

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 25704 of 2016
Date of Decision: March 07, 2017

Subhash Sapra

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Kuldeep Sheoran, Advocate,
for the petitioner.

Mr. D.S. Nalwa, Addl. A.G., Haryana.

P.B. Bajanthri, J. (Oral)

In the instant writ petition, the petitioner has questioned the validity of suspension order dated 22.03.2016 (Annexure P/1).

Perusal of the suspension order, it is evident that on various allegations made in the order of suspension, the petitioner has been placed under suspension.

Learned counsel for the petitioner submitted that Haryana Civil Services (Punishment and Appeal) Rules, 2016 (hereinafter referred to as "Rules, 2016) issued on 29.07.2016 is applicable for the purpose of review of suspension in respect of petitioner is concerned. He relies on proviso to Rule 5 of Rules, 2016 which reads as under:-

"5. Suspension and withholding of emoluments:-

(1) xx xx xx

Provided that where a Government employee against whom disciplinary proceedings are contemplated is

suspended, such suspension shall not be valid, where the disciplinary proceedings are not initiated against him before the expiry of a period of ninety days from the date from which the employee was suspended.

Provided further that the competent authority in the matter may, at any time before the expiry of the said period of ninety days and after considering the special circumstances for not initiating disciplinary proceedings, to be recorded in writing and after seeking the approval of next higher authority allow continuance of the suspension beyond ninety days but not beyond one hundred eighty days without the disciplinary proceedings being initiated;”

Learned counsel for the petitioner further submitted that the respondents are not initiated disciplinary proceedings by framing charges even after completion of 180 days. In such event, it was bounden duty of the competent authority to review the order of suspension. Supreme Court in the case of ***Ajay Kumar Choudhary vs. Union of India through its Secretary and another***, reported in ***(2015) 7 Supreme Court Cases, 291*** in para no. 21 held as follows:-

“21. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Charge sheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Charge sheet 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.”

Therefore, order of suspension is required to be interfered and suspension order is to be set aside.

Per contra, learned State counsel submitted that petitioner is already facing disciplinary proceedings in some other allegations way back in the year 2010 in which he has been charge-sheeted on 27.08.2010. Further it was submitted that under sub clause (5) to Rule 5 of Rules, 2016, an employee who has been placed under suspension could be deemed to have been made under suspension and shall continue to remain in force until it is modified or revoked by the competent authority. In the present case, suspension order has not been modified or revoked. Therefore, the petitioner has not made out a case so as to interfere with the order of suspension.

Heard learned counsel for the parties.

In view of Supreme Court's case ***Ajay Kumar Choudhary*** cited *supra* whether an employee could be continued to be under suspension for a prolonged period or not, if the charge-sheet is not filed for a longer period

has been discussed and principle has been laid down in the absence of filing charge-sheet suspension of an employee for prolong period would not be fair. In the present case, rule 5 of Rules, 2016, the competent authority is required to comply proviso to sub rule (1) of Rule 5. The competent authority cannot take shelter under sub rule (5) of Rule 5 so as to contend that order of suspension has not been modified or revoked. If the competent authority had taken any decision under sub-rule (5) of Rule 5 there is no question of interfering. Admittedly, till date no charge-sheet has been filed even though there were serious allegations made in the order of suspension.

Therefore, order of suspension dated 22.03.2016 (Annexure P/1) is set aside on the ground of prolong suspension and in the absence of filing of charge-sheet. That apart one has to examine financial burden on State exchequer also i.e., payment of subsistence allowance. At least competent authority while revoking suspension and transferring employee to far away place so as to avoid tampering of records if any. Setting aside the order of suspension could not enure the benefit of suspension period from 22.03.2016 till reinstatement. Since the said period is required to be regulated depending upon the outcome of the departmental proceedings. The respondents are at liberty to initiate disciplinary proceedings within a reasonable period and complete the proceedings at the earliest.

Accordingly, instant petition stands allowed.

March 07, 2017

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**[P.B. Bajanthri]
Judge**

Whether reasoned / speaking : Yes

Whether reportable : No