

Court No. - 5

Case :- WRIT - A No. - 5440 of 2024

Petitioner :- Prabodh Singh

Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin.
Secy. Deptt. Of It And Electronics Lko And 2 Others

Counsel for Petitioner :- Sudhir Pande,Himanshu Shekhar

Counsel for Respondent :- C.S.C.,Ajit Singh

Hon'ble Abdul Moin,J.

1. Supplementary affidavits, filed by the learned counsel for the petitioner and Sri Ajit Singh Gaherwar, learned counsel appearing for the respondents no.2 and 3, are taken on record.

2. Heard.

3. Instant petition has been filed challenging the suspension order dated 10.04.2024, a copy of which is Annexure-6 to the petition. A further prayer is for a mandamus commanding the respondents to allow the petitioner to continue to work on the post of Additional General Manager with all attendant benefits and to pay arrears of salary.

4. Bereft of unnecessary details the facts are that initially the petitioner while working on the post of Additional General Manager of the Corporation had been placed under suspension on 28.12.2022, a copy of which is Annexure-2 to the petition. The said order was challenged by filing Writ-A No.8715 of 2023 in re: Prabodh Singh vs. State of U.P. and others. This Court vide order dated 07.11.2023, a copy of which is Annexure-3 to the petition, considering the contention on the part of the respondent Corporation that after the petitioner has been released from jail he has preferred an application for revocation of the suspension order which has been considered

by the Board and a decision has been taken of continuing the suspension of the petitioner, disposed of the petition leaving it open to the respondents to communicate the said decision of the Board to the petitioner and the petitioner was granted liberty of challenging the said order before appropriate Court in appropriate proceedings.

5. Subsequent thereto, the approval order dated 17.11.2023, a copy of which is Annexure-4 to the petition, along with initial suspension order dated 28.12.2022 was challenged by the petitioner by filing Writ-A No.2315 of 2024 in re: Prabodh Singh vs. State of U.P. and others. This Court vide judgment and order dated 21.03.2024, a copy of which is Annexure-5 to the petition, considering the facts that (a) the petitioner had initially been placed under deemed suspension without any specific provision for the same under the rules, and (b) no reasons being indicated in the suspension order, held the suspension order to be clearly violative of Rule 5(a) of the service rules and consequently quashed the suspension order dated 28.12.2022 as well as the resolution of the Board dated 19.10.2023 and the order dated 17.11.2023 giving liberty to the respondents to pass a fresh order strictly in consonance with Rule 5(a) of the Rules. Incidentally, the Rules governing the suspension of the petitioner are the U.P. Electronics Corporation Limited Service Rules.

6. Subsequent thereto, the respondents have passed the impugned suspension order dated 10.04.2024, a copy of which is Annexure-6 to the petition, and being aggrieved, the instant petition has been filed.

7. The arguments of the learned counsel for the petitioner are (a) that the petitioner would be entitled for payment of full salary w.e.f. 28.12.2022 till passing of the fresh suspension

order dated 10.04.2024 as this Court vide judgment and order dated 21.03.2024 had quashed the suspension order dated 28.12.2022, order dated 17.11.2023 as well as the resolution of the Board dated 19.10.2023. In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court in the case of **State Bank of India vs. T.J. Paul - 1999 (4) SCC 759** and (b) that the documents as were asked for by the petitioner in order to submit his reply to the charge sheet dated 31.07.2024 have not been made available to the petitioner rather the petitioner has been asked to obtain the same from the requisite agency.

8. Elaborating ground (b), the argument of learned counsel for the petitioner is that once the disciplinary proceedings have been initiated by the Corporation consequently it is the duty of the Corporation itself to make available all the documents which are required by the petitioner in order to enable him to submit his reply and there cannot be any occasion for the Corporation to ask the petitioner to get the documents from another agency. Further it is contended that the documents have been denied by the Managing Director of the Corporation rather it is the duty of the Inquiry Officer to make available the documents under the Rules.

9. No other ground has been urged by the learned counsel for the petitioner.

10. Responding to the aforesaid argument Sri Ajit Singh Gaherwar, learned counsel for the Corporation, argues that undoubtedly the earlier suspension order of the petitioner along with approval granted by the Board had been quashed by this Court vide judgment and order dated 21.03.2024 but it was left open for the Corporation to pass a fresh order strictly in consonance with Rule 5(a) of the Rules.

11. Referring to Rule 5 (a) of the Rules, the argument of Sri

Singh is that the said Rules themselves provide for passing of a suspension order with effect from a particular date which in fact has been done by the Corporation while passing the order impugned.

12. The contention is that even if the earlier suspension order may have been quashed by this Court yet once the suspension order as challenged by the petitioner dated 10.04.2024 has been passed w.e.f. the earlier date i.e. 17.11.2022 consequently there cannot be any occasion for payment of entire salary to the petitioner for the aforesaid period considering that the petitioner has been placed under suspension with retrospective effect which power is conferred to the Corporation under the Rules themselves. It has also been stated that the subsistence allowance has been paid to the petitioner till March, 2024 and could not be paid subsequently as the petitioner has failed to comply with the provisions of Rule 5(e) of the Rules and as soon as the petitioner complies with the said provisions, the remaining subsistence allowance would be paid.

13. So far as the non-supply of the relevant documents is concerned, it is contended that the documents demanded by the petitioner have got no relevance with the charges which have been levelled against the petitioner and the only intention of the petitioner is to somehow or other delay the departmental proceedings initiated against him.

14. Heard learned counsels for the parties and perused the record.

15. From perusal of the record, it emerges that initially the petitioner had been placed under suspension vide order dated 28.12.2022. Upon a challenge being raised to the said suspension order, the writ petition had been disposed of vide judgment and order dated 07.11.2023 leaving it open to the

respondents to communicate the decision of the Board to the petitioner regarding his suspension order within a week and it was left open to the petitioner to challenge the said decision before the appropriate Court in appropriate proceedings.

16. In pursuance thereof, an order dated 17.11.2023 was passed by the Corporation. Being aggrieved, the petitioner filed another writ challenging the suspension order dated 28.12.2022 as well as the resolution of the Board dated 19.10.2023 continuing his suspension and the order dated 17.11.2023 whereby his suspension order had been continued.

17. The writ Court vide judgment and order dated 21.03.2024 quashed the said suspension order, the resolution of the Board as well as the order dated 17.11.2023 and granted liberty to the respondents to pass a fresh order strictly in consonance to Rule 5(a) of the Rules.

18. In pursuance thereof, the respondents have passed the suspension order dated 10.04.2024 whereby the petitioner has been placed under suspension w.e.f. 17.11.2022.

19. Being aggrieved, the instant petition has been filed.

20. The grounds of challenge have already been set forth above namely (a) that the petitioner would be entitled for payment of full salary w.e.f. 28.12.2022 till passing of the fresh suspension order dated 10.04.2024, and (b) that the documents as were asked for by the petitioner in order to submit his reply to the charge sheet dated 31.07.2024 have not been made available to the petitioner rather the petitioner has been asked to obtain the same from the requisite agency.

21. So far as the ground (a) is concerned, no doubt Hon'ble Supreme Court in the case of **T.J. Paul (supra)** has held that once the removal order has been set aside with a direction to pay backwages consequently the benefits would flow

therefrom. However, in the instant case although the suspension order had been quashed yet liberty had been granted to the respondents to pass a fresh order in accordance with Rule 5(a) of the Rules. Rule 5(a) of the Rules reads as under:-

"Where a disciplinary proceeding against an employee is contemplated or in pending or where criminal proceedings against him in respect of any offence are under investigation or trial and the disciplinary authority is satisfied that it is necessary or desirable to place the employee under suspension he may by order in writing suspend him with effect from such date as may be specified in the order. A statement setting out in details the reasons for such suspension shall be supplied to the employee."

22. From a perusal of Rule 5(a) of the Rules, it emerges that where a disciplinary proceeding against an employee is contemplated or in pending or where criminal proceedings against him in respect of any offence are under investigation or trial and the disciplinary authority is satisfied that it is necessary or desirable to place the employee under suspension he may by order in writing suspend him **with effect from such date as may be specified in the order**. Therefore, the competent authority has been vested with the power under Rule 5(a) of suspending an employee with effect from a particular date. Thus, even when the earlier suspension order had been quashed by the writ Court and liberty had been granted to the Corporation to pass afresh order strictly in accordance with Rule 5(a) of the Rules and Rule 5(a) of the Rules itself specifies that an employee can be placed under suspension with effect from a particular date and in fact the petitioner has been placed under suspension w.e.f. the date of 17.11.2022 then irrespective of the earlier suspension order having been quashed the consequences would not flow in this case considering the earlier order of the writ Court dated 21.03.2024 read with Rule 5(a) of the Rules and thus the ground (a) as urged by the learned

counsel for the petitioner is rejected.

23. So far as non-supply of the documents is concerned, the rules of natural justice provide for supply of all documents which may be required by the delinquent employee for the purpose of submitting of his reply but the said power has to be exercised by the Inquiry Officer not by the Managing Director.

24. In the instant case, it is apparent that it is the Managing Director who has refused to supply certain documents to the petitioner as emerges from a perusal of the letter dated 20.09.2024, a copy of which has been filed as Annexure-2 to the supplementary affidavit filed today by the learned counsel for the petitioner.

25. Thus, let the application for supply of the documents as submitted by the petitioner vide his application dated 23.08.2024, a copy of which is part of Annexure SCA-1 (Page 82) to the supplementary affidavit filed by the Corporation today be considered by the Inquiry Officer in accordance with law and the relevant rules within a period of ten days from today. Whatever documents are found relevant would be supplied to the petitioner. In case any documents are not found relevant then the same would also be informed to the petitioner along with reasons within the aforesaid time of ten days. Thereafter the petitioner would submit his reply to the charge sheet within next fifteen days. The inquiry proceedings shall be finalized within next three months in accordance with law and the relevant rules.

26. Needless to mention that the petitioner shall cooperate in the inquiry proceedings. In case the petitioner does not cooperate, the Inquiry Officer would be at liberty to inform the petitioner in writing about his non-cooperation and the period of non-cooperation would be excluded from the aforesaid

period of time.

27. The writ petition stands disposed of with the aforesaid direction.

Order Date :- 15.10.2024

A. Katiyar