

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.28199 of 2018 (O&M)

Date of Decision.01.10.2019

Kapoor Singh

...Petitioner

Vs

State of Haryana and others

...Respondents

Present: Mr. A.K. Viridi, Advocate
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

Mr. Puneet Jindal, Senior Advocate with
Mr. Ashutosh Gupta, Advocate
for the respondents No.2 to 5.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

Challenge in the present petition is to the suspension order dated 13.07.2018 (Annexure P-1).

Facts which emanate from pleadings are that petitioner being an ex-serviceman vide appointment letter dated 03.08.2004 (Annexure P-2) as Junior Engineer was appointed in the office of respondent-Nigam. On the basis of certain information, was erroneously suspended by an officer not competent in law i.e. by an Executive Engineer vide impugned order *ibid*.

Mr. Viridi, learned counsel appearing on behalf of the petitioner submitted that suspension is without jurisdiction and the same cannot be sustainable in the eyes of law and in support of aforementioned contention relies upon para 14 of the judgment rendered by Hon'ble Supreme Court in **Union of India and others Vs. Ashok Kumar Aggarwal 2013 (12) SCR**

629. During the course of hearing, he also referred to letter dated

18.01.2017 of SE (Admn) addressed to all the Chief Engineers, Superintending Engineers regarding adoption of Haryana Civil Services (General) Rules, 2016. Thus, alleged reliance on Dakshin Haryana Bijli Vitran Nigam Ltd. Employees (Punishment & Appeal) Regulations, 2006 could not come into play, for, the General Rules also envisage provisions qua suspension, dismissal as well as remedy of appeal etc. Letter dated 14.07.2018 written by Superintending Engineer to the Chief Engineer (Annexure R-1) seeking post facto approval, was not valid in the eyes of law as the Chief Engineer withheld the file for almost five (5) months and sought regularization of suspension vide letter dated 06.11.2018 from the Department of Human Resource. The same was approved vide communication dated 07.12.2018 (Annexure R-3).

On account of same very allegation, petitioner was served with two charge sheets and also an enquiry officer was appointed but during the pendency of writ petition, withdrew second charge-sheet. In such circumstances, the impugned order is liable to be quashed.

Per contra, Mr. Puneet Jindal, learned Senior Counsel assisted by Mr. Ashutosh Gupta, learned counsel appearing for respondents submitted that reliance of the letter dated 18.01.2017 will have no force, as it is only General Rules, which envisage the power to frame punishment and appeal rules. There is no adoption of Haryana Punishment and Appeal Rules by the DHBVN, as it has own set of regulations of 2006 *ibid*. Rule 4-A empowers the Executive Engineer to seek post facto approval, which as per the facts narrated above has been taken and therefore, there can be no grouse for the petitioner. The judgment cited by counsel for the petitioner cannot apply as it was based on general principles but in the instant case

owing to provisions envisaged in the Regulations, the ratio decidendi culled out would not be applicable, thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Viridi. For the sake of brevity, Rule 4-A of Regulations, 2006 and the ratio decidendi culled out in para 14 of the judgment (supra) cited by counsel for the petitioner are reproduced herein below:-

“4-A. Suspension:-

1. Notwithstanding anything contained in Rule 7.5 read with Rule 7.6 of Punjab CSR Vol.1 Part-1 (as applicable to Haryana State Employees), the Appointing Authority or any other authority to which it is subordinate or the punishing authority or any other authority empowered in that behalf by the Nigam by general or special order, may place an employee under suspension:-

a) Where a disciplinary proceeding against him, is contemplated or is pending; or

b) Whether a case against him in respect of any criminal offence, is under investigation or inquiry or trial;

Provided that where the order of suspension, is made by an authority lower than the appointing authority or any other authority empowered in that behalf by the Nigam, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

Provided further that the suspended employee, shall be bound

to mark his presence on all working days in the office where his headquarter during the period of his suspension, is fixed and in not doing so, would be an act of misconduct.

Para 14 of judgemnt.

14. The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, particularly in [State of M.P. v. Sardul Singh](#), (1970) 1 SCC 108; [P.V. Srinivasa Sastry v. Comptroller & Auditor General of India](#), (1993) 1 SCC 419; [Director General, ESI & Anr. v. T. Abdul Razak](#), AIR 1996 SC 2292; [Kusheshwar Dubey v. M/s Bharat Cooking Coal Ltd. & Ors.](#), AIR 1988 SC 2118; [Delhi Cloth General Mills vs. Kushan Bhan](#), AIR 1960 SC 806; [U.P. Rajya Krishi Utpadan Mandi Parishad & Ors. v. Sanjeev Rajan](#), (1993) Supp. (3) SCC 483; [State of Rajasthan v. B.K. Meena & Ors.](#), (1996) 6 SCC 417; [Secretary to Govt., Prohibition and Excise Department v. L. Srinivasan](#), (1996) 3 SCC 157; and [Allahabad Bank & Anr. v. Deepak Kumar Bhola](#), (1997) 4 SCC 1, wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of [Article 21](#) of the [General Clauses Act](#), 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned. Where the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without examining the entire record in question and in order that the disciplinary proceedings may continue unhindered the

court may not interfere. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial can not be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question.

Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, it is not desirable that the court may find out as which version is true when there are claims and counter claims on factual issues. The court cannot act as if it an appellate forum de hors the powers of judicial review.”

On plain and simple perusal of the aforesaid Rule as well as finding, in the absence of any applicability of Rules aforementioned, findings no doubt has the force of law in view of provisions of Article 141 of the Constitution of India but owing to applicability of Rules, which have not been challenged, the provision of post fact approval is subsisting. The facts narrated above leaves no manner of doubt that post facto approval was

accorded vide order dated 07.12.2018 (Annexure R-3). There is no challenge to the aforementioned order.

It is matter of record that petitioner is still facing enquiry. Withdrawal of another enquiry and charge sheet is on account of the fact that the Department on the basis of same allegation had served two charge-sheets. The error can always be rectified.

The argument of Mr. Viridi with regard to expression 'empowered' is baseless on the premise as the officer competent to pass the suspension order can only be Board of Directors but in the absence of any order placed on record, the aforementioned argument of Mr. Viridi is not able to cut ice. The officer derives power from applicability of Rules. Since the appointing authority in this case concededly is the Chief Engineer, the order of suspension has been ratified by the Chief Engineer.

In view of such circumstances, I do not find any illegality and fallacy in the impugned order. No ground for interference is made out. The writ petition is dismissed.

(AMIT RAWAL)
JUDGE

October 01, 2019

Pankaj*

Whether speaking/reasoned Yes

Whether reportable No