

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 10934 of 2015 (O&M)

Date of Decision: July 25, 2017

Saurabh Chauhan

... Petitioner

Versus

Hindustan Petroleum Corporation Ltd. and others

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Harsh Chopra, Advocate,
for the petitioner.

Mr. Girish Agnihotri, Sr. Advocate with
Mr. J.S. Toor, Advocate,
for the respondents.

P.B. Bajanthri, J. (Oral)

1. In the instant writ petition, petitioner has questioned communications dated 06.10.2014 (Annexure P/6) and 31.12.2014 (Annexure P/7).

2. Petitioner was placed under suspension on 30.07.2014 vide Annexure P/2. On 11.09.2014 respondents are stated to have issued communication asking the petitioner to furnish certain documents so also to appear on 25.09.2014 and 26.09.2014. Petitioner's father has passed away on 02.07.2014, therefore, in connection with monthly ceremony, petitioner was away at his home town and he sought for re-scheduling his appearance on 25.09.2014 and 26.09.2014. Pursuant to petitioner's request, respondents have instead of postponing the dates from 25.09.2014

and 26.09.2014, pre-poned it to 24.09.2014 and 25.09.2014 respectively vide communication dated 22.09.2014. The same was not communicated to the petitioner for want of communication gap since petitioner was away from Bahadurgarh in connection with his father's death ceremony. Re-scheduling of petitioner's appearance dated 22.09.2014 seems that the same has been taken to the petitioner's residence by an employee of the respondent. The same has not handed over to the person who is available at home. In this regard, respondents have not countered in their reply statement pursuant to pleadings made in para no.11 of the writ petition. Due to non-appearance of petitioner on 24.09.2014 and 25.09.2014, respondents have proceeded to pass an order on 06.10.2014 by which reducing petitioner's subsistence allowance on the score that petitioner is causing delay in completing the process of inquiry. He is entitled to reduce subsistence allowance to the extent of 25 per cent of the subsistence allowance. Thus, respondents have passed an order dated 06.10.2014 to reduce the petitioner's subsistence allowance to 12.5% of the salary i.e. Basic Plus Allowance during the period of his suspension . Thereafter, on 31.12.2014 petitioner was directed to report to Senior Manager Operations, MDPL Bahadurgarh at 12 noon on day to day basis for recording his attendance failing which he is not entitled for subsistence allowance in terms of CDS Rules. Thereafter for non-compliance of order dated 31.12.2014, respondents have issued a communication on 05.01.2015 while petitioner is not entitled to any subsistence allowance on the principle of "No Work No Pay". Thus, petitioner has questioned order of reducing subsistence allowance and further directing him to report to

Senior Manager Operations, MDPL Bahadurgarh at 12 noon on day to day basis for recording his attendance and so also ordering that petitioner is not entitled to any subsistence allowance.

3. Learned counsel for the petitioner submitted that it was beyond the control of the petitioner in not obeying communication dated 22.09.2014 since he has requested for re-scheduling the dates of appearance with reference to communication dated 11.09.2014 in which he has specifically taken a contention that petitioner has to attend his father's death ceremony. Therefore, pre-poning the date of appearance of the petitioner would be disadvantage to him which disrupt the petitioner's father death ceremony, thus, respondents should have postponed the date of appearance of the petitioner. It was further submitted that re-scheduling the date of appearance of the petitioner on 22.09.2014 was not communicated timely so as to furnish his reply. In fact it was submitted that when communication dated 22.09.2014 was made by the respondent in person they should have handed over the communication to any one the members who are available in his residence. On this contention, respondents have not answered in the present writ petition also. It was further submitted that it was his beyond control to attend the inquiry proceedings as directed on 22.09.2014 for the reasons that petitioner was attending his father's death ceremony. Insofar as challenge to Annexure P/7, it was submitted that question of reporting to Senior Manager Operations, MDPL Bahadurgarh at 12 noon on day to day basis for recording petitioner's attendance amounts to revocation of suspension. No suspended employee be directed to put his attendance in the office. If such

a direction is given to suspended employee, it amounts to revocation of suspension. Suspended employee can obey the orders of the respondent – Management only in the event of attending day to day enquiry fixed by the Enquiry Officer. Further for the purpose of accepting subsistence allowance, he is required to furnish 'No Employment Certificate' (suspended employee is not gainfully employed elsewhere). It was also submitted that petitioner should have been issued a notice before taking impugned action by the respondents for the reasons that due to impugned action of the respondents against the petitioner would amount to civil consequences. Therefore, without hearing the petitioner passing impugned orders are liable to be set aside.

4. Per contra, learned counsel for the respondents resisted petitioner's arguments while relying on Discipline and Appeal Rules in particularly clause C - Suspension (4) and D – Subsistence Allowance (4), which reads as under:-

“C. Suspension:

4. The suspended officer shall not normally be required to record his attendance at the usual specified time & place daily, unless otherwise specifically instructed.”

D. Subsistence Allowance:

4. The suspended officer shall not, during the period of suspension, take up any employment, profession or any other vocation with any other organization on any terms.”

Learned counsel for the respondents in support of impugned communications relied on the above clauses to contend that petitioner's

conduct has attracted aforesaid clauses. Consequently, there is no infirmity in the impugned communication relating to reducing petitioner's subsistence allowance so also directing him to appear before Senior Manager on day to day basis. It was also submitted that having regard to the conduct of the petitioner during his suspension, the impugned action has been taken to reduce the petitioner's subsistence allowance in accordance with law.

5. Heard learned counsel for the parties.

6. The respondents while passing order dated 06.09.2014 have taken into consideration that petitioner was not available for the purpose of investigation and he has failed to obey the communication dated 22.09.2014. Undisputedly, petitioner's father died on 02.07.2014 and the petitioner has to complete his certain ceremonies. In this regard, he had brought it to the notice of the respondents as and when communication dated 11.09.2014 was issued to the petitioner. It was his beyond control to attend the office of the respondents on 24.09.2014 and 25.09.2014 as desired by the respondents on 22.09.2014 having regard to the dates and events. The respondents should have fairly fixed the dates instead of pre-poning it when the petitioner has specifically stated before the respondents that he has to attend his father's death ceremonies. Therefore, pre-poning the date of appearance of the petitioner is highly arbitrary and illegal. Consequently, reducing petitioner's subsistence allowance to 12.5 per cent of the salary i.e. basic plus allowance during the period of petitioner's suspension is highly arbitrary. Insofar as non-compliance of communication dated 31.12.2014 is concerned, it is to be noted suspended

employee need not put his attendance of day to day basis at the best he is required to furnish no employment certificate. Question of 'No Work No Pay' principle is not attracted in the case of suspended employee. Thus, further action pursuant to communication dated 31.12.2014 is also arbitrary. Hence, communications dated 06.10.2014 (Annexure P/6) and dated 31.12.2014 (Annexure P/7) are liable to be set aside. Accordingly, same are set aside. The respondents are directed to restore the subsistence allowance and disburse the arrears of subsistence allowance to the petitioner within a period of three months from today. It is to be noted that petitioner is under suspension since 30.07.2014 and Supreme Court has held prolonged suspension may not be correct. Petitioner is hereby directed to co-operate in the disciplinary proceedings so as to enable the respondents to complete disciplinary proceedings at the earliest in accordance with law.

7. Instant writ petition stands allowed.

July 25, 2017
vkd

[P.B. Bajanthri]
Judge

Whether speaking / reasoned : Yes

Whether reportable : No