

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 1st February, 2023

+ W.P.(C) 11149/2009

UOI & ANR.

..... Petitioners

Through: Ms. Arunima Dwivedi, CGSC with
Ms. Swati Jhunjhunwala, Ms. Pinky
Pawar and Mr. Aakash Pathak, Advs.

versus

KEWAL KRISHAN LOONA

..... Respondent

Through: In person.

AND

+ W.P.(C) 7908/2010

UNION OF INDIA

..... Petitioner

Through: Ms. Arunima Dwivedi, CGSC with
Ms. Swati Jhunjhunwala, Ms. Pinky
Pawar and Mr. Aakash Pathak, Advs.

versus

K K LOONA

..... Respondent

Through: In person.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in these two petitions are to the orders dated April 29, 2009 in Original Application No.1257/2008 and July 20, 2010 in C.P. No.262/2010 in Original Application No.1257/2008 passed by the Central Administrative Tribunal ('Tribunal', for

short) whereby, the Tribunal has allowed the Original Application, filed by the respondent herein, and had in contempt proceedings directed the petitioners herein, to pay the benefits for the period between May 14, 2008 to July 22, 2009, and to be treat the period as spent on duty with all benefits.

2. The facts as noted from the record are that the respondent namely Kewal Krishan Loona was convicted, pursuant to an FIR registered against him, wherein, he was sentenced for a period of three years under Section 7 of the Prevention of Corruption Act, 1988, (“Act of 1988”, for short) vide judgment dated January 27, 2007, by the Special Judge, Ambala. The learned Special Judge then stayed the sentence for a period of one month for the respondent to file an appeal. In the appeal, being CA No.275-SB-2007, before the Punjab and Haryana High Court, the sentence which was stayed by the Special Judge, continued to operate till the pendency of the appeal.

3. Pursuant thereto, the respondent continued to work on his post, w.e.f. January 27, 2007, and has been drawing his pay and allowances for the said period. However, on May 14, 2008, the petitioners resorted to Rule 10(2) of the CCS (CCA) Rules, 1965 (‘Rules of 1965’, for short), thereby placed the respondent under deemed suspension from the date of conviction, retrospectively, i.e., January 27, 2007. The challenge of the respondent in the Original Application was to the order dated May 14, 2008.

4. The case of the respondent before the Tribunal was primarily by placing reliance on the Office Memorandum of the Ministry of Home Affairs dated November 29, 1966 and September 19, 1975, to contend that, as soon as the government servant is convicted on a criminal charge, he may, in appropriate cases, be placed under suspension, if not already suspended. Though the respondent informed about his conviction on February 23, 2007, which was within the knowledge of the respondent, it took the petitioners more than one year and three months to place him under suspension. It was also the case of the respondent that, he performed duties and drawn pay and allowances for the period from January 27, 2007 till May 14, 2008, and as such the petitioners have no authority to deem this period as suspension, which would entail recovery of the allowances, which the respondent had drawn by virtue of having worked without being suspended on the post.

5. That apart, it was also the case of the respondent that, as per Rule 10(2)(b) of the Rules of 1965, a deemed suspension is a legislative intent to place the government servant under suspension, if he is in judicial custody and pursuant thereto, on conviction, wherein he has been sentenced to a term of imprisonment exceeding 48 hours and the period of 48 hours has to be computed from the commencement of the imprisonment. The sentence in case of the respondent having been suspended, the imprisonment had

never commenced, and the petitioners could not have invoked the deeming provision for placing him under deemed suspension.

6. The case of the petitioners before the Tribunal was by relying upon the judgment of the Supreme Court in the case of ***Union of India & Ors. v. Rajiv Kumar, (2003) 6 SCC 516***, to contend that the Supreme Court in the said case has held that, a combined reading of the provisions of Rules 10(1), 10(2), 10(3), 10(4) and 10(5)(a) of the Rules of 1965, makes the position clear that the order of suspension is effective for the period of detention only and not beyond it, where by legal fiction, a government servant is deemed to be under suspension for remaining in custody for a period exceeding 48 hours. In other words, as soon as a person is convicted and sentenced to a term of imprisonment exceeding 48 hours and was never dismissed or removed or compulsory retired, the suspension would be deemed from the date of conviction and the explanation has only laid down a methodology for computation of this 48 hours for the purpose of sentence, but the main provision as to conviction is the determining factor. Reliance was also placed on the judgment of the Supreme Court in the case of ***Union of India v. Ramesh Kumar, 1997 (7) SCC 514***, wherein it was held that, mere suspension of execution of sentence on grant of bail has been observed not to have obliterated the conviction which stands.

7. For similar proposition, reliance was also placed on the judgment of this Court in the case of ***S.S. Chowdhary v. Municipal***

Corporation of Delhi, 2005 (116) DLT 622. Reliance was also placed on the judgment of the Apex Court in the case of **Hardev Motor Transport v. State of M.P., 2006 (8) SCC 613**, to contend that the rule of explanation is not to defeat the main provision but to explain and to clear the ambiguity and provide additional support to the dominant object of the Act, but the explanation cannot interfere or change the enactment and in order to suppress the mischief and advance the object of the Act. The Tribunal allowed the Original Application by holding in paragraphs 18 to 26 as under:

“18. A discerned reading of the ratio decidendi of the above clearly signifies that explanation attached to a statutory provision cannot change the enactment, but basically it has a purpose to clear the ambiguity in the main provision and also can add to or widen the scope of the main section. It is an additional support to the dominant act. The concept of deemed suspension is in the context of a criminal proceeding where a government servant has been detained on a criminal charge for a period exceeding 48 hours as per Rule 10 (2) of the Rules ibid.

19. In Rajiv Kumar (supra) Rule 10 (2) has been observed to be a deemed provision creating a legal fiction once on detention for 48 hours suspension is found to be indefinite. Accordingly, the first part of Rule 10 (2) (a) deems a government servant under suspension if he is detained on criminal charge in custody for exceeding 48 hours is a pre-trial charge but, however, if one is not detained earlier on his conviction the methodology of deemed suspension is laid down under Rule 10 (2)(b). Applying the principle construction and interpretation clause 10

(b) deems suspension of a government servant if one is sentenced to a term of imprisonment exceeding 48 hours and was not dismissed on conviction for an offence. The conviction may be for a fine or may be a sentence is imposed as per Indian Penal Code or Code of Criminal Procedure. However, the explanation attached is a clarificatory supplying the additional emphasis in a situation where on sentence to a term of imprisonment exceeding 48 hours pursuant to conviction a government servant who has not been dismissed or removed has to be deemed under suspension. Even otherwise in a case where a government servant is implicated in a criminal case and on lodging of FIR he remains in custody of either police or judicial exceeding 48 hours the suspension would be deemed from that date, initial point of which is detention of a government servant. In such an event, the explanation is only attached to Rule 10 (b), which clarifies as to the computation for commencing imprisonment after conviction, for the purpose of computing 48 hours and these 48 hours would be in a case of conviction on sentence from the commencement of the imprisonment. Accordingly, the explanation has been added because provision of Rule 10 (b) does not give the methodology of computation of imprisonment exceeding 48 hours. It is not only conviction alone, which makes a government servant to be treated under deemed suspension, but also it is qualified by conviction for an offence and on sentence to a term of imprisonment exceeding 48 hours. Accordingly, in a case where on conviction either TRC is a sentence or fine is imposed, a government servant cannot be placed under deemed suspension as per the main provision of Rule 10 (b) of the Rules ibid. It is only when the sentence is more than a term of imprisonment exceeding 48 hours how to reckon this period of 48 hours is a clarification and removal of ambiguity by way of explanation, according to

which a conviction alone is not the relevant criteria or condition precedent for deeming the suspension but if it is followed by sentence to a term of imprisonment, that too exceeding 48 hours only then Rule 10 (b) would be invoked to deem a government servant under suspension.

20. A sentence alone is also not relevant but if it exceeds 48 hours. Accordingly, when this imprisonment has to be reckoned for the purpose of 48 hours has been clarified and explained by way of explanation, according to which, the computation of imprisonment after the conviction would be from commencement of the imprisonment, which include intermittent period of imprisonment, if any, to be taken into consideration. Accordingly, if we deem the explanation as part and parcel of Rule 10 (b) then it is only the commencement of imprisonment 48 hours are to be reckoned.

21. In legal parlance, commencement of imprisonment would be when the government servant pursuant to his conviction is sent to judicial custody to undergo the term of sentence. However, in a situation where this sentence to a term of imprisonment has been suspended by the trial court and thereafter by the appellate Court in continuation it cannot be legally inferred that a government servant on his conviction has remained under imprisonment and this imprisonment has not yet commenced for the purpose of reckoning 48 hours.

22. The above is the only logical and rationale interpretation as per the literal, contextual and purposive interpretation on following the basic principles. We do not find that explanation has defeated the object of the Act, which is a sentence of term to imprisonment and commencement exceeded 48 hours and in a situation where it has not been the power to place under deemed suspension would not

be available even if a person has been convicted of an offence.

23. No doubt, in a case of conviction where the sentence is suspended, the stigma of conviction never obliterates. It is washed of only when a person is acquitted in appeal. However, the very conviction when not a basis of deemed suspension, whether it is obliterated or not, is a secondary issue, not relevant to the issue in this OA.

24. Government in its prerogative as per Rule 19 of the Rules ibid on conviction and on a conduct leading to conviction can straightway on show cause notice dismiss or remove a government employee, but having not opted so or to hold a disciplinary proceeding against the applicant, they are bound by the methodology adopted in the case of applicant. This has to come to a logical conclusion.

25. Another aspect of the matter, which is not to be forgotten is that conviction in this case has been reported immediately to the respondents on 23.3.2007, yet despite the office memoranda referred to ibid, envisaging immediate action for suspension the respondents without any explanation and justification exercised this power belatedly, which smacks of legal malafide. Moreover, a person who has been on duty having worked on the post and drawn salary cannot be placed under deemed suspension and if so, no recovery could be effected of the pay and allowances and this period cannot be treated otherwise, as he has already worked, performed and discharged the duties attached to the post. A retrospective, suspension without jurisdiction under Rule 10 (b) would gravely prejudice the right of the applicant.

26. Resultantly, for the foregoing reasons, the deemed suspension of applicant from the date of his

conviction, i.e., 27.1.2007 cannot be countenanced in law. The OA is allowed to the extent that order dated 14.5.2008 is set aside with all consequences in law. No costs.”

8. As the order was not complied with a Contempt Petition being CP No.262/2010, was filed wherein, the Tribunal treated the Contempt Petition as MA for execution under Rule 24 of the Administrative Tribunals Act, 1985, directed the petitioners to pay the benefits for the period between May 14, 2008 to July 22, 2009 as the period has to be treated as he was on duty.

9. The submission of the learned counsel for the petitioners is that the Tribunal has erred in allowing the Original Application by incorrectly appreciating the provisions of 10(2) of the Rules of 1965. She stated that the judgment of the Apex Court in the case of *Union of India & Ors. v. Rajiv Kumar (supra)*, *Union of India v. Ramesh Kumar (supra)*, *S.S. Chowdhary (supra)* and *Hardev Motor Transport (supra)* are very clear and covers the issue which arose before the Tribunal. She stated that, merely for the reason that the order of suspension was passed on May 14, 2008, inspite of the petitioners having been informed by the respondent of his conviction on March 23, 2007, the delay would not vitiate the order dated May 14, 2008, given the nature of the Rule under which action has been taken. She stated that the orders of the Tribunal both in the Original Application and in the Contempt Petition need to be set aside.

10. On the other hand, the respondent, who appears in person would contest both the writ petitions by stating that the order dated May 14, 2008, passed by the petitioners suspending him w.e.f. January 27, 2007, is illegal as the perusal of the Rule 10(2) of the Rules of 1965 is very clear, inasmuch as, the deeming provisions would only come into play, if the government servant has been detained in custody for a period exceeding 48 hours or from the date he was detained in custody, whether on a criminal charge or otherwise, for a period exceeding 48 hours or in the event of conviction for an offence, he is sentenced to a term of imprisonment exceeding 48 hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

11. According to him, pursuant to his conviction, the Special Judge had stayed the sentence which was extended by the High Court. Even in appeal, as such, there was no detention beyond 48 hours upon conviction.

12. Having heard the parties at the outset, it may be stated insofar as the judgment relied upon by the learned counsel for the petitioners in the case of *Union of India & Ors. v. Rajiv Kumar (supra)* is concerned, the question which arose before the Supreme Court was whether the suspension under deemed suspension provision of Sub-rule 2 of Rule 10, has limited operation for the period of detention and not beyond that and the Supreme Court in paragraph 15 answered the said issue by holding as under:

“15. Thus, it is clear that the order of suspension does not lose its efficacy and is not automatically terminated the moment the detention comes to an end and the person is set at large. It could be modified and revoked by another order as envisaged under Rule 10(5)(c) and until that order is made, the same continues by the operation of Rule 10(5)(a) and the employee has no right to be reinstated in service. This position was also highlighted in *Balvantrai Ratilal Patel v. State of Maharashtra* [AIR 1968 SC 800]. Indication of the expression “pending further order” in the order of suspension was the basis for the aforesaid view.”

13. Suffice to state, the issue which arose for consideration before the Supreme Court in the case of *Union of India & Ors. v. Rajiv Kumar (supra)* is different from these writ petitions, the same is distinguishable. Similarly, the reliance placed on the judgment in the case of *Union of India v. Ramesh Kumar (supra)* wherein, it was held that the mere suspension of execution of a sentence on grant of bail does not obliterate conviction, is concerned, there cannot be any dispute on the said proposition of law but the said judgment would not be applicable to the issue which arises for consideration in these writ petitions. For similar proposition, the reliance placed on the judgment in the case of *S.S. Chowdhary (supra)* is concerned; the said judgment is also distinguishable.

14. The reliance placed on the judgment in the case of *Hardev Motor Transport (supra)* is concerned, the said judgment shall not come to the aid of the petitioners. It may be stated here that in

Hardev Motor Transport (supra), the Supreme Court in paragraphs 40 and 41, has held as under:

“40. As a logical corollary the mode and manner in which the permits are granted must necessarily be considered to be part of the provisions of the 1991 Act. Article 254(2) of the Constitution of India as such may not be attracted but it is a trite law that the executive while fixing a rate of duty cannot be permitted to usurp the legislative power and make a provision which would be inconsistent with the substantive provision of the statute. In other words, the provisions contained in the Schedule must be in consonance with the substantive provisions in the main Act. It must be in conformity with the charging section. As in terms of Section 3 of the 1991 Act, the legislature directed that the tax can be levied on motor vehicles subject to the rates fixed; by taking recourse to Explanation (7), firstly, no new definition could be introduced and, secondly, an owner of a vehicle having one kind of permit could not have been treated as having no permit at all only because the transport authorities have reasons to believe that the conditions of permit have been violated. By way of example we may notice that recently a Constitution Bench of this Court in State of Kerala v. Maharashtra Distilleries Ltd. [(2005) 11 SCC 1] has laid down guidelines for reading of the entries in the Schedule vis-à-vis the provisions of the Act.

41. For the reasons aforementioned, clause (g) of Entry IV of the First Schedule of the Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991 (for short “the 1991 Act”) as amended by the Madhya Pradesh Motoryan (Sanshodhan) Adhiniyam, 2004 read with Explanation (7) of the First Schedule is declared unconstitutional. The appeals are allowed. No costs.”

15. The submission of the learned counsel for the petitioners was by placing reliance of the said judgment is that the sub-rule 2 of Rule 10, contemplates even on conviction, the petitioners are

within their right to retrospectively suspend the respondent on deemed basis but such a submission is ignoring the explanation given under the said sub-rule which in a way clarifies the sub-rule 2 of Rule 10. The Tribunal has also referred to paragraph 31 of the judgment in the following manner:

“31. The role of an Explanation of a statute is well known. By inserting an Explanation in the Schedule of the Act, the main provisions of the Act cannot be defeated. By reason of an Explanation, even otherwise, the scope and effect of a provision cannot be enlarged. It was so held in S. Sundaram Pillai v. V.R. Pattabiraman [(1985) 1 SCC 591: AIR 1985 SC 582] in the following terms: (SCC p. 613, para 53)

“53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is—

(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the court in

interpreting the true purport and intendment of the enactment,”

(See also Swedish Match AB v. Securities & Exchange Board of India [(2004) 11 SCC 641].)”

16. In other words, the explanation has been provided as an additional support to the dominant object of the sub-rule 2 in order to make it more meaningful and purposeful.

17. We are not in agreement with the submission made by the learned counsel for the petitioners. Since the issue is relatable to the provisions of Rule 10(2)(b) of the Rules of 1965, and explanation thereof, we accordingly, reproduce the provisions of Rule 10(2) of the Rules of 1965 as under:

“(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority –

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

EXPLANATION - The period of forty-eight hours referred to in clause (b) of this subrule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.”

18. It is a conceded case of the parties that the case in hand does not fall under the provisions of Rule 10(2)(a) of the Rules of 1965. The issue is whether the petitioners could have issued the order dated May 14, 2008 by suspending the respondent from the date of the conviction, i.e., January 27, 2007 by invoking the aforesaid provision of Rule 10(2)(b) of the Rules of 1965 is justified or not.

19. We have already stated that, though the respondent was convicted, his sentence was stayed by the Special Judge, which was continued by the High Court. In that sentence, upon conviction by the Special Judge, he was not imprisoned / detained. If seen in this background, Rule 10(2)(b) contemplates that the government servant shall be deemed to have been placed under suspension w.e.f. date of his conviction, if in the event of conviction for an offence, he is sentenced to a term of imprisonment exceeding 48 hours. The explanation clarifies the position that the period of 48 hours referred to in clause (b) of sub-rule 2 shall be computed from the commencement of the imprisonment after conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

20. Having noted the rule, we agree with the finding of the Tribunal, more particularly in paragraphs 20 and 21, which we have already reproduced above.

21. Insofar as the order dated July 20, 2010, in Contempt Petition being C.P. No.262/2010 is concerned, as we have upheld

the order dated April 29, 2009 in Original Application 1257/2008, of the Tribunal, therefore, the respondent shall be entitled to the benefits for the period between May 14, 2008 to July 22, 2009.

22. In view of our above discussions and conclusion both the writ petitions filed by the petitioners being without any merit are dismissed. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

FEBRUARY 01, 2023/aky

