

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.30883 of 2017

ORDER:

This Writ Petition is being disposed of at the admission stage with the consent of both the parties.

2. This Writ Petition is filed seeking a Writ of Mandamus declaring the order of suspension issued by 1st respondent vide proceedings, dated 30-08-2017, keeping the petitioner under suspension, as arbitrary, illegal and contrary to law and without application of mind and violative of Articles 14, 16 and 21 of the Constitution of India and for granting all consequential benefits.

3. Heard Sri A.K.Jayaprakash Rao, learned counsel for the petitioner and Sri T.Mahinder Rao, learned Standing Counsel, appearing for respondent Nos.1 and 2.

4. The petitioner contends that he is working as Technician, Selection Grade-I, with the respondent Nos.1 and 2 and discharging his duties to the best satisfaction of his superiors and everyone concerned. He further contends that vide orders, dated 30-08-2017, he was placed under suspension alleging that he had caused huge financial loss to the institution. Challenging the same, the present Writ Petition is filed.

5. Learned counsel for the petitioner contends that the nature of duties performed by the petitioner as Technician, Special

Grade-I, is no way connected to the allegation of financial irregularities committed by the petitioner as he has no role in the financial matters. Further, though the Writ Petition was filed in 2017, no interim orders were granted and even after a lapse of nearly 1 ½ years, the petitioner is being continued under suspension. He further contends that keeping the petitioner under suspension for a long period would not serve any purpose and it incapacitates the source of investigation and, moreover, the petitioner is willing to cooperate with the investigating authorities. Therefore, he seeks a direction to respondents to review order of suspension passed against the petitioner in accordance with rules.

6. Learned Standing Counsel for the respondent Nos.1 and 2 contends that a detailed counter is filed denying all the contentions of the petitioner. Since the petitioner is involved in huge financial misappropriation, disciplinary action is being initiated against him and pending disciplinary action, the petitioner was placed under suspension. However, within a reasonable period of time, the proceedings would be concluded. He relied upon a judgment of this Court in W.A.No.942 of 2017, dated 13-07-2017, to the effect that the Court should not normally interfere with the matters of suspension and the employer/competent authority has the power to place the employee under suspension on the charges of mis-conduct, and in judicial review proceedings, under Article 226 of the Constitution of India, this Court would neither sit in judgment over such a decision nor would it substitute its views for that of the competent authority.

He also relied upon judgment rendered by the Supreme Court in **State of Orissa Through its Principal Secretary, Home Department Vs. Bimal Kumar Mohanty**¹ to the effect that it is a settled law that “normally when appointing authority or disciplinary authority seeks to suspend an employee, pending enquiry or pending investigation into grave charges of mis-conduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority, the appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. Therefore, this Court should not interfere with the matters of suspension.”

7. In the last but one paragraph of the judgment in W.A.No.942 of 2017, dated 13-07-2017, this Court observed:

“The fact, however, remains that the petitioner cannot be continued under suspension for an unduly long period, and an early completion of the disciplinary enquiry initiated against him would be in the interests of both the appellate-bank and the respondent-writ petitioner. We consider it appropriate, therefore, to direct the appellant-bank to complete the disciplinary enquiry initiated against the Writ Petitioner without utmost expedition in any event not later than six (6) months from today.”

¹ (1994) 4 S.C.C. 126

8. In respect of the submissions of the learned Standing Counsel, there is no dispute that it is prerogative of the employer to place the employee under suspension and the Court should not normally interfere in the suspension orders, more so when suspension is pending enquiry. This Court is not finding fault with the action of the respondents in placing the petitioner under suspension pending enquiry, but this Court is of the considered view that the petitioner was placed under suspension vide orders dated 30.08.2017 and so far the respondents have not reviewed the suspension in accordance with the Rules. Therefore, this Court is inclined to direct the respondents to review the suspension order of the petitioner in accordance with the Rules, as it is more than 1 ½ years from the date of placing the petitioner under suspension and also the respondents have not concluded the enquiry for more than 1 ½ years.

9. This Court, having considered the rival submissions made by both the parties, is of the considered view that since the petitioner was placed under suspension almost 1 ½ years back i.e. on 30-08-2017 and the respondent Nos.1 and 2 have not concluded the disciplinary proceedings, as per Rules, the case of the petitioner deserves to be reviewed in accordance with Rules. Therefore, the Writ Petition can be disposed of directing the respondents to review the suspension orders passed on 30-08-2017 in accordance with Rules and pass appropriate orders, within a period of four weeks from the date of receipt of a copy of this order.

10. With the above observations, the Writ Petition is disposed of. No costs.

11. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Date: 25-04-2019

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