

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 17.08.2016

CWP No.18924 of 2015

Parveen Kumar Sharma

...Petitioner

Vs.

UHBVN Limited, Panchkula, Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Narender Pal Bhardwaj, Advocate, for the petitioner.

Mr. R.K.S.Brar, Addl. AG, Haryana.

RAJIV NARAIN RAINA, J.

1. The facts in brief are that the petitioner is serving as an Assistant Lineman (ALM) by appointment on 30.10.2012. A criminal case in FIR No.144 dated 24.02.2015 was lodged against the petitioner. His services were placed under suspension on 05.03.2015. The petitioner was arrested by the Police on 08.03.2015, after suspension, and was released on police bail on the same day on furnishing bail bonds and personal surety. The petitioner was reinstated in service on 07.07.2015. It transpires that not only was the petitioner arrested on 08.03.2015, but was again arrested on 14.05.2015 and released on bail. He has not informed the Department about his arrest and subsequent release. The petitioner was again suspended on 11.08.2015 by the Authorities for the reason that the petitioner submitted false documents for securing his order of reinstatement to service. The

petitioner is facing criminal proceeding. The petitioner has approached this Court raising the following questions:

- (i) Whether the suspension order dated 05.03.2015 prior to the arrest of the petitioner i.e. 08.03.2015 was valid?
- (ii) Whether the suspension order dated 11.08.2015 is valid?
- (iii) Whether grave and manifest injustice has been caused to the petitioner at the hands of respondents?

2. It is argued that an FIR has no evidentiary value and its legal sanctity is no more than a document on which the police investigation commences. It is admitted that the service rules provides for suspension of an employee as and when he is taken into custody by the police, but the law also provides for the reinstatement as and when the said employee is released on bail or otherwise. Hence, there was no ground for suspension of the petitioner three days prior to the actual arrest on 08.03.2015. The petitioner remained under suspension from 05.03.2016 to 06.07.2015, which period is without reasonable cause and the action is assailed as arbitrary, illegal and contrary to the service rules. The offences for which the petitioner was charged were bailable in nature involving a case of demand of dowry in a matrimonial dispute with his wife.

3. The second suspension of the petitioner on 11.08.2015 was by an office order for submitting false documents for his reinstatement, as said before. The petitioner says that he never submitted any false documents for reinstatement in service. There was no need to rely upon false documents. He was rather entitled his reinstatement as a matter of right being on bail and

physically available to discharge his duties. He has pleaded that he submitted no document for the purpose of reinstatement. Therefore, the issue of arrest of the petitioner on 08.03.2015 ceases to be material issue because he was already placed under suspension on that date. It is a cardinal principle of criminal jurisprudence that an accused is presumed innocent unless he is convicted by the competent court of law.

4. The relief claimed in the instant petition is for issuance of a writ of mandamus directing respondent No.2 to reinstate the petitioner to service with immediate effect. He also claims arrears of salary for the suspension period alongwith interest at the rate of 18% per annum.

5. In the written statement filed today in court of which a copy was handed over to the learned counsel for the petitioner in December, 2015, the Nigam defends the action as liable to fail since the petitioner has not approached the Court with clean hands and has not disclosed the true facts of the case. They go on to say that the petitioner was arrested for commission of cognizable offences and when this fact came to the notice of the competent authority, the petitioner was rightly suspended in view of Regulation 4-A of the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990 (for short 'the Regulations'). This Regulation clearly provides that an employee can be suspended if a criminal case is pending enquiry, investigation or trial against him. Therefore, it is wrong to say on the part of the petitioner that since he was released on bail, he should not have been suspended. The petitioner was under an obligation to inform the Department of his status in the FIR. It is stated in Para.8 of the written statement that the petitioner was suspended initially w.e.f. 24.02.2015 (the date of lodging of FIR) vide order passed on

05.03.2015, but subsequently the petitioner moved an application stating that he was not arrested nor he was taken into custody by the Police. While considering his application, he was reinstated vide order dated 07.07.2015.

6. The Superintendent Engineer wrote a letter to the petitioner on 07.08.2015 to provide information regarding custody period. The petitioner failed to supply the necessary information. Hence, taking serious view of the matter, he was again suspended vide order dated 11.08.2015. The suspension was caused because of criminal case registered against the petitioner and he remained in police custody and this fact was not disclosed to the Department. Even non-disclosure of pending of criminal case amounts to misconduct on the part of the petitioner.

7. Regulation 4-A deals with suspension. It enables the Department to place an employee under suspension in two situations i.e. (a) where a disciplinary proceeding against him is contemplated or is pending; or (b) where a case against him in respect of any criminal offence is under investigation or inquiry or trial. Regulation 4-A(2) provides that an employee, shall be deemed to have been placed under suspension by an order of competent authority with effect from the date of his detention, or he is detained in custody whether on a criminal charge or otherwise, for a period exceeding forty eight hours. Explanation to Regulation 4-A provides how the period of forty eight hours, referred to in clause (b) of the sub-regulation, shall be computed, which is from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account. On the touchstone of these Regulations, it is argued on behalf of the Nigam that the suspension

was in order since it was caused in respect of a criminal offence under investigation or inquiry or trial.

8. The criminal case was under Sections 406, 498-A, 323 & 506 IPC, which involves matrimonial disputes, which were not employment related misconduct. The admitted position is that disciplinary proceedings have not been initiated against the petitioner on the allegation that he submitted false documents to secure reinstatement for which reason the suspension continues. In response to the office order dated 11.08.2015, when he was placed under suspension for the second time, the petitioner wrote letter dated 11.08.2015 i.e. on the same day at 12.50 PM to the officer. He asked for supply of photocopy of the forged/false documents alluded to in the letter so that he could give a suitable reply. He also requested for supply of photocopies of the documents sought to be used against him to justify suspension, which he allegedly submitted in office at the time of reinstatement. The Nigam is silent on this demand in its written statement and, therefore, it will be safe to conclude that the documents which were alleged to be false have not seen the light of the day and not even placed in the written statement.

9. Even on 07.08.2015, the Nigam by memo directed the petitioner to intimate the time duration of arrest under police custody with documentary proof, as a letter in this regard has been received and it is mentioned therein that he remained arrested under policy custody on 08.03.2015. Four days' time was given to him to respond failing which he was threatened to be placed under suspension again. Learned counsel for the petitioner argues that this letter is unfair, as there is no necessity of submitting documents or to rely on them to press for reinstatement which is

an independent right governed by rules and conduct. There is no proper explanation for suspending the petitioner on both the occasions since the first detention was less than 48 hours and the second suspension were ordered on flimsy grounds. If the petitioner had submitted false documents sufficient to justify action taken, his conduct could have been tested in departmental proceedings, since it had nothing to do really with the criminal case which admittedly have not been initiated in the shape of a charge-sheet and seeking reply thereto.

10. Learned counsel for the petitioner relies upon on the authority on the Supreme Court in Ajay Kumar Choudhary Vs. Union of India through its Secretary & another, (2015) 7 SCC 291; AIR 2015 SC 2389, wherein it has been held as under:

“8. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

9. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will

inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that – “We will sell to no man, we will not deny or defer to any man either justice or right.” In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. Article 12 of the Universal Declaration of Human Rights, 1948 assures that – “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”. More recently, the European Convention on Human Rights in Article 6(1) promises that “in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time....” and in its second sub article that “everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law”.

11. The petitioner also refers to Government instructions dated 19.02.1982 in turn referring to composite Punjab Government letter dated 21.04.1961 on the subject of ‘Speedy disposal of cases of Government employees under suspension’ to say that Government noticed that

instructions contained in the 1961 letter are not being meticulously followed by the departments concerned with the result that the number of government employees under suspension continues to be very large and many of them remain under suspension for a very long time, thereby causing great loss to Government on account of payment of subsistence allowance and also bringing discredit to Government. The whole position had therefore been reviewed and it was decided to reiterate the policy decisions contained in the letter dated 21.04.1961 were reissued for strict compliance by the Government Departments. Of the few noticeable defects in the system one was that Government officials are harassed by the length of time it takes to complete the processes of preliminary investigation and inquiry. The whole process of investigation and inquiry should be completed within six months (excluding any period during which proceedings are stopped owing to a reference to a Court of Law). It also mandates that an extension of a period of suspension by another six months beyond six months contemplated for investigation or inquiry may be obtained under orders of Ministers-in-charge. If extension beyond one year is needed then full facts and justification must be placed before the Cabinet and their approval taken. The second noticeable feature is that in the letter dated 19.02.1982, it was decided that in cases involving moral turpitude, there shall be no bar to the reinstatement of concerned employees within six months of institution of police cases on merits the stipulated period.

12. In the light of the above, it is urged by the petitioner that suspension in this case is punitive in nature and is not sustainable either in law or in fact. As a matter of fact, continuous suspension would harm the interest of the Nigam by excluding from its manpower the services of the petitioner only for a matrimonial dispute between the petitioner and his wife

with which the employer is not concerned. The petitioner has relied on a police investigation report of Police Station Thanesar dated 25.04.2015 in which the petitioner has been found innocent and the entire allegations by the complainant against the accused family members are found baseless and false. The family members were not involved. Besides, the first suspension order was passed even before the arrest was made and this makes the first suspension order wholly unsustainable in the eyes of law. It is only on 08.03.2015 that there can be deemed suspension in terms of the Regulations, which arrest was only by the police and for one day. The second suspension order based on submission of false documents is belied by the written statement, as there is no justification whatsoever contained therein. Regulation 4-A may empower the disciplinary authority to place an employee under suspension, but like all powers it has to be exercised reasonably. The criminal offences in Regulation 4-A(b) are not a fountain where water may spout continuously, unerringly to keep the petitioner underwater unendingly. The nature of the criminal offences would be a relevant factor in taking a decision, whether to place an employee under suspension.

13. Even Regulation 4-A(2) promotes the case of the petitioner against suspension, when it prescribes that an employee shall be deemed to have been placed under suspension with effect from the date of his detention and that too for a period exceeding forty eight hours or with effect from the date of his conviction, if in the event of conviction for an offence, he is sentenced to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction. Explanation to Regulation 4-A(2) below sub-regulations (a) & (b) defines computation of forty eight hours, which is from the

commencement of imprisonment after conviction. Therefore, the dependence of the Nigam on the aforesaid Regulation is apparently misconceived, misplaced and overmuch. The act of suspension is thus found extremely oppressive, excessive, unreasonable and, therefore, arbitrary. The petitioner has been harassed without sufficient cause only for a private and civil dispute which has taken the shape of a criminal case the burdens of which the petitioner will alone bear. The Nigam has also not done well in handing over a copy of the written statement to the learned counsel for the petitioner in December, 2015 and seeking to place in Court today to protract the litigation with the petitioner compelling hearing which this Court was enjoined upon when he claims judgment promptly in a matter which does not brook delay, as delay inevitably defeats justice. The rights of the petitioner against the impugned order cannot be postponed to a future uncertain date and having heard learned counsel for the parties at length, this Court is convinced that continued suspension of the petitioner is wholly unjustified and counterproductive to governance and sheer waste of manpower.

14. Power of suspension should not become the hallmark of injustice and unreasonableness, or a knee jerk over-reaction or a result of intemperance and lack of self restraint before signing an order and communicating it. Many aggravated situations in office arise daily requiring for their solution due reflection, sagaciousness and thought paid to analyze what is the appropriate measure for ordering suspension of an employee in the best interest of administration and to fathom from the totality of circumstances whether the presence of the delinquent in the workplace is deleterious to good discipline and harmony. The community may ask: Did this man deserve it? Is his conduct so reprehensible which borders on moral

turpitude as not to allow him back in office to earn his salary for work done till the dark clouds are cleared? Will his presence in office after the criminal case was launched obstruct the free flow of administration or would it obstruct work? These questions can be multiplied manifold to suit the situation and to find just answers by the good administrator who must apply his mind with his experience to the question whether or not to suspend employee and if suspended to continue suspension or not, in whom [the Officer] the Government have reposed and invested so much time and public money to effectively carry out its policies and schemes. This is more a matter of introspection of the “competent authority” who may actually sometimes qualify as the incompetent authority. Suspension should never be used as a deadly weapon of offence or a thick stick to beat an employee down to his knees since it may wreak untold harm on his life, livelihood and family, which in this is case is unfortunately a warring one in the face of a charge of pernicious dowry demand but the man has not yet been held guilty. No doubt the trapped unfortunate may have children and parents to look after, which in India is a pious duty to perform by a son. We have here an already beleaguered man, the breadwinner struggling to deal with the fate of his case.

15. The cost of bad reflex action and ill-thought out deeds by a superior in office against the smaller man is dock, when coupled with the decision-making “officer’s” legendary inefficiency and carelessness towards a low fellow “*mulazim*”, the prototype lesser mortal is borne by State. The superior by virtue of his positional advantage when inflicts suspension for inadequate reason, is the classic *radfahrer*, who *salaams* the one’s above him and kicks the ones’ below, like a cyclist does, which movement of the shoe is essentially subversive of good conduct, good order and discipline

and conviviality at the workplace. The *radfahrer* pretending to be the competent authority sequestered with power to harm a fellow man unnecessarily and do anything he wishes, at will, finding one reason or the other till he is not told off, as he has to be as in this case. The cost of mismanagement based on egocentric decisions is legendary when taken by small people in high office has to be borne, after all, by the State exchequer and ultimately by the tax payer's pocket, by you and me. Keeping the petitioner in continued suspension is anathema to good governance, self respect and self esteem which this Court will not tolerate without proper justification. The wrong done for too long must be reversed and amends made. Suspension cannot be inflicted as a punishment for no wrong committed at the workplace and by way of abuse of authority and misuse of power. "A man who has committed a mistake and does not correct it is committing another mistake"- said Confucius.

16. "Every language is innocent for language is only a means of communication". The language of the impugned suspension order may be innocent but when the veil is lifted it may turn out to be vile as it does in this case. There is not even a departmental proceeding pending on the allegation of furnishing false information to secure previous reinstatement to justify continued suspension since 11.08.2015.

17. Consequently, the petition is allowed with litigation costs assessed at Rs.50,000/- in favour of the petitioner which today are rather expensive. It is up to the respondent Nigam to recover these costs from all those who took the decision to suspend the petitioner for hardly any valid or just cause or legal justification including costs incurred by difference of salary [arising from the differential of subsistence allowance, if not paid in terms of rules] to be paid as a result of this order which money the petitioner

was deprived of for the wrong reasons. Neither can one escape the consequences of, or should, from his wrong-doing beyond what the law and good conscience permits, just because he had the power to suspend an employee because he wanted to. It is so easy to say, here's a suspension order, take it or leave it and go to a court of law, nothing will happen to me, forgetting that Court exists and can visit and re-modulate reparation costs while venturing to do justice ex post facto to, restore the balance of the rule of law.

18. For the foregoing reasons, the order of suspension dated 11.08.2015 (Annex P-6) is held to be illegal and arbitrary and is hereby quashed. The petitioner is directed to be reinstated to service forthwith with all consequential benefits including arrears of salary except for the day/s of arrest in police custody. The amount be determined and paid to the petitioner within six weeks from the date of receipt of a certified copy of this order, failing which the principal will carry interest @12 % per annum for the period of default till payment.

[RAJIV NARAIN RAINA]
JUDGE

17.08.2016
Vimal

Whether speaking/reasoned: Yes

Whether Reportable: Yes