

**Court No. - 18**

**Case :-** WRIT - A No. - 4797 of 2021

**Petitioner :-** Dr. Shreesh Mishra

**Respondent :-** State Of U.P.Thru.Addl.Chief Secy. Ayush And Ors.

**Counsel for Petitioner :-** Manoj Kumar Dixit,Aahuti Agarwal,Abhishek Khare,Pranjal Krishna

**Counsel for Respondent :-** C.S.C.

**Hon'ble Manish Kumar,J.**

Heard learned counsel for the petitioner and learned Standing Counsel for the State.

The present writ petition has been filed by the petitioner with the following reliefs:-

*"i. Issue a writ, order or direction in the nature of certiorari for quashing the impugned suspension order dated 15.05.2017, (Annexure no. 1) with all consequential benefits;*

*ii. Issue a writ, order or direction in the nature of certiorari for quashing the impugned officer orders dated 18.10.2017 as contained in Annexure No. 2 & 3;*

*iii. Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to restore the petitioner in service and to pay all the annual increments admissible to petitioner after regularizing the period of suspension and further to provide the other benefits accordingly."*

Learned counsel for the petitioner has submitted that identical controversy has already been decided by this Court by its judgment and order dated 08.02.2021 passed in the case of Dr. Puneet Kumar Mishra vs. State of U.P thru Prin. Secy Ayush and Ors. in W.P. No. 12049 (S/S) of 2020. The said judgment is quoted hereinbelow:-

*'Heard learned counsel for the petitioner and the learned Standing Counsel for the State - respondents.*

*The petition has been filed with the following prayers:-*

*"(i) Issue a writ, order or direction in the nature of certiorari for quashing the impugned suspension order dated 15.05.2017, passed by the Respondent No.1 (Annexure No.3), with all consequential benefits;*

*(ii) Issue a writ, order or direction in the nature of certiorari quashing the impugned charge-sheet dated 18.10.2017 (Annexure No.2) and the impugned order dated 20/26.11.19 passed by Respondent No.1 (Annexure No.1);*

*(iii) Issue a writ, order or direction in the nature of mandamus commanding the Opposite Parties to revoke the petitioner in service and to pay the petitioner as Rule 4(3) from teh date of release of custody and also to pr9ovide the other benefits accordingly;*

(iv) Issue any other writ, order or direction which this Hon'ble Court may deem just and proper in the circumstances of the case.

(v) Allow this writ petition with all costs in favour of the petitioner."

*Learned counsel for the petitioner has submitted that the petitioner was suspended vide order dated 15.05.2017 because he was caught red handed while taking bribe for which an FIR was also lodged. Learned counsel has submitted that it is settled proposition of law that after the release of a delinquent employee from jail, he must be reinstated in service. Learned counsel for the petitioner submits that the inquiry has not been completed till date. It is submitted that the suspension of a Government servant shall not be extended beyond a period of three months.*

*It is admitted position that the petitioner is under suspension w.e.f. 06.09.2018. In the case of Anshu Bharti vs. State of U.P. and others, reported at 2009(1) AWC 691, it has held that the prolonged suspension of the petitioner is clearly unjust and unwarranted. The question deals with the prolonged agony and mental torture of a suspended employee where inquiry either has not commenced or proceed with snail pace. Though suspension in a contemplated or pending inquiry is not a punishment but this is a different angle of the matter, which is equally important and needs careful consideration. A suspension during contemplation of departmental inquiry or pendency thereof by itself is not a punishment if resorted to by the competent authority to enquire into the allegations levelled against the employee giving him an opportunity of participation to find out whether the allegations are correct or not with due diligence and within a reasonable time. In case, allegations are not found correct, the employee is reinstated without any loss towards salary, etc., and in case the charges are proved, the disciplinary authority passes such order as provided under law. However, keeping an employee under suspension, either without holding any enquiry, or in a prolonged enquiry is unreasonable. It is neither just nor in larger public interest. A prolonged suspension by itself is penal.*

*Similarly, an order of suspension at the initial stage may be valid fulfilling all the requirements of law but may become penal or unlawful with the passage of time, if the disciplinary inquiry is unreasonably prolonged or no inquiry is initiated at all without there being any fault or obstruction on the part of the delinquent employee. No person can be kept under suspension for indefinite period since during the period of suspension he is not paid full salary. He is also denied the enjoyment of status and therefore admittedly it has some adverse effect in respect of his status, life style and reputation in society. A person under suspension is looked with suspicion in the society by the persons with whom he meets in his normal discharge of function.*

*A Division Bench of this Court in Gajendra Singh Vs. High Court of Judicature at Allahabad 2004 (3) UPLBEC 2934 has observed as under :*

*"We need not forget that when a Government officer is placed under suspension, he is looked with suspicious eyes not only by his colleagues and friends but by public at large too."*

*Disapproving unreasonable prolonged suspension, the Apex Court in Public Service Tribunal Bar Association Vs. State of U.P. & others 2003 (1) UPLBEC 780 (SC) has observed as under :*

*"If a suspension continues for indefinite period or the order of suspension passed is mala fide, then it would be open to the employee to challenge the same by approaching the High Court under Article 226 of the Constitution.....(Para 26) "*

*The statutory power conferred upon the disciplinary authority to keep an employee under suspension during contemplated or pending disciplinary enquiry cannot thus be interpreted in a manner so as to confer an arbitrary, unguided an absolute power to keep an employee under suspension without enquiry for unlimited period or by prolonging enquiry unreasonably, particularly when the delinquent employee is not responsible for such delay. Therefore, I am clearly of the opinion that a suspension, if prolonged unreasonably without holding any enquiry or by prolonging the enquiry itself, is penal in nature and cannot be sustained.*

*In view of the above discussion, it cannot be said that the impugned order of suspension satisfies the requirement of law and is sustainable.*

*In the result, the writ petition is partly allowed."*

*The impugned order of suspension dated 15.05.2017 (Annexure - 3 to writ petition) is hereby quashed. However, respondent-competent authority is directed to proceed with the inquiry and conclude the same within three months from today.'*

It is further submitted that the suspension order passed against the petitioner and the petitioner of the aforesaid writ petition was of the same date and the charge sheet having the same charges. Hence, the case of the petitioner is squarely covered with the aforesaid judgment.

Learned Standing Counsel has submitted that the aforesaid judgment relied by learned counsel for the petitioner is applicable in the case of the petitioner in the present writ petition.

In view of the above discussion, it cannot be said that the impugned order of suspension satisfies the requirement of law and is sustainable.

In the result, the writ petition is partly allowed.

The impugned order of suspension dated 15.05.2017 is hereby quashed. However, respondent-competent authority is directed to proceed with the inquiry and conclude the same within three months from today.

**Order Date :- 19.1.2024**

Nitesh