

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

**CWP No.14725 of 2017 (O&M)
Date of decision:11.07.2017**

Iqbalpreet Singh Randhawa

... Petitioner

Vs.

State of Punjab & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. D.S. Patwalia, Senior Advocate with
Mr. Gaurav Rana, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J.

Petitioner who is holding the post of Municipal Town Planner, Amritsar assails the order dated 03.07.2017 (Annexure P-13), whereby he has been placed under suspension and has been divested of the current duty charge of the post of Senior Town Planner.

Learned senior counsel would submit that the impugned order of suspension has been passed by attributing negligence to the petitioner regarding unauthorized construction of Plot No.32 near Hotel Vetana, main road opposite circuit house, Kennedy Amritsar. Argument raised is that the very basis of passing the impugned order is non-existent. Instructions dated 03.11.1997 issued by the Department of Local Government, Punjab, Chandigarh (Annexure P-3) have been referred to, to submit that it was duty of the Building Inspector or any other officer as authorized by the Commissioner, Municipal Corporation, Amritsar to inspect the

site/construction in question and to ensure that the sanctioned building plan is not violated. Another limb of the argument raised is that it was the duty of the Assistant Town Planner to have taken coercive action against any violator including demolition of an illegal construction. Learned senior counsel would submit that the building plan as regards the construction in question was sanctioned vide Certificate dated 23.02.2016 (Annexure P-5) and as soon as, the violations came to the knowledge of the present petitioner and Municipal Corporation, Amritsar, notice was issued to the violators and which was followed by a Letter dated 25.10.2016 (Annexure P-7) requesting the Commissioner of Police to register an FIR against the violators. Thereafter even a final Demolition Notice was issued on 28.04.2017 (Annexure P-9) and the building was sealed on 02.05.2017. Counsel submits that sequence of facts would in itself demonstrate that timely action had been taken by the petitioner as well as Municipal Corporation in relation to the unauthorized construction. Under such circumstances, it is argued that attribution of negligence to the petitioner and passing of the orders of suspension and withdrawing current duty charge of the post of Senior Town Planner, Amritsar cannot sustain. Even a plea of discrimination has been raised by contending that the Assistant Town Planner and Building Inspector concerned have merely been transferred out whereas the petitioner has been visited with an order of suspension as also withdrawal of current duty charge of a higher post.

Learned senior counsel has been heard at length and the case paper book has been perused.

Employer's right to make appointment inheres in itself the right to suspend the employee as well. An employee, who is placed under

suspension is entitled to subsistence allowance as per provisions governing the service. It is well settled that suspension is not a punishment.

Jurisdiction of the Court to review the action of the employer to suspend an employee is very limited. Ordinarily, it is for the employer to determine whether an employee should be kept out of active service. It is also for the employer to take a decision whether continuance of an employee in active service would be injurious to the establishment or public interest. The Court will interfere with the exercise of the power of suspension by the employer, if it is found to be contrary to law or there is a case of patent arbitrariness. In a situation, where the employer suspends the employee in contemplation of disciplinary action and if there be no justification forthcoming for an abnormal delay in initiation of inquiry, an inference of arbitrariness may legitimately be drawn.

Adverting back to the facts of the present case, the impugned order dated 03.07.2017 (Annexure P-13) is a composite order. Not only has the petitioner been placed under suspension and current duty charge of the post of Senior Town Planner, Municipal Corporation, Amritsar been withdrawn but it has been specifically recited therein that charge sheet under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 would be issued to the official. In other words, the decision taken is to suspend the petitioner as also to initiate departmental proceedings against him. The precise articles of charge are yet to be formulated and served upon the petitioner. It would be open for the petitioner at that stage to raise all submissions/contentions including the ones noticed herein above in his defence. It would not be appropriate for this Court to delve into the issue of alleged negligence on the part of the petitioner as it would virtually amount

to pre-judging the issue. Any observations made by this Court with regard to the role of the petitioner in relation to the unauthorized construction referred to in the impugned order would have an impact and may even influence the departmental proceedings. As such, this Court would desist from expressing any opinion in such regard. Even otherwise it cannot be the case of the petitioner that having been placed under suspension, the matter is being delayed and inquiry proceedings have not been initiated. After all, the impugned order has been passed only on 03.07.2017 (Annexure P-3).

The plea of discrimination raised on behalf of the petitioner is not well founded. Even if the submission raised by learned senior counsel that the entire responsibility in the matter actually devolves upon the Assistant Town Planner or the Building Inspector concerned and who have merely been transferred out, still the petitioner cannot escape the rigors of a contemplated inquiry in the matter. Even assuming that the respondent-authorities have soft-pedaled the issue in relation to the Assistant Town Planner or the Building Inspector concerned, what would be required are necessary corrective measures with regard to such officials and not to strike down a decision of the competent authority to suspend and to initiate departmental proceedings against the present petitioner who was working on the post of Municipal Town Planner, Amritsar as also holding the current duty charge of the post of Senior Town Planner.

The divesting of the current duty charge of the post of Senior Town Planner from the petitioner would also not call for any interference. No employee has a right to ask for grant of current duty charge of a higher post or to continue current duty charge that may have been granted. Learned senior counsel has not been able to demonstrate as regards any financial loss

having been caused to the petitioner upon withdrawal of current duty charge or that any service conditions having been violated. Withdrawal of current duty charge of the post of Senior Town Planner under such circumstances does not vest with the petitioner any cause of action to invoke the writ jurisdiction of this Court. A reference in such regard may be made to the decision of the Apex Court in **State of Haryana Versus S.M. Sharma, 1993 (3) SCT 396.**

For the reasons recorded above, no infirmity in the impugned order dated 03.07.2017 (Annexure P-13) is found and the writ petition is accordingly dismissed.

11.07.2017*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

- | | | |
|------|----------------------------|-----|
| (i) | Whether speaking/reasoned? | Yes |
| (ii) | Whether reportable? | Yes |