

*** HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

AND

HON'BLE SMT JUSTICE ANIS

+ WRIT PETITION No.28692 OF 2015

% 22-09-2015

Union of India,

Rep. by its Secretary and others Petitioner (s)

Vs.

\$ Shaik Abdul Fazululla IRS,

S/o Late S. Mohammad Hussain

and another. Respondent (s)

! Counsel for the Petitioner (s) : Sri B. Narasimha Sarma.

Counsel for the Respondent (s) : Sri J. Sudheer.

< Gist :

> Head Note:

? Cases referred:

Nil.

HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

HON'BLE SMT JUSTICE ANIS

WRIT PETITION No.28692 OF 2015

ORDER: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

The Union of India, Central Board of Direct Taxes, the Chief Commissioner of Income Tax, Hyderabad and the Commissioner of Income Tax, Tirupati are the petitioners herein, who sought for a Certiorari for correcting the exercise carried out by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad in OA/020/00948/2014 on 17.04.2015.

The first respondent herein filed the above said Original Application challenging initially, the reluctance of the petitioners herein in allowing him to resume his duties on 07.08.2014 and subsequently, passing an order on 22.08.2014 deeming the first respondent to have been placed under suspension as he was detained in judicial custody for more than 48 hours. Now, the Tribunal has passed an order quashing the proceedings dated 08.08.2014 and those followed on 22.08.2014 and 25.09.2014. The petitioners herein are also directed to reinstate the first respondent into service forthwith with all consequential benefits. The only liberty, which was accorded was to effect the transfer of the first respondent to any of its office within or outside the state for severing local or personal contact with anyone, which might hamper the progress of investigation.

A brief account of the back drop is required to be stated here. The Central Bureau of Investigation (for short 'C.B.I') seems to have raided the office, where the first respondent was working as Deputy Commissioner of Income Tax, and seized from his office table drawer a packet containing Rs.3,00,000/-

cash on 07.07.2014. When the first respondent has been arrested and produced before the competent Court, on 10.07.2014, he has been remanded to judicial custody. On 04.08.2014, the first respondent was enlarged on bail. On 07.08.2014, after release, he reported to duty seeking to resume his work. It is in that context on 08.08.2014, the first respondent has been informed that he may not resume his duties and discharge official functions as he shall be deemed to have been placed under suspension for having spent in judicial custody a period beyond 48 hours.

The learned counsel for the first respondent, who has accepted notice, would submit that the first respondent has been maintaining a decent record throughout his service. He has never given scope for any allegation to be levelled against him in the discharge of his functions. When the first respondent gone out of his office chamber, which does not have an attached rest room and by the time he returned from the common rest room, he has noticed his office drawer being partially open and he therefore has reason to suspect that he has been falsely implicated by someone so that he can be put to misery and suffering. It is in this backdrop, the learned counsel for the first respondent would urge that notwithstanding the fiction incorporated under Sub Rule (2) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short 'the Rules'), the first respondent herein shall be allowed to resume duties.

Per contra, Sri B. Narasimha Sarma, learned counsel for the petitioners, would urge that in case of the serious nature of allegations faced by the first respondent herein, it would not be appropriate for reinstatement of the first respondent. He would submit that an appropriate charge sheet has already been drawn and that has been pending for further steps. In the meantime, a charge sheet was also filed by C.B.I before the competent criminal Court for prosecuting the first respondent.

Be that as it may, much can be said on both sides when we talk of tax collectors. While corruption in public services is considered to be fairly rampant, but, at the same time, there are still good number of officers in public service, who maintain impeccable record by virtue of their own integrity and honesty. One cannot be too sure as to whether an incident like the one which has been narrated supra is the culmination of actions taken by the individuals

concerned on their volition or the result of the work of someone, who has been jealously waiting for an opportunity to implicate an otherwise honest officer so as to cause harm and harassment to him. As at present advised, it will be hard and harsh for us to draw any opinion on either side. It would be, hence, safe to await the outcome of inquiry/trial, as the case be. It is in these set of circumstances, the fiction employed in Sub Rule (2) of Rule 10 of the Rules that springs up for consideration. If a public servant has been detained in judicial custody for a period exceeding 48 hours, what would be at stake is not merely the individual reputation of the employee concerned but entire institutional interest would come unto fore. No public office, all the more so, if it is a tax collecting one, can afford to have people with doubtful integrity working for it. So long as the public servants in such departments function efficiently and honestly with the interest of the state at heart, it will result in honest collection of taxes lawfully imposed. On the other hand, if a marginal allowance is allowed, to that extent the interest of the state would get impacted. The loss of revenue through these kinds of hair line leakages can lead to a cascading effect on the whole. Therefore, a stern view may be warranted to be taken. It is in this perspective the fiction under Sub Rule (2) of Rule 10 of the Rules acquires the legal significance. But, at the same time, like every fiction must yield to reality at one stage or other, so it be the case with Sub Rule (2) of Rule 10 of the Rules. But, however, in matters of this nature, the best and the most appropriate authority to take an appropriate call is always the 'master who employs' the servant. It is for him to make an honest assessment as to whether the continued suspension of the public servant is really warranted or not. He has to balance the interest of the department as well as the individual. He should be alive to the fact that the main purpose of confining the person under suspension is to prevent him from having access to the record maintained in the office and also to prevent him from influencing those who are likely to speak against him, who might hesitate to do so when he continues to yield influence while sitting in the office. At the same time, suspension pending enquiry/criminal cases cannot render itself into imposition of punishment of substantive suspension. The impact of an order of suspension that would leave on the morale of the working forces has also got to be kept in view. If an honest individual has been made a victim of the circumstances and is made to suffer unnecessarily, that would cause demoralising effect on the others who have

been interested in working real hard with honesty, removing themselves faraway from possible temptations offered galore by all and sundry. It is equally essential that the morale of such honest men have got to be preserved and protected, lest, the consequences would be exactly the opposite what the institutional interests demand. Therefore, in the circumstances of this nature, we hope and trust that the Central Board of Direct Taxes, New Delhi, to whom the first respondent appears to have submitted a detailed representation on 19.02.2015 would take a infirm decision expressing reasons, in brief at least, as to its decision and communicate the same to the petitioner within a maximum period of 15 days from the date of this order.

It is also appropriate for us to point out that instead of making a public servant, who is otherwise good at work, to sit at home and languish for too long a period while simultaneously getting paid subsistence allowance, which is a substantial portion of his pay, without commensurately rendering service to the employer, it might be advisable to reinstate him pending enquiry as it is not in the best interests for one to be continued under suspension for long period. It would also be appropriate for the Central Board of Direct Taxes to get guided by any orders passed by it earlier in similar circumstances. With this, the order passed by Central Administrative Tribunal in OA/020/00948/2014 stands modified.

Accordingly, the writ petition is disposed of. No order as to costs.

The miscellaneous petitions, if any, pending in the Writ Petition, shall stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

Date: 22.09.2015

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Note: LR copy to be marked.

(B/o)

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