

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20588 of 2014
Decided on : 11.02.2016

Jasbir Singh & another

... Petitioners

Versus

Punjab State Civil Supplies Corporation Ltd. & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.Kamaldip Singh Sidhu, Advocate, for the petitioners.

Mr.Nitin Kaushal, Advocate, for respondent No.1.

Mr.Pankaj Mulwani, DAG, Punjab.

G.S. Sandhawalia , J. (Oral)

The petitioners seek quashing of the suspension order dated 02.09.2014 (Annexure P3) on the ground that it is in violation of the proper procedure laid down by the rules, with a further direction that they be treated on duty.

The petitioners are employees of the respondent-Corporation, who had been posted as District-in-Charge, along with additional charges of District Kapurthala at the relevant point of time, i.e., 04.08.2014. The physical verification of the wheat stock at Shahkot Centre was done and certain shortage was found. It is on that account, the impugned order was passed on 02.09.2014, wherein, apart from the 2 petitioners, 2 more officials were suspended, with immediate effect, by the Managing Director of the respondent-Corporation.

Though the writ petition was filed on the ground that no

specific reason had been given, as such, the Corporation has defended the suspension order on the ground that it was to ensure that there was no interference in the departmental proceedings and that the petitioners are entitled for subsistence allowance under Rule 7.2 of the Punjab Civil Services Rules. Reference was also made to the shortage of wheat stock, to the tune of 42,833 bags for the year 2013-14 and 2014-15. It was further justified that the petitioners were accused in FIR No.12 and it was in such circumstances the suspension order, which had been passed, was continuing.

Respondents No.2 & 3-the Vigilance Bureau also supported the Corporation by taking the defence that there was a deficit of the wheat bags in 3 godowns of Shahkot Centre and the investigation was conducted by them.

It has been argued by counsel for the petitioners that petitioner no.1 is going to retire on 31.03.2016 and in the absence of any reasoned order having been passed while extending the period of suspension beyond a period of 3 months, the Corporation is not justified in keeping the petitioners under continuous suspension, without issuing any charge-sheet on the departmental side. It is further argued that even in the criminal proceedings, investigation has not been concluded and therefore, the petitioners are gravely prejudiced as their suspension continues without any valid reason. Reference is made to the instructions dated

16.05.1978 (Annexure P4), attached with the replication, to contend that the State Government has reviewed the policy regarding suspension of Government employees and issued necessary guidelines which had been openly violated. The charge-sheet has not been served within the prescribed period of 3 months and therefore, the petitioners were eligible for reinstatement. Relevant portion of the instructions reads as under:

“Copy of the Punjab Government circular letter No. 1270-2PP-78/15809, dated 16th May 1978, from the Department of Personnel and Administrative Reforms, addressed to all Heads of Departments etc., etc.

Subject:- Suspension of Government Employees- Review of the General policy.

The Government has recently reviewed the policy regarding the suspension of Government employees and decided to issue the instructions indicated below. These instructions supersede all the earlier instructions on the subject.

2. Every proposal for suspension of a Government employee should be carefully considered and suspension ordered only if circumstances fully justify it. Suspension should not be ordered unless the allegations are of such a serious nature that, on the basis of available material, a prima facie case for dismissal or removal of the employee concerned is made out, or his continuance in service is likely to cause embarrassment, and hamper the investigation process. Ordinarily it should be sufficient to transfer the employee concerned to prevent him from having an opportunity to interfere with witnesses or temper with the evidence.

3. Except in cases of rare urgency, an employee should not be suspended until a proper charge-sheet has been served upon him and his explanation obtained and found

unsatisfactory. When an employee is henceforth placed under suspension, the charge-sheet should, in any case, be served on him within a period of three months. In case the charge-sheet is not served within three months he should be eligible to be reinstated.

4. The entire process of serving the charge-sheet, holding the enquiry and taking of decision with regard to the final action to be taken in the case should be completed within a period of one year from the date of suspension of the employee. In cases where a decision cannot be taken within a period of one year, the concerned employee should be eligible for reinstatement.”

Counsel for the respondent-Corporation could not dispute the factual aspect that no specific reason has been recorded after the initial order of suspension, which, though, might have been issued, keeping in view the facts and circumstances, as the Corporation had put-forth, in view of the fact that there was shortage of wheat bags and the liability of the petitioners, both on the criminal breach of trust or on the departmental side, on account of negligence on their part.

However, the fact remains that a period of more than 1 year and 5 months have gone by since the order of suspension has been passed. As per the instructions, reproduced above, after the period of 3 months, the Corporation was under a legal obligation to re-consider the whole issue, afresh and pass an order regarding whether the petitioners were entitled to be reinstated or not or that there were certain reasons which entitled the Corporation to keep them under suspension and away from their

official work, for the reasons to be so stated since they had not been departmentally charge-sheeted. This having not been done and no charge-sheet having been served upon the petitioners and neither in the criminal proceedings any investigation having been concluded, this Court is of the opinion that the observations of the Apex Court in **Ajay Kumar Choudhary Vs. Union of India through its Secretary & another 2015 (7) SCC 291** are squarely applicable to the facts and circumstances of the present case. The right of the employees and the torment which they face during the suspension period, was noticed and it was held that suspension is to be, per-force, for a short duration and cannot be punitive in nature. Relevant observations read 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".

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14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any

of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

Resultantly, keeping in view the above observations, the present writ petition is allowed. The currency of the suspension period is limited to a period of 3 months from the date it was enforced. The petitioners are, accordingly, held entitled for reinstatement and all consequential benefits, thereafter.

FEBRUARY 11, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE