

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SERVICE MATTER

Writ Petition (Civil) No. 8624 of 2007

Judgment reserved on: November 11, 2008

Judgment delivered on: December 4, 2008

1. Government of National Capital Territory of Delhi
through its Chief Secretary
Players” Building, I.P. Estate
New Delhi

2. Deputy Commissioner (South)
M.B. Road, Saket
Delhi “Petitioners

Through Ms. Avnish Ahlawat with Mr. Saurabh
Chadha, Ms. Nidhi Gupta and
Ms. Simran, Advocates

Versus

Mrs. Beena Mehra
W/o Shri Anil Mehra
R/o 933, Laxmibai Nagar
New Delhi “Respondent

Through Mr. Shyam Babu, Advocate

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE SURESH KAIT

MADAN B. LOKUR, J

1. The question posed for our consideration is whether, after revocation of a suspension order, passing a second suspension order against the Respondent on the same day is permissible or not. Our answer to the question is in the affirmative and in the given facts of the case the second suspension order was validly passed.

2. The Respondent was working as a Naib Tehsildar and it was alleged that she had accepted illegal gratification of Rs.10,000/- from a complainant. The Anti Corruption Branch of the Delhi Government arrested her and a First Information Report was lodged under the Prevention of Corruption Act, 1988. Since the Respondent was in custody for more than 48 hours, she was deemed to be under suspension from 20th October, 2004 the date of her arrest. A formal order of suspension was, however, passed in this regard only on 5th December, 2004

3. In terms of the extant rules, the Respondent's suspension was required to be reviewed after 90 days from the date of her deemed suspension. Consequently, the review was required to take place before 20th January, 2005 but it was not held. Notwithstanding this, the Respondent continued to be under suspension until her suspension was formally revoked on 2nd May, 2006.

4. In the meanwhile, on 7th March, 2006 a departmental enquiry was initiated against the Respondent for the alleged misconduct. It was only thereafter that on 27th April, 2006 the Review Committee met to consider the Respondent's suspension and as a result of the deliberations, two orders were passed by the Petitioners on 2nd May, 2006. The first order formally revoked her suspension, since the mandatory statutory review had not taken place within 90 days of her deemed suspension. The second order placed her under suspension for a period of 180 days with immediate effect.

5. The Respondent challenged her second suspension by filing an Original Application before the Central Administrative Tribunal (the Tribunal) which was registered as OA No.1451 of 2006. By the impugned order dated 5th

September, 2007 the Tribunal allowed her Original Application and came to the conclusion that the second suspension order was invalid on merits. However, the Tribunal left it open to the Petitioners to take an appropriate administrative decision with regard to her suspension keeping in mind the provisions of Rule 10(6) and 10(7) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [for short the CCS (CCA) Rules].

6. Two principal reasons were given by the Tribunal for arriving at the conclusion that it did: firstly, there was no additional or fresh material with the Review Committee warranting the Respondent's second suspension; secondly, the provisions of Rule 10(6) and 10(7) of the CCS (CCA) Rules were not complied with.

7. Before proceeding any further, it is necessary to refer to the Rules upon which the Tribunal placed reliance. They read as under:- "10. Suspension "(1) xx xx xx (2) xx xx xx (3) xx xx xx (4) xx xx xx (5) xx xx xx (6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority which is competent to modify or revoke the suspension before expiry of ninety days from the date of order of suspension on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be made for a period exceeding one hundred and eighty days at a time. (7) Notwithstanding anything contained in sub-rule (5)(a), an order of suspension made or deemed to have been made under sub-rule (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days."

8. In so far as the first principal reason given by the Tribunal is concerned, namely, that there was no additional or fresh material before the Review Committee to warrant the Respondent's suspension, it must be noted that her first suspension lapsed or became invalid by operation of law. This was through the application of Rule 10(7) of the CCS (CCA) Rules inasmuch as the necessary review for extension of the suspension did not take place within 90 days of the deemed suspension. It is not as if the suspension was invalid on merits.

9. On the contrary, the basis on which the Respondent was initially suspended continued and the original reason for placing her under suspension remained. The revocation of her suspension was nothing but the completion of a mere formality, the review postulated by law not having taken place within the specified time limit. Consequently, there was no necessity of any additional or fresh material coming into existence for placing the Respondent under suspension for the second time. The material available with the Petitioners, when they placed the Respondent under suspension for the first time, was relevant and live for her suspension.

10. It is worth mentioning that the Review Committee passed a rather detailed order justifying the Respondent's suspension. The Committee took note of the fact that a criminal offence of illegal gratification was made out against the Respondent, under the Prevention of Corruption Act and a case was registered against her in this regard. It was also noted that the continuance of the Respondent in service under these circumstances would seriously subvert discipline in the office and would be against the wider public interest. Furthermore, a prima facie case was made out against the Respondent justifying criminal proceedings as well as departmental proceedings against her (which had been initiated on 7th March, 2006). On an overall conspectus of all these facts, the Review Committee was of the opinion that it was necessary to place the Respondent under suspension with effect from 2nd May, 2006.

11. In our view, the decision taken by the Review Committee is neither irrational nor mala fide. It was taken in the exigencies of service. It appears to us difficult to accept the proposition that the Petitioners should be asked to permit a person to continue in office notwithstanding an allegation of accepting illegal gratification and the pendency of investigations into a criminal offence in this regard. No efficient or effective administrative set up would permit this.

12. Learned counsel for the Respondent submitted that two contradictory orders were passed on 2nd May, 2006: one revoking the suspension of the Respondent and the second again placing her under suspension. We do not find any contradiction in this. The revocation of the Respondent's suspension was a mere formality and a foregone conclusion because of the existence of Rule 10(7) of the CCS (CCA) Rules. All that the Petitioners did was to merely perform a ministerial act of putting its seal on the lapsing of the suspension order or the invalidity of the continuance of the Respondent's

suspension. The second order no doubt required due application of mind by the Petitioners. But, we have indicated above, there was full application of mind to all relevant facts and it is only thereafter that the Respondent was placed under suspension. We do not see any error in the Review Committee taking both the decisions on the same day, one after the other.

13. The second principal reason given by the Tribunal for its conclusion is that the provisions of Rule 10(6) and 10(7) of the CCS (CCA) Rules were not complied with. We do not find any procedural or substantive requirement in the Rules for passing a second suspension order. The Tribunal appears to have proceeded on the assumption that the second suspension order was an extension of the first suspension. Factually this was not so. The matter was considered afresh by the Review Committee, which concluded that the Respondent's suspension was warranted. It is then that the second suspension order was passed. No procedural fault was pointed out with the decision taken to once again place the Respondent under suspension.

14. Even otherwise, we are of the opinion that no hard and fast rule can be laid down for deciding when an employee, whose suspension is revoked, can be placed under suspension for a second time. There is no doubt that such a decision should be taken with circumspection, but the justification for the second suspension would depend on the facts of each case. Rule 10(6) and 10(7) of the CCS (CCA) Rules do not create any procedural or substantive bar for a second suspension, as suggested by the Tribunal.

15. In *U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan*, 1993 Supp (3) SCC 483 the Supreme Court expressed the view that a suspension order can be passed a second time. "The first order might be withdrawn by the authority on the ground that at that stage, the evidence appearing against the delinquent employee is not sufficient or for some reason, which is not connected with the merits of the case." In the present case that we are concerned with, the first order of suspension was revoked for a reason unconnected with the merits of the case. Consequently, the Petitioners were entitled to suspend the Respondent on the merits of the case.

16. A similar view was taken by a Full Bench of this Court in *Delhi Public School v. Director of Education*, 100 (2002) DLT 530. In that case, an employee of the Petitioner school was suspended but the suspension was not approved by the Director of Education within 15 days as required by the

Delhi School Education Act and the Rules framed thereunder. The Full Bench held that if no decision is taken by the Director of Education within the statutory period, the order of suspension would lapse. But, the Full Bench went on to observe: “However, that does not mean that if no decision is taken at all or the matter is unnecessarily delayed, it would not be permissible for the Managing Committee of the school to insist the Director of Education to take a decision even after 15 days of the communication of the order of suspension. If such a decision is taken, though belatedly, the fresh order of suspension can always be passed.” This is precisely what has happened in the present case “ the first order of suspension lapsed, the Review Committee took a belated decision to suspend the Respondent and a fresh order of suspension was passed. The facts of Delhi Public School are quite apposite and relevant to the facts of the present case.

17. Under the circumstances, since we do not agree with the view expressed by the Tribunal, we have no option but to set aside the impugned judgment and order. We do so.

18. It appears that since the order of the Tribunal was not complied with, the Respondent had filed a contempt petition against the Petitioners. By an order dated 21st November, 2007, this Court had noted the statement of learned counsel for the Respondent that he would not press the contempt petition. This interim arrangement has continued till today and so we take it that the Respondent has not yet been reinstated. In view of the above, the status quo will continue for the time being and in the meanwhile, the Petitioners should review the necessity of continuing the Respondent’s suspension. The review should be completed within a period of four months from the date of receipt of this order.

19. The writ petition is allowed and the impugned judgment and order is set aside. There will be no order as to costs.

Sd/-
MADAN B. LOKUR, J

Sd/-
SURESH KAIT, J

