THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTH

W.P.No.259 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The ground, on which the Tribunal set aside the order of suspension passed against the 1st respondent herein, is that three other officers who were similarly placed and who were said to have drawn House Rent Allowance(HRA) contrary to the Rules, were not placed under suspension. The Tribunal, relying on the judgment of the Supreme Court in ***K.Sukhendar Reddy vs. State of A.P.*** [1] and ***K.C.Bajaj and others vs. Union of India and others*** [2]**,** held that a pick and choose method could not be adopted by the petitioners herein in placing employees under suspension. The Tribunal also held that the case before it was not a fit case to suspend the 1st respondent from service based on a criminal complaint registered in F.I.R.No.54 of 2014 dated 04.10.2014.

The allegations leveled against the 1st respondent are that he had drawn HRA while occupying the official premises as his residence. The 1st respondent contended that the official premises was, in fact, a camp office wherein the officers were permitted to reside; and that three other officers, prior to his assuming office thereat, had also stayed in the camp office and had drawn HRA.

Before the Tribunal the petitioners herein did not refer in detail to the cases of the other three officers, and merely contended that they had the right to place the 1st respondent under suspension. In the writ petition filed before this Court, against the said order of the Tribunal, details of how the other three officers are not similarly placed, was not stated. On being asked as to how the Government could selectively place officers under suspension, learned Additional Advocate General sought time to file an additional affidavit.

In the additional affidavit now filed, it is stated that Sri K.Venkateswara Rao, IPS had stayed in the official premises from 10.11.2006 to 31.08.2008; he had vacated the quarters on 31.08.2008 as the premises was leaking; and he had claimed HRA only thereafter from 01.09.2008 onwards till 24.04.2010 as he was staying in a private accommodation and used to come to office therefrom. With regards Sri A.S.Khan, it is stated that the said officer took charge on 24.04.2010 and worked till 24.08.2011; and the officer had his own house at Vijayawada and had occupied the same for residential purpose. With regards the third officer i.e., Dr.M.Naganna, it is stated that he worked from 24.08.2011 to 31.07.2012; his family members were staying at Secunderabad; and the officer was staying in a private residential apartments and not in the camp office. It is further stated that except the family of Sri K.Venkateswara Rao, who occupied the quarter as residence from 10.11.2006 to 31.08.2008 and had vacated thereafter, the other two officers had never occupied the office premises for their residential use.

Learned Additional Advocate General would submit that in ***K.Sukhendar Reddy***[1], the allegations were of criminal conspiracy under Section 120-B IPC; it is for this reason that the Supreme Court faulted selective suspension of one of the officers allegedly involved in the criminal conspiracy; the concerned officers ought to have been made parties in the proceedings before the Tribunal; and, any finding adverse to the individual officers, can only be passed after they are given an opportunity of being heard.

While a reply affidavit is filed contending to the contrary, these are questions of fact which the Tribunal should examine. Whether the assertion in the additional counter affidavit, of the other three officers not occupying the camp office when they claimed HRA, is true, and whether or not they are similarly situated with the 1st respondent, are matters which the Tribunal shall now examine and pass an order afresh in accordance with law.

Suffice it to hold that neither this Court in proceedings

under Article 226 of the Constitution of India nor the Tribunal in exercise of its jurisdiction under the Administrative Tribunals Act, would act as an appellate authority and record a finding, in the facts and circumstances of a given case, whether or not an employee should be placed or continued under suspension. The only ground on which the 1st respondent herein (applicant in the O.A.) can claim the relief, of having the order of suspension set aside, is if the other three officers, who he claims had also drawn HRA when they were staying in the camp office, had drawn HRA illegally.

The impugned order is set aside, and the matter is remanded to the Tribunal for its consideration afresh and in accordance with law. As the dispute relates to the validity of an order of suspension passed against a senior police officer, it is but appropriate that the Tribunal decides the matter with utmost expedition and an order is passed afresh in accordance with law at the earliest in any event not later than two (2) months from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

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RAMESH RANGANATHAN, J

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M.SATYANARAYANA MURTHY, J

25th February 2015.
JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
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W.P.No.259 of 2015

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Date: 25.02.2015

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[1] (1999) 6 SCC 257

[2] (2014) 3 SCC 777