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D. D. SURI

v.

A. K. BARREN &amp; ORS.

February 6, 1976

[V. R. KRISHNA IYER, A. C. GUPTA AND N. L. UNTWALIA, JJ.]

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*Prevention of Corruption Act, 1947—Sec. 5(2)—All India Services (Discipline and Appeal) Rules 1955—Rule 7(3)—Suspension order without following administrative instructions whether valid—Meaning of investigation—Inquiry and trial—Whether suspension comes to an end on retirement.*

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The appellant was an erstwhile member of the Indian Administrative Service in the cadre of the State of Orissa. At the relevant time in the year 1967, he was serving as Commissioner of Land Reforms, Orissa. According to the appellant he had disputes, differences and animosity with respondent No. 1, the Chief Secretary to the Government of Orissa and respondent No. 2 who was at the relevant time Director of Vigilance and Additional Secretary to the Government of Orissa. The First Information Report was lodged against the appellant under s. 5(2) of the Prevention of Corruption Act, 1947, on 24-11-1967. The appellant's house was searched on 27-11-1967. An order of suspension was made against the appellant by the Government of Orissa on 28-11-1967 under rule 7(3) of the All India Services (Discipline and Appeal) Rules, 1955. The Writ Petition filed by the appellant against his order of suspension and investigation was dismissed by the High Court *in limine*. This Court allowed an appeal filed by special leave by the appellant against the High Court judgment and directed the High Court to admit and dispose of the petition in accordance with law.

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The State Government approached the Central Government to accord sanction for prosecution of the appellant. In spite of reminders, the Central Government neither accorded the sanction nor refused it. Appellant was compulsorily retired by the Government in 1971. Thereafter, charge-sheet was submitted against him in the Court of the Special Judge, Sambalpur. The trial concluded but because of the stay order passed by this Court judgment could not be delivered. Against the order of the compulsory retirement, the appellant filed a writ petition in the Delhi High Court which was dismissed by a learned single Judge and against which a Letters Patent appeal is pending. The Orissa High Court dismissed the writ petition of the appellant on the ground of it having become infructuous since the appellant was no longer in suspension since he was compulsorily retired. The High Court also did not think it necessary to examine the legality of the investigation against the appellant as charge-sheet had already been submitted.

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In an appeal by special leave the appellant contended :

The suspension order may be quashed on the following grounds :

- (1) It was passed without following the various Governmental instructions on the point.
- (2) The order was in violation of rule 7(3).
- (3) The order was malafide.

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HELD : (1) It is true that all the instructions contained in the circulars issued by the Central Government do not seem to have been strictly followed. That would, however, not invalidate or nullify the order of suspension made under rule 7(3). In dealing with the cases of high officers of the Administrative Service care ought to have been taken to follow the instructions as far as possible. On the facts of the present case, however, failure to follow the instructions fully, does not render the order of suspension *per se* invalid. [353GH]

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(2) Under rule 7(3) a member of the Service in respect of or against whom an investigation, enquiry or trial relating to a criminal charge is pending, may at the discretion of the Government be placed under suspension. The

expression investigation, enquiry and trial are well known in the realm of the criminal law under the Criminal Procedure Code. In the present case, the First Information Report was lodged and the search warrants were issued before the suspension orders were passed. Most of the allegations against the appellant were in relation to his alleged acts of corruption and misuse of his official position. Whether the allegations are true or false is irrelevant. Order under rule 7(3) was, therefore, legal and valid. [354A-E]

(3) The suspension order came to an end by the compulsory retirement of the appellant. After retirement from service he could no longer be deemed to be under suspension. Since we are remitting the case back to the High Court we permit the appellant to raise the question of his salary and emoluments during the suspension period to be raised in the High Court. The counsel for the appellant, however, assured this Court that if the appellant would be exonerated of the charges levelled against him and acquitted in the criminal proceedings the State Government would pay him his full pay and allowances for the period of suspension. [354G-H, 355B-C]

(4) We do not think it advisable to decide the point of malafide in the absence of the judgment in the criminal cases. Since the two matters are so interwoven and interconnected that it would be expedient for the High Court to decide this issue after the judgment is delivered in the criminal trial. [355D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 292 of 1973.

(Appeal by special leave from the judgment and order dated the 25-4-1972 of the Orissa High Court of Judicature at Cuttack in O.J.C. No. 82 of 1968).

*S. N. Andley* and *A. Subbarao* for the appellant.

*M. C. Bhandare* and *B. Parthasarathi* for respondent No. 3.

*M/s. S. N. Prasad* and *Girish Chandra* for respondent No. 4.

The Judgment of the Court was delivered by

UNTWALIA, J.—The appellant in this appeal by special leave is Shri D. D. Suri—an erstwhile member of the Indian Administrative Service in the cadre of the State of Orissa. Shri A. K. Barren, I.A.S. the Chief Secretary to the Government of Orissa at the relevant time was impleaded as respondent no. 1. He died during the pendency of this appeal. Therefore, his name is directed to be expunged. For the sake of convenience, however, he will be referred to hereinafter in this judgment as respondent no. 1. Shri S. K. Ghosh, I.P.S. respondent no. 2 was at the relevant time Director of Vigilance and Additional Secretary to the Government of Orissa in the Political and Services Department. He has since retired and no notice of this appeal could be served on him. Even so the appeal proceeded to hearing as for the disposal of this appeal, his appearance was not necessary. The State of Orissa is respondent no. 3, and the Government of India is respondent number 4. Respondents 5 and 7 are other officers of the Government of Orissa.

It is an unfortunate protracted litigation with a chequered history. Yet we do not find it possible to bring it to conclusion by our judgment.

The appellant was appointed to the Indian Administrative Service and joined as an Additional District Magistrate in the State of Orissa in November, 1950. According to his case due to some actions which he took against some big political persons, he incurred their displeasure

A in the year 1952. Sometime after he came on deputation to the centre but went back to Orissa in April, 1965. At the relevant time in the year 1967 he was serving as Commissioner of Land Reforms, Orissa. According to his case he had disputes, differences and animosity with respondent no. 1 and later with respondent no. 2 also. The appellant by stating very many facts, which are not necessary to be enumerated in this judgment endeavoured to make out a case of male fides against respondents 1 and 2 and asserted that he was put to trouble and unwarranted and illegal actions were taken against him by or at the instance of respondents 1 and 2.

A First Information Report was lodged and Sambalpur Vigilance P.S. Case No. 23/1967 was instituted against the appellant on November 24, 1967 under section 5(2) of the Prevention of Corruption Act, 1947. An application for search warrant was made before the Additional District Magistrate, Sambalpur on the same date i.e. 24-11-1967 and a search warrant was issued. The appellant's house at Cuttack was searched on and after 27-11-1967. An order of suspension was made against the appellant by the Government of Orissa on the 28th November, 1967 under Rule 7(3) of the All India Services (Discipline and Appeal) Rules, 1955—hereinafter referred to as the Rules. The appellant filed a writ petition (OJC 82/1968) in the Orissa High Court in January, 1968 to challenge the order of suspension and the investigation made and proceeded against him. The writ application was dismissed by the Orissa High Court *in limine*. Civil Appeal No. 679/70 filed by special leave against the order of the Orissa High Court was allowed by this Court on 22-10-1970. The writ application was directed to be admitted and disposed of in accordance with law.

Certain subsequent developments and events are necessary to be noted. The State Government moved the Central Government on November 23, 1968 after stating the facts in detail to accord sanction for prosecution of the appellant as the materials collected during investigation revealed a *prima facie* case in relation to the charges of corruption and misuse of his official position by the appellant. In spite of reminders the Central Government neither accorded sanction for the prosecution of the appellant nor refused it. Without sanction of the Central Government no Charge-Sheet could be submitted against the appellant for his prosecution so long he remained in government service. It seems, however, that the appellant was compulsorily retired by the appropriate government on June 9, 1971. Thereafter on November 8, 1971 Charge-Sheet was submitted against him in the Court of the Special Judge, Sambalpur. In Transfer Petition No. 2/73 this Court transferred the case to the file of another Special Judge. On the splitting up of the original case the trial of several cases proceeded against the appellant in the Court of the Special Judge. The trial concluded but because of the stay order passed by this Court, judgment could not be delivered until the disposal of this appeal and LPA 3/73 pending in the Delhi High Court. Against the order of compulsory retirement, the appellant filed a writ petition in the Delhi

High Court. It was dismissed by a learned single Judge on November 16, 1972. LPA 3/73 is directed against the said order of dismissal. A

A Bench of the Orissa High Court by its order dated the 25th April, 1972, the order under appeal, has again dismissed the writ petition (OJC 82/1968) as being infructuous. It has taken the view that since the appellants have already retired from service they are no longer under suspension. Therefore, the legality of the suspension order is not necessary to be examined. Nor did the High Court think it necessary to examine the legality of the investigation against the appellants as Charge-Sheet had already been submitted. B

Mr. S. N. Andley, learned counsel for the appellants asked us to quash the suspension order and strenuously urged the following three grounds : C

- (1) That it was passed without taking the various preliminary steps of preliminary enquiry or investigation as was necessary to be done in view of the various governmental instructions. D
- (2) That the order was not warranted by and was in violation of Rule 7(3) of the Rules.
- (3) That the charges levelled against the appellants were all baseless, frivolous and false. They were levelled and the suspension order was made mala fide. E

In support of the first submission our attention was drawn to the various executive instructions issued by the Central Government as also the State Government of Orissa to show as to how and in what manner preliminary steps had to be taken and enquiry made by the governmental authorities concerned before putting a government servant and especially a member of the Administrative Service under suspension. Counsel submitted that nothing was done in accordance with those instructions before the lodging of the First Information Report on November 24, 1967. The action was taken mala fide in all haste without observing the requirements of the law as contained in the executive instructions. On the other hand, Mr. M. C. Bhandare, counsel for the Government of Orissa pointed out that the Vigilance Department of the State Government had made preliminary enquiries and then taken action. We do not consider it necessary to discuss in any detail or record any definite finding one way or the other in respect of this bone of contention between the parties. We may only observe that all instructions contained in the various letters and circulars of the Central Government do not seem to have been strictly followed. But that will not invalidate or nullify the order of suspension made under Rule 7(3) of the Rules. In dealing with the cases of high officers of the Administrative Service, care ought to have been taken to follow the instructions as far as possible. Yet on the facts of this case we are not prepared to hold that failure to follow the instructions fully, *per-se*, made the order of suspension invalid. F  
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**A** Sub-rule 1 of Rule 7 of the Rules provides for the placing under suspension a member of the service against whom any disciplinary proceeding has been initiated. Under that sub-rule without the initiation of the disciplinary proceeding an order of suspension could not be made. Under sub-rule 2 a member of the service who is detained in official custody for a period longer than 48 hours is to be deemed to have been suspended by the government concerned. We shall now

**B** read sub-rule 3 of Rule 7.

**C** "A member of the Service in respect of, or against whom, an investigation, inquiry, or trial relating to a criminal charge is pending, may, at the discretion of the Government under which he is serving, be placed under suspension until the termination of all proceedings relating to that charge, if 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."

**D** Under the sub-rule aforesaid it is clear that a member of the service can be placed under suspension if against him an investigation, inquiry or trial relating to criminal charges is pending. The expression 'investigation', 'inquiry', or 'trial' are well-known in the realm of the criminal law under the Code of Criminal Procedure. In the instant case when a First Information Report was filed against the appellant and steps were taken for obtaining a search warrant for the search of his house, investigation within the meaning of Rule 7(3) became pending on and from November 24, 1967. The suspension order,

**E** therefore, made on November 28, 1967 was well within the ambit of the power of the government under the said provision of law. Most of the charges levelled against the appellant, and at this stage, we do not know whether they were right or wrong, true or false, were in relation to his alleged acts of corruption and misuse of his official position.

**F** In our view the making of the suspension order against the appellant under rule 7(3) of the Rules was legal and valid. But did it come to an end, if so, when? The rule provides that the suspension order may last "until the termination of all proceedings relating to" the charges. Appellant's counsel submitted that, as mentioned in one of the letters of the State Government to the Central Government, the investigation was complete on November 23, 1968, hence on the termination of the investigation the suspension order terminated. We

**G** have no difficulty in rejecting this argument as unsound. Under rule 7(3) the suspension order can be made to continue until the termination of all proceedings viz. investigation, inquiry or trial which may follow the investigation. Strictly speaking, the investigation could not be said to be complete until the submission of the Charge-Sheet. Factual completion of the investigation in November, 1968 did not

**H** terminate all proceedings in relation to the charges levelled against the appellant. But obviously the suspension order came to an end by the compulsory retirement of the appellant. After retirement from service he could no longer be deemed to be under suspension.

During the hearing of the appeal and in view of certain new stands taken in the petition filed in this Court by the appellant, an interesting point cropped up and that is this. What was the effect of the appellant's compulsory retirement on his suspension? He was not prosecuted before his retirement. What is to be the effect of his retirement on the appellant's pay and allowances for the period of his suspension viz. between November 28, 1967 and June 9, 1971. Does rule 9 of the Rules cover the appellant's case? If so, is he entitled to an order in his favour for paying him full pay and allowances for the said period because he was made to compulsorily retire without any stigma and not by way of punishment? We did not feel persuaded to decide this aspect of the matter for the first time in this appeal. Since we are remitting the case back to the High Court, we permit the appellant to raise this point there, if necessary, by amendment of his writ petition. We may, however, hasten to add that the counsel for the State of Orissa assured us that if the appellant would be exonerated of the charges levelled against him and acquitted in the criminal proceedings, then the State Government will pay him his full pay and allowances for the period of his suspension.

Evidence at the trial is over and only the judgment has to be delivered. Without the aid of the judgment in the criminal cases, we did not find it advisable or possible to decide the third point urged on behalf of the appellant. On the materials in the records of this case, it will not be possible to say that the charges levelled against the appellant were false and that action was taken against him mala fide. The two matters are so interwoven and interconnected that we think it expedient to leave the matter for a fresh decision by the High Court after the judgment is delivered at the criminal trial which is already concluded. We vacate the order of stay made by this Court and direct the Trial Judge to deliver his judgment without any further delay. The High Court, if necessary, will go into the question of mala fides when the case goes back to it on remand and it will do so taking note, *inter alia*, of the judgment in the criminal cases.

Nothing we have said in this judgment is meant to prejudice either party in the disposal of the letters patent appeal pending in the Delhi High Court in which the appellant is pursuing his challenge to the order of his compulsory retirement. But it will be desirable, may, necessary to dispose of LPA 3/1973 pending in the Delhi High Court at a very early date so that the judgment may be made use of by either party, if necessary, in the Orissa High Court in aid of the disposal of the case being remitted back by us to that court.

In the result we allow this appeal, set aside the order of the High Court, remit the case back to it for fresh disposal in the light of this judgment. We make no order as to costs.