of on 12 January 1990 to which one of us was a party (K. Jagannatha Shetty). There it was observed:

"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."

It was also observed:

"That the order of suspension will continue 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, 1963 and the circular of the Chief Secretary dated February 13, 1989."

The opposite view taken by the tribunal in the instant case therefore, cannot be sustained.

This brings us to the second conclusion reached by the Tribunal to invalidate the order of suspension. Precisely, it is also rested on the statutory framework of Rule 13(I) coupled with the terms of the order by which the respondent was kept under suspension. The Tribunal has observed that Rule 13(1) empowers the authority to make an order of suspension pending investigation or enquiry into charges, but not pending prosecution with regard to the charges. It seems to us that the Tribunal has taken a hypertech- nical view of the matter. The factual background of the case may now be shortly stated: On 10 July 1986, U. Narasimha died in the police custody of Sanjeeva Reddy Nagar Police Station where the respondent was then working as a Circle Inspector of Police. Next day morning the infuriated mob attacked the Police Station and there was similar attack at the Bodabanda Outpost in whose limits Narasimha was resid- ing. On the same day, a First Information Report was issued registering the offence of murder but without mentioning the name of any accused. The accused could not be named since there was then no authentic information as to how U. Nara- simha died and who were responsible for his unnatural death. In order to clear the mist surrounding the incident, on 19 July 1986 the State Government constituted a Commission of Inquiry under Section 3 of the Commission of Inquiry Act, 1952 (Central Act 60 of 1952). Shri A.D.V. Reddy, retired Judge of the High Court of Andhra Pradesh was constituted as a Single Member of the Commission of Inquiry. The Commission was asked to find out the circumstances leading to the lock-up death of U. Narasimha and to identify the person, if any, responsible for the incident. The Commission was also required to point out lapses on the part of any authority or person or per- sons, in connection with that incident. On 29 November 1986 the Commission submitted its report indicating certain police officials including the respondent. It was inter alia observed that the respondent and other police officials have mercilessly beaten and tortured U. Narasimha and that has resulted in his lock-up death. It has been further observed that the officials were also responsible for certain other offences like illegal detention of the deceased, disrobing of Smt. Chandrakala, the wife of the deceased, house tres- pass, misappropriation etc. The Government after examining the report, has accepted it and decided to initiate prosecu- tion against the officers. The Director General of Police was asked to take immediate action in that regard. There then the Director General of Police made the order keeping the respondent under suspension pending prosecution against him. The Rule 13(1) empowers the authority to keep the respondent under suspension pending investigation or enquiry into the criminal charges where such suspension is necessary in the public interest. When the first information report is issued, the investigation commences and indeed it has com- menced when the respondent was kept under suspension. The order of suspension cannot, therefore, be said to be beyond the scope of Rule 13(1) merely because it has used the word 'prosecution' instead of investigation into the charges against the respondent. A wrong wording in the order does not take away the power if it is otherwise available. The tribunal seems to have ignored this well accepted principle. In stating this conclusion, we do not of course express any opinion about the need to make a fresh order of suspen- sion. We however make it clear

that the original order of suspension need not be given effect to since the respondent has already been reinstated into service and transferred to some other station.

The appeal is accordingly allowed setting aside the order of the Tribunal.

N.P.V.
allowed.

Appeal