

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

CWP No. 26799 of 2014 (O&M)

Date of Decision: 05.10.2018.

Sushil Kumar

... Petitioner

Versus

Punjab State Power Corporation Ltd. and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Gurcharan Dass, Advocate,
for the petitioner.

Mr. Naveen S. Bhardwaj, Advocate,
for respondent Nos. 1 & 2.

Respondent Nos. 3 & 4 proceeded against exparte
vide order dated 12.05.2015.

JITENDRA CHAUHAN.J.

This is a civil writ petition filed under Articles 226 and 227 of the Constitution of India for issuance of a writ in the nature of mandamus directing respondent No.1 to take action against respondent Nos. 3 & 4 for not having complied with the instructions contained in memo No. 6039/7412 dated 19.05.2011 (Annexure P-12) and directing the respondents to withdraw the suspension order dated 22.03.2012 (Annexure P-1) and charge-sheet dated 10.04.2012 (Annexure P-2).

The learned counsel for the petitioner states that the petitioner was placed under suspension without issuing any show cause notice, which is mandatory in terms of instructions (Annexure P-12).

He refers to the provisions of Regulation 4(2) of the Punjab State Electricity Board Employees (Punishment and Appeal) Regulations, 1971 (for short “the Regulations of 1971”) which finds mention in the suspension order are not applicable to the petitioner as no case had been registered against him and he had never been detained in custody.

On the other hand, it has been contended by the learned counsel for the respondents that the order of suspension of the petitioner was passed by the competent authority under the Regulations of 1971. It finds mention in the order that the same was passed under Regulation 4(2). However, the said order of suspension was modified/corrected vide office order No. 476 dated 29.06.2012 and it was specifically stated that Regulation 4(1) be read as the governing regulation instead of Regulation 4(2). The said fact has not been disclosed by the petitioner. Further contention is that the disciplinary proceedings in pursuance thereof has already concluded and punishment of stoppage of two increments with future effect has been imposed vide office order dated 25.08.2015 (Annexure R-1A). The suspension period has been treated as leave as such no grievance survives and the writ petition has become infructuous as the order dated 25.08.2015 is not a subject matter of challenge in this petition.

Heard.

Impugned suspension order (Annexure P-1) is

reproduced as under:-

“Sh. Sushil Kumar A.A.E. Son of Sh. Lal Chand (date of birth 29.09.1961) who is working in the office of Additional Superintending Engineer/Operations, Estate Division, Ludhiana is suspended with immediate effect under Regulations No. 4(2) of Punishment and Appeal Rules, 1971 due to his having committed negligence/dereliction of duty. During suspension period, his headquarter is fixed as Deputy Chief Engineer/Operations PSPCL Area, Khanna.”

Instructions contained in memo No. 6039/7412 dated

19.05.2011 (Annexure P-12) issued by Chief Administration PSPCL,

Patiala to all E.I.C./C.E in PSPCL, Patiala reads as under:-

“Specific instructions were issued vide Memo No. 52782/54114/CSD dated 13.03.1990, Memo No. 11445/12369/L-728/Secret dated 21.09.2001 and Memo No. 2574/2789/DS-III dated 20.07.2005 on the subject that calling of the explanation of the officer/employee is mandatory before initiating the Charge Sheet. In this regard a meeting was held with PSEB Engineers Association, wherein the association brought out that above instructions issued by PSEB (now PSPCL) that before issue of Charge Sheet/suspension orders the explanation of the concerned officer/employee will be recorded, are not being implemented/followed. The CMD/PSPCL has taken the serious note of the matter and issued the instructions that the strict compliance of the same may be ensured.

It is mentioned here that this office is dealing with the disciplinary cases of the officers and it is observed that the compliance of the above instructions are not being followed in true spirit. Compliance of the instructions may be ensured. Before proceeding with the disciplinary cases, the copy of explanation/statement may be endorsed with the draft and also intimate the reasons why the explanation/statement is not satisfactory.”

A perusal of Annexure P-12 shows that before

issuance of charge-sheet/suspension order, the explanation of the concerned officer/employee is required to be taken. In the present case, no explanation of the petitioner was called for before issuance of charge-sheet/suspension order, therefore, the charge-sheet and the subsequent orders passed thereon are liable to be set aside.

Consequently, the present civil writ petition is allowed. The impugned suspension order (Annexure P-1), charge-sheet (Annexure P-2) and the subsequent proceedings taken thereupon are set aside. The respondents are free to issue fresh show cause notice to the petitioner as per rules and take appropriate action, as per law.

05.10.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No