

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No.12508/2006

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9th April, 2015

SUSHIL KUMAR GUPTA

..... Petitioner

Through: Mr. R.K.Maheshwari, Adv.

versus

SOFTWARE TECHNOLOGY PARKS OF INDIA & ORS.

..... Respondents

Through: Mr. J.K.Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India , petitioner impugns the suspension order dated 9.7.2004 and which suspension order has been continued from time to time even during the pendency of the present writ petition.

2. Admittedly, no departmental proceedings till date have been initiated against the petitioner and that no charge-sheet has been issued against the petitioner. Petitioner has in the meanwhile during the pendency

of this case retired on 28.2.2009. Even after the retirement, though no service rules have been cited before me and probably would not exist enabling commencement of the departmental proceedings after retirement, even after retirement, no departmental proceedings have been commenced against the petitioner.

3. Petitioner was suspended by the order dated 9.7.2004 on the ground of charges of financial misdemeanor inasmuch as he is said to have got five buildings of the respondent no.1/employer/Software Technology Parks of India constructed at Pune, Aurangabad, Nasik, Kolhapur and Nagpur in collusion with various other officials by spending public money in an irregular manner i.e without financial sanction or without administrative approval of the competent authority for undertaking such works.

4. No doubt, charges against the petitioner were grave, however, all I need to state is that it is settled law that suspension is not a form of punishment. Suspension order is issued only as an aid to complete the departmental proceedings including for the reason that charged officer should not feel that he can tamper with the evidence and can further do mischief although departmental proceedings are going on against him. This

is so held in the judgment of the Supreme Court in the case of *State of Orissa Vs. Bimal Kumar Mohanty (1994) 4 SCC 126*.

5. As already stated above that from 9.7.2004 till the petitioner retired on 28.2.2009, no charge-sheet was issued against the petitioner and that till date no charge-sheet has been issued and no departmental enquiry against the petitioner is pending.

6. The stand of the respondent no.1 that there has been delay in view of the deplorable condition of the record and technical evaluation required of the five buildings which were constructed and including for lack of measurement books etc, yet this stand/defence cannot be a ground that now for a period of around 11 years, no departmental proceedings have been initiated against the petitioner, and in the meanwhile as stated above petitioner has already retired. The Supreme Court in the judgment in the case of *Union of India Vs. Raj Kishore Parija 1995 Supp (4) SCC 235* set aside the suspension order where charge-sheet was served about four years after suspension and enquiry could not be completed within five long years later. In the present case, as already stated above, in fact no enquiry proceedings have commenced against the petitioner till date ie for around 11

years after issuing of the impugned suspension order dated 9.7.2004 and which has been continued thereafter.

7. I may also state that the Supreme Court in its judgments in the cases of *O.P.Gupta Vs. Union of India & Ors. 1987 AIR 2257* and *Union of India & Anr. Vs. Ashok Kumar Aggarwal (2014) 1 SCJ 115* has reiterated the position that suspension is only an aid to disciplinary proceedings and suspension cannot continue for an unduly long period.

8. Learned counsel for the respondent no.1 firstly sought to place reliance upon the judgment of the Supreme Court in the case of *Government of A.P. Vs. V. Sivaraman (1990) 3 SCC 57* to argue that there is no automatic lapsing of the suspension order, however, this judgment will not apply because I am not deciding the case on the ground of lapsing of suspension order after expiry of original period or extended period of suspension and suspension thereafter being only retrospectively extended and as was done by the respondent in this case.

9. Learned counsel for the respondent no.1 then places reliance upon a judgment of a Division Bench of the Madras High Court in the case of *State of Tamil Nadu Vs. M.Veerappan, etc. 2005 LAB. I.C. 3233* wherein the Division Bench of the Madras High Court refused to quash the suspension

order for a long period. In the facts of the present case, however, in my opinion, in view of the ratio of the judgment of the Supreme Court in the case of ***Raj Kishore Parija(supra)*** the present is a fit case for quashing of the suspension order more so because counsel for the respondent no.1 concedes that after retirement no departmental proceedings in fact now can be initiated against the petitioner as per rules.

10. In view of the above, the writ petition is allowed. The impugned order of suspension dated 9.7.2004 and orders passed thereafter which have continued the suspension till date are quashed. Petitioner will be entitled to all his service benefits as if he continued in the service with the respondent no.1, however, in the peculiar facts of this case, it is held that petitioner is not entitled to payment of any interest from the respondent no.1 with respect to the amount of dues which will now be paid by the respondent no.1 to the petitioner. The necessary dues will be calculated by the respondent no.1 and be paid to the petitioner within a period of two months from today.

11. The petition is allowed and disposed of accordingly, leaving the parties to bear their own costs.

APRIL 09, 2015
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VALMIKI J. MEHTA, J.