

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.21019 OF 2014

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ORDER:

The petitioner, who is working as Superintendent and in-charge of Security Unit, National Institute of Technology, Warangal, filed the writ petition challenging the impugned order No.NITW/R/2014/1671, dt.23.07.2014 as arbitrary, illegal and without any jurisdiction, whereby the petitioner was placed under suspension indefinitely.

02. The petitioner is admittedly working as Superintendent and in-charge of Security Unit. While he was on duty on 26.06.2014 an incident occurred that the Watchman, who was outsourced by the NIIT, misbehaved with a girl, inmate of the hostel, thereupon she complained the same to the Station House Officer, Kazipet Police Station, to take necessary action against the said Watchman and the same was registered as a case in Cr.No.179 of 2014 dated 22.07.2014. Thereafter a group of students gathered there and there was a scuffle between Students and the Watchman, later the petitioner being in-charge of Security Unit and Superintendent allegedly identified the Watchman and beat him. Therefore, he is placed under suspension by impugned order dated 23.07.2014.

03. It is the case of the petitioner that the Security Guard did not give any complaint against the petitioner either to the police or to the concerned authorities of the institution making a serious allegation of beating, no piece of paper is available to attribute any misconduct of the petitioner to place him under suspension during pendency of enquiry to be initiated against the petitioner by the respondent. Therefore, the order dated 23.07.2014 is without any material.

04. The respondent filed counter admitting that till today no material is collected and no complaint was received against the petitioner. However, necessary proceedings have to be initiated against the petitioner after collecting evidence against him and denied

the allegations of mala-fides attributed to the respondent about undue influence of local M.L.A., in placing the petitioner under the suspension specifically.

05. Learned counsel for the petitioner, while reiterating the contentions urged in the petition, specifically drawn the attention of this Court to the order under challenge, which is bereft of any reason, placed the petitioner under suspension. In the absence of any reason and collection of material even after lapse of two years, the order of suspension cannot be continued *ad-infinitum* since no disciplinary action was initiated till today and prayed to set aside the order.

06. Whereas learned counsel for the respondent contended that so far the respondent did not receive any complaint against the petitioner either from the Security Guard or any other third party.

07. As on today there is no iota of evidence to attribute any misconduct to the petitioner and no complaint is received from any corner against the petitioner even to proceed against him to initiate any disciplinary proceedings for the alleged misconduct of beating, though two years period has been elapsed. Normally a Government Servant is to be placed under suspension during pending inquiry or before initiating the inquiry to avoid unnecessary interference in the fact finding inquiry or regular inquiry, in case of serious charges. But the order is totally silent and the reason for placing him under suspension is only on beating of Security Guard, but the Security Guard did not give any complaint to the respondent or to the police. Therefore, placing the petitioner or debarring the petitioner from any privilege, office, emolument, etc., for a time is impermissible. Suspension is nothing but temporarily suspending or ceasing the relationship of Master and Servant. During the suspension period, the employee is not permitted to work and the employer is not bound to pay the emoluments. The order of suspension of Government Servant does not put an end to the relationship of Servant and the Government and the real effect of the order of suspension is that he continues to be a

member of the Government service, but is not permitted to work and further during the period of suspension he will be paid only some allowance generally called 'subsistence allowance'.

08. Normally when an appointing authority or the disciplinary authority seeks 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, the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority.

09. In the present facts of the case no material is collected against the petitioner, thereby question of taking into consideration of any material before placing the petitioner under suspension does not arise. It is evident from the material on record that till today no material is collected against the petitioner to *prima facie* substantiate the alleged misconduct attributed to the petitioner. When there is no material to place the petitioner under suspension, such order is illegal and the Court, while exercising the power of judicial review, can interfere with such order.

10. The Apex Court in **U.P. Rajya Krish Utpadan Mandi Parishad v. Sanjiv Rajan**^[1] held that there is no restriction on competent authority to pass a second suspension order after the first order was quashed by Court. The first order might be withdrawn by the authority on the ground that at the stage, the evidence appearing against the delinquent employee is not sufficient or for some reason, which is not connected with the merits of the case. Therefore, there is no restriction on the department to pass an appropriate suspension order placing the petitioner under suspension, if the respondent collects any evidence which directly attributing misconduct in discharging his duties either in the office or outside the employment.

Therefore, nothing prevents the respondent to pass a fresh suspension order for second time, if they collected any material against the petitioner during the pendency of enquiry or before initiating any inquiry. However as observed in the earlier paragraphs as on today there is no material to place the petitioner under suspension for his alleged grave misconduct.

11. Therefore, the order under challenge dated 23.07.2014 is illegal, arbitrary and the same is hereby set aside, however liberty is given to the respondent to take appropriate action against the petitioner, if any material is collected against him.

12. With the above observation, the writ petition is disposed of.
No costs.

13. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 13.04.2016

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[\[1\]](#) 1993 Supp. (3) SCC 483