

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**W.P.Nos.22530, 22609, 22612 & 22622 of 2017****COMMON ORDER:**

Heard Sri P.V.Krishnaiah, learned counsel for the petitioners and the learned Government Pleader for Services appearing for respondents.

2. These four Writ Petitions are being decided by this Common Order since the issue raised in all these Writ Petitions relates to the validity of the suspension order passed against the petitioners herein on 04-07-2017 by the Collector and District Magistrate, Khammam.

3. Petitioners are employed as Junior Assistant, Dy. Tahsildar, Mandal Revenue Inspector and Dy.Tahsildar (Civil Supplies) respectively in the State of Telangana.

4. On 02-07-2017, there was a raid conducted on the guest house of one Apuri Bhaskar Rao (Revenue Divisional officer) by the police at 2100 hours. The petitioners in these Writ Petitions and Apuri Bhaskar Rao were found playing cards by paying huge amounts of Rs.44,420/- and a case in Cr.No.162/2017 under Sections 3, 4 and 9(i) of T.S. Gaming Act, 1974 was registered against all of them.

5. This was communicated to the Collector and District Magistrate, Khammam by the Commissioner of Police, Khammam on 04-07-2017.

6. So the impugned order was passed by the Collector and District Magistrate, Khammam on 04-07-2017 suspending the petitioners pending enquiry/termination of all proceedings relating to the criminal charge. In the said order, he stated that he carefully considered the available material and he was satisfied that the criminal charge under investigation against the petitioners was connected with their official position as Government servants and involved moral turpitude and therefore, they were suspended from service.

7. Assailing the same, these Writ Petitions are filed.

8. Sri P.V.Krishnaiah, learned counsel for the petitioners, contended that the alleged misconduct had nothing to do with their duties; that the District Collector in a routine and automatic manner, without perusing the records, suspended the petitioners on a mistaken impression that the misconduct related to their discharge of duties; that the petitioners were in fact playing the game of *rummy* which is not a prohibited game; that the Collector did not examine the necessity to keep the petitioners under suspension since there was no threat of tampering of evidence of witnesses and that was why the petitioners were not even arrested; and the Collector could have ordered transfer of the petitioners, but instead directed their suspension without applying his mind. He further contended that the Revenue Divisional Officer in whose house the incident took place was not placed under suspension by the District Collector and so it was a case of selective suspension which is not permitted by law.

He relied upon several decisions of this Court and of the Supreme Court some of which will be discussed below.

9. Learned Government Pleader for Services appearing for the respondents however contended that the District Collector did apply his mind since he referred to F.I.R. and its contents indicated that the petitioners were involved in an offence involving moral turpitude; that a Government servant, even in private life, cannot act in a manner putting the Government in an embarrassing position in view of Rule 3 (2) of the A.P. Civil Service (Conduct) Rules, 1964 which states that “no Government employee shall behave in a manner which will place his official position under any kind of embarrassment”; no *mala fides* are attributed to the District Collector; that there is no allegation by the petitioners that the Collector had no power to suspend under Rule 8 (1) (c) of the A.P. Civil Service (CCA) Rules; and therefore the impugned order is not liable to be interfered with. Learned Government Pleader pointed out that the R.D.O. who is accused No.1 in the F.I.R. can be suspended only by the Chief Commissioner of Land Administration; that the District Collector was not competent to suspend him; and that the wheels of the State are also moved to take appropriate decision against accused No.1. He further contended that the offence alleged against the petitioners may not have anything to do with the discharge of duties of the petitioners, but it certainly has a connection with official position of the petitioners, and that was why the District Collector was justified in

placing the petitioners under suspension pending termination of all proceedings relating to the criminal charges.

10. Rule 8 (1) of the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991 deals with suspension. It reads:

“Rule 8. Suspension :- (1) A member of a Service may be placed under suspension from service-

(a) where a disciplinary proceeding against him is contemplated or is pending, or

(b) when in the opinion of the authority competent to place the Government servant under suspension, he has engaged himself in activities prejudicial to the interest of the security of the State, or

(c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial;

(d) A member of a service may be placed under suspension from service even if the offence from which he was charged does not have bearing on the discharge of his official duties.”

11. The suspension referred to therein is not a substantive punishment and is an interim step in the enquiry proceedings. Under what circumstances such suspension orders are to be passed have been considered by Courts from time to time.

12. In **State of Orissa through its Principal Secretary Vs. Bimal Kumar Mohanty**¹, the Supreme Court held that an order of suspension would normally be passed after taking into account the gravity of the misconduct sought to be inquired into or investigated

¹ (1994) 4 S.C.C. 126

and the nature of the evidence placed before the appointing authority and on application of mind by the disciplinary authority; and that such authority should also consider whether it is expedient to keep an employee under suspension pending the aforesaid action. It observed that suspension is not an administrative routine or an automatic order and the Court must consider each case on its own facts and *no general law can be laid down in that behalf*. It observed that the suspension orders are made to restrain an employee to avail further opportunity to perpetrate the alleged misconduct, or to remove the impression among the members of service that dereliction of duty would pay fruit and the offending employee could get away even pending enquiry without any impediment, or to prevent an opportunity to delinquent officer to scuttle the enquiry or investigation, or to win over witnesses. It however noted that if order of suspension is actuated by *mala fides*, arbitrary or is for ulterior purpose, then it cannot be sustained. It held that the authority should also keep in mind the public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge.

13. In **Union of India and another Vs. Ashok Kumar Aggarwal**², the Supreme Court again reiterated that power of suspension should not be exercised in an arbitrary manner and that any reasonable ground or as vindictive misuse of power. It held that suspension should be made only in a case where there is a strong

² (2013) 16 S.C.C. 147

prima facie case against delinquent employee and the allegations involved moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority or if there is a strong *prima facie* case against him and if proved, would ordinarily result in reduction in rank, removal or dismissal from service. It reiterated that the disciplinary authority should take into account the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the enquiry. It also held that effect on public interest due to the employee's continuation in office is also a relevant and determining factor, *but no formula of universal application can be laid down*. It held that ordinarily a Court should not interfere with orders of suspension unless they are passed in a *mala fide* manner without there being even *prima facie* evidence on record connecting the employee with the misconduct in question.

14. A Division Bench of this Court in **Buddana Venikata Murali Krishna Vs. State of A.P., represented by its Principal Secretary, T.R. and B.Department, Hyderabad and others**³, also considered all the decisions of the Supreme Court on the point and reiterated the principles referred to above. It held that suspension of a Government servant pending any enquiry or pending a criminal charge is a necessary part of procedure for taking disciplinary action against him, and the authority should keep in mind the public interest

³ 2016 (3) ALT 727

of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge. It emphasised the importance and necessity of proper disciplinary action being taken against Government servants for inefficiency, dishonesty or other suitable reasons and held that while suspension may be against the immediate interest of the Government servant, yet it is absolutely necessary in the interests of the general public for serving whose interests the Government machinery exists and functions. It also held that while considering the validity of suspension order, *it is not desirable for the Court to find out as to whether the version set up by the employee is true when there are claims and counter claims on factual issues.* It held that one of the usual grounds for suspension, pending criminal proceedings, is that the charge is connected with the employee's position as a Government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude and in such a case, he may be suspended pending investigation, enquiry or trial relating to a criminal charge.

15. Decisions of other High Courts also reiterate the above principles substantially. I therefore do not think it is necessary to discuss all the judgments sought to be relied by the learned counsel for the petitioners.

16. Keeping in mind the above principles, I will now consider whether the impugned order suspending the petitioners from service passed by the District Collector, Khammam are valid or not.

17. Firstly, the petitioners are admittedly Government servants and governed by the A.P. Civil Services (Conduct) Rules, 1964.

18. Rule 3 (2) thereof states that no Government employee shall behave in a manner which is unbecoming of such a manner or derogatory to the prestige of the Government and Rule 3 (3) of the Rules states that no Government employee shall act in a manner which will place his official position under any kind of embarrassment.

19. The District Collector, in the impugned order, referred to the report of the Commissioner of Police, Khammam dt.04-07-2017 wherein the Commissioner of Police informed the District Collector about the registering of an FIR on 02-07-2017 against the petitioners and Apuri Bhaskar Rao, R.D.O. for playing cards allegedly by betting with huge amount in a guest house of the said Apuri Bhaskar Rao and also registering of crime No.162 of 2017 under Section 3, 4 and 9 (i) of the T.S. Gaming Act, 1974.

20. If the above allegation is factually correct, it cannot be disputed that it would be an offence involving moral turpitude. Though it may have no relationship with the official duties of each of the petitioners, it certainly is connected with their official position as a Government servant. No *mala fides* have been attributed to the

District Collector by the petitioners and there is also no dispute as to the power of the District Collector to suspend the petitioners.

21. I am of the considered opinion that a reference to the contents of the F.I.R. in the impugned order itself indicates application of mind by the District Collector and the counsel for the petitioners is not correct in his submission that there is non-application of mind by the District Collector.

22. It may be that the R.D.O., who is accused No.1, is not yet placed under suspension, but that cannot furnish a ground to the petitioners since the District Collector was not competent to suspend the R.D.O.

23. The Chief Commissioner of Land Administration, Telangana Government has already written to the Principal Secretary to the Government, Revenue (Vigilance-I) Department on 11-07-2017 to initiate appropriate disciplinary action against the accused No.1, the Deputy Collector/R.D.O. in the criminal case, and a copy of the said proceedings has been placed by the Government Pleader before the Court.

24. In these circumstances, I am of the opinion that no exception can be taken to the action of the District Collector in suspending the petitioners pending termination of the criminal proceedings against them.

25. Accordingly, the all the Writ Petitions are dismissed at the admission stage. No costs.

26. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11-08-2017

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