

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION Nos.3180 of 2021 and 3192 of 2021

COMMON ORDER:-

In W.P.No.3180 of 2021:

This Writ Petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue a writ, order or orders more particularly one in the nature of a Writ of Mandamus declaring the action of the 2nd respondent in issuing D.O.No.886 of 2020, C.No.1025/A9/2020, dated 05.12.2020 and accordingly placed the petitioner under suspension from service is arbitrary, unreasonable, contrary to law and accordingly set aside the impugned order passed by the 2nd respondent vide D.O.No.886/2020, C.No.1025/A9/2020, dated 05.12.2020 and consequently direct the respondents to reinstate the petitioner into service by treating the suspension period as on duty by paying all consequential benefits and pass such other order or orders as the Court deems fit”.

In W.P.No.3192 of 2021:

2. This Writ Petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue a writ, order or orders more particularly one in the nature of a Writ of Mandamus declaring the action of the 2nd respondent in issuing D.O.No.885 of 2020, C.No.1025/A9/2020, dated 05.12.2020 and accordingly placed the petitioner under suspension from service is arbitrary, unreasonable, contrary to law and accordingly set aside the impugned order passed by the 2nd respondent vide D.O.No.885/2020, C.No.1025/A9/2020, dated 05.12.2020 and consequently direct the respondents to reinstate the petitioner into service by treating the suspension period as on duty by paying all consequential benefits and pass such other order or orders as the Court deems fit”.

3. The petitioner in W.P.No.3180 of 2021 is joined as Police Constable in 4th respondent police station, in the year 2011 and he is enlisted as civil police constable after completion of his intermediate. From the date of his appointment, he is discharging his duties without any complaint from anybody. While so, he was placed under suspension on the allegation of grave misconduct i.e. indulging in illegal gratification by collecting money from the drivers, who are transporting the cattle and other vehicles, fruit vendors, pan shops, from the complainants and others who are visiting the Police Station regularly. As usual on the evening of 06.08.2020 while the petitioner was on off duty, he came to Venkatagiri cross road along with N.Munendra Babu (PC-2864) in a greedy of collecting illegal money from the cattle lorries. On knowing about collection of money by K.Nagaraju, who is working as special Police officer (working on outsourcing basis) at Venkatagiri Check post, from the lorry drivers, he picked up quarrel with the petitioner along with PC 2864 and retaliated each other in the presence of public in four road junction at Venkatagiri cross road.

4. The petitioner in W.P.No.3192 of 2021 is joined as Police Constable in 4th respondent police station in the year 2011 and he is enlisted as civil police constable after completion of his B.A (graduation). From the date of his appointment, he is discharging his duties without any complaint from anybody. While so, he was placed under suspension on the allegation of grave misconduct i.e.

indulging in illegal gratification by collecting money from the drivers, who are transporting the cattle and other vehicles, fruit vendors, pan shops, from the complainants and others who are visiting the Police Station regularly. As usual on the evening of 06.08.2020 while the petitioner was on off duty, he came to Venkatagiri cross road along with P.Masthaniah (PC-2969) in a greedy of collecting illegal money from the cattle lorries and on knowing about collection of money by K.Nagaraju, who is working as special Police officer (working on outsourcing basis) at Venkatagiri Check post, from the lorry drivers, he picked up quarrel with the petitioner along with PC 2969 and retaliated each other in the presence of public in four road junction at Venkatagiri cross road.

5. The 2nd respondent passed an order by placing the petitioner under suspension it is illegal and arbitrary. In fact, on the alleged date of incident, the petitioner was not on off duty and on that day he was on duty at Kasipet center point, he attended duty at 5.00 PM, he attended Roll call at 9.00 PM and he was on beet duty with Home Guard No.467. But, without taking into consideration of these duties, the 2nd respondent placed the petitioner under suspension and the same is without application of mind, which is contrary to the provisions of law, consequently requested to declare the same as illegal, arbitrary and set aside the same.

6. During hearing, the learned counsel for the petitioner reiterated the contentions urged in the petition while demonstrating that the order passed by the 2nd respondent is bereft of any reasons and thereby requested to set aside the same. Whereas, learned Government Pleader for Services-I contended that the involvement of the petitioners in grave misconduct i.e. collection of amounts from the persons illegally is suffice to place them under suspension which cannot be expected from a Police Constable. Therefore, the act of the petitioners attracts misconduct as defined under Rule 3 of A.P.C.S (Conduct) Rules, 1991 and requested to dismiss the writ petitions.

7. Undisputedly, the petitioner was placed under suspension by order dated 05.12.2020 for the alleged 'misconduct' i.e., collection of illegal gratification and the same is questioned on various grounds. Normally, this Court can interfere with such order of suspension only in exceptional circumstances, where the suspension was without application of mind, against public interest, contrary to law, or the order was passed without any jurisdiction.

8. Therefore, to place a Government servant under suspension normally when an appointing authority or the disciplinary authority intend to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would

be passed after taking into consideration of the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority by application of the mind by disciplinary authority.

9. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid disciplinary enquiry. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment, but it is only one of the forbidding or disabling an employee to discharge the duties of office or the post held by him.

10. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service for dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the

progress of the investigation or inquiry etc. But, as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact that creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by *mala fides*, arbitrary or for ulterior purpose, the suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind the public interest or the impact of the delinquent's continuance in office, while facing departmental inquiry or trial of a criminal charge as laid down in the case of **R. Ravichandran v. The Additional Commissioner of Police, Traffic, Chennai**.¹

11. The law is well settled, this Court cannot interfere is a matter of routine and placed reliance on the judgment in the case of **Buddana Venkata Murali Krishna Vs. State of A.P. rep., by its Principal Secretary**, by the Division Bench wherein it is observed that:

Ordinarily, a government servant is placed under suspension to restrain him from availing the further opportunity to perpetrate the alleged misconduct or to scuttle the inquiry or investigation or to win over the witnesses or to impede the progress of the investigation or inquiry, etc. It would also remove the impression, among members of the service, that dereliction of duty would pay. (Ashok Kumar Aggarwal² Bimal Kumar Mohanty⁹). When serious allegations of misconduct are imputed against a member of a service, normally it would not be desirable to allow him to continue in the post where he is functioning. The government may rightly take the view that an officer, against whom serious imputations are made, should

¹ 1994 (4) SCC 124

not be allowed to function anywhere before the matter has been finally set at rest after proper scrutiny and holding of departmental proceedings. (Tarak Nath Ghosh⁴). The purpose of suspension is generally to facilitate a departmental enquiry and to ensure that, while such enquiry is going on-it may relate to serious lapses on the part of a public servant-, he is not in a position to misuse his authority in the same way in which he might have been charged to have done so in the enquiry. (R.P. Kapur⁷).

The effect on public interest, due to the employees continuation in office, is also a relevant and determining factor. Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in the aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. At this stage, it is not desirable for the court to find out as to which version is true when there are claims and counterclaims on factual issues. (Ashok Kumar Aggarwal²). No conclusion can be arrived at without examining the entire record. It is always advisable to allow disciplinary proceedings to continue unhindered, and the concerned employee kept out of the mischief's range. If he is exonerated, he would then be entitled to all the benefits from the date of the order of suspension. ([U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan](#) ; Bimal Kumar Mohanty⁹). The usual ground for suspension, pending a criminal proceeding, is that the charge is connected with his position as a government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude. In such a case a public servant may be suspended pending investigation, enquiry or trial relating to a criminal charge. (R.P. Kapur⁷).

The power of suspension should, however, not be exercised in an arbitrary manner and without any reasonable ground or as a vindictive misuse of power. A suspension order cannot be actuated by mala fides, arbitrariness, or be passed for an ulterior purpose. (Ashok Kumar Aggarwal²). An order of suspension should not be passed in a perfunctory or in a routine and casual manner but with due care and caution after taking all factors into account. (Ashok Kumar Aggarwal²). It should be made after consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The authority should also take into account all 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 inquiry. (Ashok Kumar Aggarwal²). Ordinarily, an order of suspension is passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated, and the nature of the evidence placed before it, on application of mind by the disciplinary authority. (Ashok Kumar Aggarwal²; Bimal Kumar Mohanty⁹).

Whether the employee should or should not continue in office during the period of inquiry is a matter to be assessed by the concerned authority. Ordinarily, the Court should not interfere with orders of suspension unless they are passed mala fide and without there being even prima facie evidence on record connecting the employee with the misconduct in question. (Sanjiv Rajan²¹). The court cannot act as if it is an appellate forum de hors the power of judicial review. (Ashok Kumar Aggarwal²). The Court or the Tribunal must consider each case on its own facts and no general law or formula of universal application can be laid down in this regard. (Ashok Kumar Aggarwal²; Bimal Kumar Mohanty⁹). Each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. The authority should also keep in mind the public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge. (Bhimal Kumar Mohanty⁹).

12. Applying the principle laid down in the above judgment, I find that it is not a fit case to warrant any interference by this Court while exercising power under Article 226 of the Constitution of India, in the impugned order.

13. In the result, these Writ Petitions are dismissed. There shall be no order as to costs.

As a sequel, all the pending miscellaneous applications are closed.

JUSTICE M.SATYANARAYANA MURTHY

Date: 16.02.2021
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NOs.3180 & 3192 of 2021

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