

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR.JUSTICE P.B. BAJANTHRI

WRIT PETITION NO. 537/2019 (S-RES)

Dated:02-07-2020

SRI. S. MURTHY vs. THE SPECIAL BOARD AND OTHERS

ORDER

In the instant petition, petitioner has assailed the order of suspension dated 27.12.2018 passed under Rules 8 and 9(o) read with Schedule – II of The Karnataka Legislative Assembly Secretariat (Recruitment and Conditions of Services) Rules, 2003 (Hereinafter referred to as 'Rules, 2003' for short) and Rule 10 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (Hereinafter referred to as 'CCA Rules' for short) by the Office of the Karnataka Legislative Assembly Secretariat (Hereinafter referred to as 'KLAS' for short) under the orders of Special Board on the allegation that petitioner while working as a Secretary in the office of the KLAS, during the period 2016-17 when Winter Session was in vogue at Belagavi's Suvarna Vidhana Soudha for which certain expenses was incurred by the Government, in this regard, petitioner is alleged to have committed certain financial irregularities. Arising out of these events, the then Speaker sent a note on 23.11.2018 to the

Chief Secretary to initiate a discreet inquiry and submit a report within a week. Pursuant to the aforesaid note Finance Department constituted a team of 5 members, headed by Additional Director for Karnataka State Accounts Department. Report was forwarded by the Chief Secretary. KLAS is of the opinion that there were certain alleged financial irregularities stated to have been committed by the petitioner. Thus, he was placed under suspension on 27.12.2018.

2. Petitioner feeling aggrieved by the order of suspension dated 27.12.2018 presented this petition on various grounds and he has also sought for an interim relief. On 26.03.2019, the matter was heard for consideration of interim prayer and it was rejected. Petitioner aggrieved by the rejection of interim relief, preferred Writ Appeal No.1040/2019 and Writ Appeal was disposed of on 19.12.2019
Extract of the order reads as under:

- (i) We hold that no error has been committed by the learned Single Judge;
- (ii) However, while we decline to interfere with the impugned order, we must make a note here that the appellant cannot be kept under suspension for a long period without initiating departmental/disciplinary inquiry proceedings.

Therefore, on the failure on the part of the respondents-Authorities to initiate departmental enquiry within a reasonable time and/or its failure to conclude the enquiry within a reasonable time, it will be always open for the appellant to file a fresh petition seeking to quash the order of suspension;

- (iii) We make it clear that the observations made in this order and the findings recorded are only for the purposes of examining the existence of a prima facie case. The learned Single Judge shall dispose of the writ petition without being influenced by the said prima facie findings;
- (iv) Subject to what is observed above, the appeal is dismissed, with no order as to the costs.

When things stood thus, petitioner filed an interim application i.e., I.A.1/2020 for direction wherein it was pointed out that petitioner had not been paid subsistence allowance in accordance with The Karnataka Civil Services Rules (Hereinafter referred to as 'KCSR' for short). In the meanwhile, Articles of Charge were issued on 02.02.2019 while granting two weeks time to file objection/explanation whereas petitioner submitted his objection/explanation on 22.05.2019. Official respondents without waiting for petitioner's reply/objection to the Articles of Charges read with notice dated 02.02.2019, proceeded to appoint Inquiring Officer and Presenting Officer to hold disciplinary proceedings against the petitioner

for the alleged charges stated in the Articles of Charge. It was further directed the Inquiring Authority to complete the inquiry proceedings within a period of 3 months, such proceedings is without waiting for the petitioner's explanation to Articles of Charges. Disciplinary authority has not recorded as to whether petitioner filed his explanation to Articles of Charges or not and failed to ascertain from petitioner.

3. Petitioner feeling aggrieved by the issuance of show-cause notice and articles of charges dated 02.02.2019 filed Writ Petition No.11518/2019 wherein he had sought for an interim relief. The matter was adjourned at the behest of the respondents from time to time. Ultimately, on 04.09.2019, this Court passed the following Order:

Heard the learned counsel for the petitioner and learned Additional Government Advocate.

Learned AGA submits that learned Advocate General would be appearing in the matter on behalf of the respondents and seeks accommodation till 11.09.2019.

Learned Counsel for the petitioner would object to the adjournment on the ground that the Enquiry Officer is proceeding with the enquiry proceedings on a day to day basis despite the petitioner having questioned the competency of the authority to conduct

the enquiry. It is also submitted that the Division Bench is also ceased of similar issue and Division Bench has summoned the record.

In that view of the matter, this Court is of the opinion that the Enquiry Officer be restrained from passing any orders till the next date of hearing.

List it on 13.09.2019.

The official respondents neither reviewed the order of suspension after lapse of 3 months, 6 months or 9 months in terms of the Government Orders issued by the DPAR from time to time nor in terms of Apex Court decision in the case of AJAY KUMAR CHOUDHARY vs UNION OF INDIA THROUGH ITS SECRETARY AND ANOTHER reported in CDJ 2015 SC 129. That apart, even though Inquiry Officer was appointed on 26.02.2019, official respondents had sufficient time till 04.09.2019 to complete the inquiry proceedings. No-doubt with effect from 04.09.2019 Inquiry Authority had been restrained from passing any order pursuant to the interim direction of this Court dated 04.09.2019. The official respondents have not made out any endeavor for modification of the interim direction dated 04.09.2019 or proceed to reinstate the petitioner subject to the result of the disciplinary proceedings initiated on 02.02.2019.

4. In the interim application, petitioner has

stated that he has not been paid subsistence allowance from time to time where as it is disputed by the official respondents stating that up to September 2019, subsistence allowance has been paid. The official respondents have filed their counter to interim application wherein it is stated that subsistence allowance is paid up-to September 2019, thereafter, petitioner's bank account was seized. Hence, there was administrative hurdle. Therefore, on 12.06.2020 this Court directed the official respondents to file an affidavit with dates and events relating to payment of subsistence allowance within a week. Official Respondents filed affidavit and dates and events on 23.06.2020 along with Memo for 'Being Spoken' to on 25.06.2020.

5. Learned Advocate General submitted that subsistence allowance has been paid to the petitioner till September 2019. There were administrative difficulties in reaching the subsistence allowance to the petitioner from October 2019 for the reason that concerned bank account of the petitioner was seized in a proceeding. The State Treasury requires to feed an alternative account number of the petitioner. In this regard, petitioner has not furnished alternative bank account number. If the petitioner furnishes alternative bank account details, in that event, necessary action would be taken to set-right the grievance

of the petitioner relating to payment of arrears of subsistence allowance.

6. Learned Advocate General vehemently contended that petitioner is not entitled for reinstatement for the reasons that when the inquiry commenced, he remained absent on 15.03.2019, 27.03.2019, 27.03.2019 and 05.08.2019. It was further submitted that on 14.10.2019 the Superintendent of Police (Central), Bengaluru has expressed that petitioner is likely to tamper the investigation. The aforesaid submission is with reference to memo for documents, list of dates and events and objections to the I.A.1/2020 filed by the petitioner. It was further contended that review of suspension is under process. Such a proposal was forwarded on 13.12.2019 and the file was taken back on 23.12.2019 in order to put up the decision in Writ Appeal No.1040/2019 dated 19.12.2019 and it was submitted on 04.01.2020. Thus, review of suspension is under process.

7. Learned Counsel for petitioner has not disputed payment of subsistence allowance up to September 2019. It was submitted that petitioner would furnish alternative Bank account for remittance of arrears of subsistence allowance.

8. Learned counsel for the petitioner opposed the aforesaid contentions of the learned Advocate General while stating that on 15.03.2019, petitioner was unwell. On 27.03.2019, petitioner had requested for certain documents which was not made available to the petitioner. That apart, this Court in W.P.11518/2019 directed the authorities to furnish the records demanded by the petitioner. Similarly, absence on 05.08.2019 was at the request of the petitioner, however, such absence was due to lack of communication to the Inquiring Officer to the extent of not in receipt of petitioner's communication for adjournment of inquiry. This has been clarified by the Inquiring Officer by its mail message to the petitioner that Inquiring Officer is in receipt of the petitioner's request for adjourning the inquiry matter. Thereafter, the respondents have not co-operated in W.P.No.11518/2019 where the initiation of inquiry is under challenge. Consequently, this Court was compelled to pass order cited supra on 04.09.2019 to the extent that Inquiring Authority was restrained to pass order. That apart, respondents have not made any efforts to get modification or cancellation of the order dated 04.09.2019 so as to proceed with the disciplinary proceedings. On the other hand, they are denying reinstatement. Prolonged suspension is impermissible. Authorities were required

to undertake review of suspension from time to time like 3 months, 6 months, 9 months in terms of DPAR Circulars issued from time to time read with Rule 98 of the KCSR Rules so also the decision of the Apex Court in the case of AJAY KUMAR CHOUDHARY (SUPRA).

9. Learned Advocate General's contention that continuation of suspension of the petitioner is due to remaining absent in the disciplinary proceedings and that he has not co-operated. Further, review of suspension process is pending consideration before the Special Board. This contention of the learned Advocate General may not be correct for the reasons that Disciplinary Authority/Special Board issued Articles of Charge to the petitioner on 02.02.2019 and further, petitioner was asked to furnish his explanation within two weeks. Without waiting for the petitioner's explanation to the Articles of Charge, Special Board proceeded to appoint Inquiring and Presenting Officer to conduct inquiry within a period of 3 months on 26.02.2019. In terms of Sub-rule(5)(b) of Rule 11 of Rules, 1957, in the event if Disciplinary Authority is not in receipt of delinquent Government Official's explanation, in such circumstances, he has to record the

reasons and proceed to hold an inquiry. Thereafter, the petitioner has submitted his explanation on 22.05.2019. There is delay in filing reply obviously for the reason that petitioner was not provided complete records cited in the Articles of Charge/list of documents. The respondents have not apprised this Court on what dates the demanded documents by the petitioner were furnished to him. In fact, it is to be noted that in Writ Petition No.11518/2019, this Court has directed the respondents to furnish the demanded records to the petitioner. Further, respondents have not adhered to Rule 98 of KCSR that Special Board/Disciplinary Authority is required to examine the feasibility of continuation of the petitioner under suspension beyond 6 months for both payment of subsistence allowance and continuation of suspension. In this regard, DPAR has issued Official Memorandum/Circular from time to time. So also, decision of the Apex Court in the case of AJAY KUMAR CHOUDHARY (supra), the respondents have not adhered to the aforesaid statutory provision and related orders. The order of suspension is dated 27.12.2018. In terms of Sub-rule 6 of Rule 10 of Rules, 1957 and Rule 98 of KCSR, Special Board/Disciplinary Authority was required to take decision and it was not adhered as is evident from record.

10. Insofar as payment of subsistence allowance so also revocation of suspension/continuation of suspension, such

proposal was for the first time initiated on 13.12.2019 i.e., almost one year from the date of suspension. Further, 6 months have elapsed as on this day, still there is no decision. Perusal of the records, it is evident that there is no progress from 04.01.2020. Thus, there is total inaction on the part of the respondents, in particularly, Special Board who is the Disciplinary Authority and who had suspended the petitioner.

11. As regards payment of subsistence allowance is concerned, respondents have stated that till September 2019, it was paid and it was not disputed by the counsel for the petitioner. Therefore, from October 2019 till date petitioner is entitled for subsistence allowance. In this regard, petitioner is required to furnish alternate bank account number to the concerned respondent so as to enable the official respondents to pay him up-to-date subsistence allowance.

12. In this backdrop, the questions for consideration are:

(i) Whether petitioner has made out a case for a direction to the official respondent regarding payment of subsistence allowance or not?

(ii) Whether, petitioner has made out prima facie case for reinstatement subject to result of the disciplinary proceedings initiated on 02.02.2019 or

not?

13. The object of granting subsistence allowance is for survival or livelihood of an employee/officer. It is to be paid, since he has been suspended to be an officer on temporary basis. Rule 98 of KCSR deals with subsistence allowance which reads as under:

98. (1) A Government servant who is placed or deemed to have been placed or continues to be under suspension shall be entitled to the following payments, namely:-

- (a) Subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn if he had been on leave on half pay and in addition, dearness allowance, if admissible on the basis of such leave salary, and
- (b) House rent allowance and city compensatory allowance admissible from time to time on the basis pay of which the Government servant was in receipt on the date of suspension subject to fulfillment of other conditions laid down for drawal of such allowances:

Provide that where the period of suspension exceeds six months, the authority which made or is deemed to have made, the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first six months as follows,-

- (i) The amount of subsistence may be increased by a suitable amount not exceeding fifty percent of the subsistence allowance admissible during the period of first six months, if, in the opinion of the said authority the period of suspension has been prolonged for reasons to

be recorded in writing, not directly attributable to the Government servant.

- (ii) The amount of subsistence allowance may be reduced by a suitable amount not exceeding fifty per cent of the subsistence allowance admissible during the period of the first six months, if in the opinion of the said authority, the period of suspension has been prolonged for reasons, to be recorded in writing directly attributable to the Government servant.
- (iii) The amount of dearness allowance shall be based on the increase or decrease in the amount of subsistence allowance, as the case may be, admissible under clauses (i) and (ii) above.

[Note.- Where the headquarters of Government servants placed under suspension is changed by shifting the lien in public interest, the House Rent Allowance and City Compensatory Allowance admissible at the new place of posting shall be payable to the Government servant.]
(Emphasis supplied)

- (2) No payment under sub-rule (1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation:

Provided that in the case of a Government servant dismissed, removed or compulsorily retired from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal or compulsory retirement under sub-rule (3) or sub-rule (4) of Rule 10 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 and who fails to produce such a certificate for any period or periods during which he is deemed to have been placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods, as the case may be fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him but when the subsistence allowance and other allowances

admissible to him are equal to or less than the amount earned by him nothing in this proviso shall apply to him.]

14. The official respondents are of the view that subsistence allowance has been paid from time to time till September 2019 through Treasury's account. At the same time, it was submitted on behalf of the official respondents that the bank account of the petitioner is stated to have been seized by the authorities. Thus, petitioner is prevented from withdrawing the subsistence allowance or making any transaction. If the official respondents are aware of the fact that petitioner's bank account is seized by the authorities in connection with certain alleged allegations, it was the bounden duty of the official respondents to seek necessary information from the petitioner to provide an alternative bank account for the purpose of remittance of subsistence allowance. On 12.06.2020 – the date on which the matter was heard, few officers of the official respondents were present and on their instructions, learned State Counsel sought petitioner's alternative bank account. Thus, for no fault of the petitioner, he has been denied subsistence allowance from October 2019. Therefore, the official respondents are hereby directed to make necessary arrangement for withdrawal of the remittance of subsistence allowance in a non-operative account and to make payment to the petitioner while accepting alternative account or in the alternative, calculate arrears

of subsistence allowance till date and make payment whatever the amount is said to have been deposited/remitted in the petitioner's seized account, the same can be adjusted in future.

15. Supreme Court in the case of STATE GOVERNMENT of MADHYA PRADESH and OTHERS vs SHANKARLAL reported in (2008) 2 SCC 55 held that the "payment of subsistence allowance in accordance with the Rules, to an employee under suspension is not a bounty. It is a right. An Employee is entitled to be paid the subsistence allowance".

16. In yet another decision in *A.K. BINDAL AND ANOTHER VS. UNION OF INDIA AND OTHERS* reported in 2003 (5) SCC 163 it is held as under:

"Right to life enshrined in this Article means something more than survival or animal existence. It would include the right to live with human dignity. Payment of very small subsistence allowance to an employee under suspension which would be wholly insufficient to sustain his living, was held to be violative of Article 21 of the Constitution"

17. Madras High Court in the case of *REGISTRAR AND OTHERS V/S M. ELANGO* reported in 2020 SCC OnLine Madras 384 held that "To "subsist" means to manage to stay alive, especially

with limited resources or money. The state of living as such is known as subsistence, which is indicative of the fact that one has enough resources to sustain life with basic minimum needs. This means of existence or continuance with meagre resources of livelihood for a salaried employee is known as a subsistence allowance, which is an advance payment to meet immediate living expenses while being kept away from service. It is, therefore, an income that is sufficient to provide bare necessities and is an adequacy of support that exists as a reality while undergoing a compulsory distress. The idea is to preserve sustenance at the minimum economic level to sustain in a minimum standard of living'.

18. Thus, petitioner has made out a case seeking direction for payment of arrears of subsistence allowance. The official respondents/competent authority is/are hereby directed to pay arrears of subsistence allowance within a period of four weeks from the date of receipt of this order, in the mean while, petitioner is directed to provide alternative Bank Account forth with.

19. Coming to the question, "Whether petitioner is entitled for reinstatement with reference to the order of suspension dated 27.12.2018", prima

facie, petitioner has not made out a case so as to interfere with the order of suspension insofar as quashing, at the same time, order of suspension is only a temporary measure. Suspension has been defined as temporary deprivation of one's office or position. Suspension does not put an end to the relationship of master and servant between the employer and employee. It simply keeps the employee away from work situation during the pendency of some departmental/domestic/criminal proceedings against him/her. The object and purpose of placing an employee under suspension is to keep him away from a position where he can interfere with the conduct of inquiry or tamper with the documentary or oral evidence in any manner, or, where, having regard to the nature of charges against him, it is felt that it would be unsafe to continue to vest in him/her the power of the post. It is a clear principle of natural justice that the delinquent employee when placed under suspension is entitled to represent that the departmental proceedings should be concluded with reasonable diligence and within a reasonable period of time. If such a principle were not to be recognized, it would imply that the executive is being vested a totally arbitrary and unfettered power of placing its employee/officer under disability and distrust for an indefinite duration. The total period of suspension, namely, both in respect of investigation and disciplinary proceedings

should not ordinarily, exceed six months. In exceptional cases, where it may not be possible to adhere to the said time limit of six months, the disciplinary authority or competent authority should undertake to review of suspension by recording reasons to continue the suspension. In so far as review of suspension periodically the Government has issued guidelines from time to time like review of suspension once in 3 months or once in six months and prolonged suspension without issue of charge sheet/charge memo. In number of cases Courts of law had interfered and revoked the order of suspension for the reason that no proceedings had been commenced against the suspended employee. In other words suspension of an employee for a long period is not legally sustainable, particularly where there can be no apprehension that employee would be in a position to influence the witnesses or tamper with records. Continued suspension may become unnecessary when there is no possibility of the official concerned tampering with the records or influencing the witnesses. In the present case the charge memo has been issued within three months from the date of suspension order. However there is no progress in the disciplinary proceedings even after seven months from the date of framing charges. Demanded documents were made available to the petitioner by means of judicial order. Therefore the respondent should have revoked the order of suspension pending disciplinary proceedings. Hence there is total inaction on the part of the respondent

- (a) Where a government servant is placed under suspension before the commencement of investigation into the allegations against him, he should be reinstated in service if the investigation is not completed within 6 months from the date of suspension. In such a case, if at the end of investigation a prima facie case is established, there is no objection to suspend him again before commencement of inquiry/trial.
- (b) Where a government servant is placed under suspension when the investigation is in progress, or at any time between conclusion of the investigation and commencement of inquiry/trial he should be reinstated in service if the inquiry/trial is not commenced within three months from the date of suspension;
- (c) Where a Government servant is placed under suspension when the investigation/inquiry/trial is in progress or at any time between conclusion of the investigation and commencement of inquiry/trial, the period of his suspension should not extend beyond nine months from the date of commencement of the inquiry/trial or from the date of suspension whichever is later;

The latest Circular bearing No .S: AD, ÅE 2 , ÅE« 2003
ç£ÁAP: 6.2.2003. In fact, the Government has also
issued order on 11.09.2003 wherein time limit has
been stipulated for completion of disciplinary
proceedings to avoid undue delay in completion of
disciplinary proceedings.

21. The Disciplinary Authority/Appointing
Authority is the Special Board insofar as post held by
the petitioner. Special Board cannot be equated to
that of Government. Since, official respondents have

not pointed out any statutory provision by which Special Board is equated to that of Government. In this backdrop it is necessary to examine Sub-rule 6 of Rule 10 of The Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 reads as under:

“Where a Government Servant has been suspended by an authority other than Government and final orders in the inquiry pending against him have not been passed within a period of six months from the date of order of suspension, ¹[the Appointing Authority shall examine the case and take a decision whether to continue the Government servant under suspension or not as it deems fit]”.

In terms of the aforesaid provision, Special Board is bound by the aforesaid provision to the extent of examining the petitioner's case and to take a decision “Whether continuation of the petitioner under suspension beyond 6 months “? Special Board has not adhered to the aforesaid provision even to thisday.

22. The official respondents/competent authority have failed to take note of Rule 98 of KCSRs, the Apex Court decision cited supra read with the DPAR Order/Circular issued from time to time in respect of regulating suspension of an employee/officer and to undertake review of

suspension. Prima facie, official respondent/competent authority have not adhered to the aforesaid decision, Rule 98 of KCSRS and Government Orders and failed to undertake review of suspension from time to time.

23. In view of these facts and circumstances and the fact that order of suspension is dated 27.12.2018 and the Inquiring authority has not completed inquiry proceedings during the period from 26.02.2019 to 03.09.2019 even though 3 months time limit was stipulated to complete the inquiry proceedings. That apart, perusal of the records it is evident that inquiry was initiated on 02.02.2019 while asking petitioner to submit his explanation within a period of two weeks. On 26.02.2019, Inquiring Authority and Presenting Officer were appointed without waiting for the petitioner's explanation to Articles of Charge whereas petitioner filed his explanation to Articles of Charge on 22.05.2019. The Disciplinary Authority was required to adhere to Sub-Rules 4 to 6 of Rule 11 of Rules, 1957. From the records it is evident that there is no consideration of petitioner's explanation to Articles of Charges dated 22.05.2019. Moreover, keeping petitioner under suspension for the last one and half

years and paying subsistence allowance without extracting work amounts to burden on the State exchequer.

RESULT:

Accordingly, Writ Petition stands disposed of with the following terms:

(i) Petitioner is hereby directed to provide alternative Bank Account details to the respondent at the earliest.

(ii) The competent authority is hereby directed to disburse the arrears of subsistence allowance by remitting in the alternate bank account provided by the petitioner.

(iii) Petitioner shall be reinstated subject to the result of the disciplinary proceedings within a period of three weeks from the date of receipt of this order.

(iv) Suspension period shall be regulated on completion of disciplinary proceedings.

(v) The official respondents are at liberty to file necessary application for modification of the order dated 04.09.2019 passed in Writ Petition No. 11518/2019 whereby Inquiring authority had been restrained from passing the order.