

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

**CWP No.26221 of 2019
Date of decision:29.10.2019**

Sushil Kumar

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Anil Rathee, Advocate
for the petitioner.

Mr. Gaurav Jindal, Addl. A.G.Haryana.

AMIT RAWAL J. (Oral)

Short reply on behalf of the respondents has been filed in Court today. The same is taken on record. A copy thereof, has been handed over to the counsel opposite.

Grievance of the petitioner in present writ petition is for quashing of order dated 22/30/04.2019 (Annexure P-9) of Additional Chief Secretary, Secondary Education Department, Haryana, Civil Secretariat, Chandigarh suspending him from the post of PGT(Mathematics).

As per the facts of writ petition, petitioner was appointed on 26.02.1996, thereafter, was awarded the appreciation certificate on 18.08.2012 (Annexure P-1) and also transferred from time to time. One Urmila Devi, complainant registered an FIR No.317 dated 25.08.2018 under Sections 186, 323 and 506 of Indian Penal Code regarding allegations of beating with *danda* and blows on her stomach, private parts (Annexure P-3).

Petitioner on 06.09.2018 was arrested, vide order dated 06.09.2018 (Annexure P-4) and released on bail, .

Mr. Anil Rathee, learned counsel appearing on behalf of the petitioner submitted that order of suspension has to be commensurate with Rules i.e. Rule 5 of Haryana Civil Services (Punishment and Appeal) Rules 2016 prescribing the extension of suspension period upto 90 days and for another 180 days after passing of speaking order in writing and approval of next higher authority. The reply of State reveals that though vide order dated 01.10.2019 inquiry officer has been appointed, but it will not entail into extension of suspension order in view of rules aforementioned or approval thereof, thus, urged this Court for allowing the writ petition.

Per contra, Mr. Gaurav Jindal, learned Additional Advocate General, Haryana submitted that it is not a simple case of initiation of disciplinary proceedings against the petitioner, for, he is also an accused in aforementioned FIR and in view of pendency of criminal case, period of 90 days would not be applicable. Reliance has been laid to proviso of Rule 5 and thus, urged this Court for dismissal of petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that it would be apt to reproduce Rule 5(1) and (2) alongwith proviso which reads thus:-

5. Suspension and withholding of emoluments.—

(1) 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 Governor, by general or

special order, may place a Government employee under suspension where—

(a) a disciplinary proceeding against him is contemplated or is pending, or

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

(c) in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State:

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 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;

Note 1.— The order of suspension shall stand revoked, being invalid, unless the punishing authority obtains the approval of next higher authority and informs the Government employee under suspension the specific period of extension of suspension before the expiry of period of ninety days or extended period of another ninety days, as the case may be.

Note 2.— Where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

(2) A Government employee shall be deemed to have been placed under suspension by an order of the appointing authority—

(a) with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation.— The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of imprisonment after the conviction and for

this purpose, intermittent periods of imprisonment, if any, shall be taken into account.”

The facts noticed above revealed that petitioner was not confined in jail for a period of 48 (forty eight) hours, as per the explanation given in sub-rule (2), he never remained in jail for the period prescribed nor there is any order in terms of second proviso to sub rule (1) whereby competent authority accorded any reason in writing or approval of next higher authority. Thus, period of 90 days expired on 30.07.2019. Appointment of inquiry officer is post, i.e. on 01.10.2019. The interpretation of rules by the department as per reply is totally erroneous and fallacious, for, rules aforementioned do not reveal the suspension period for infinite period until and unless there is compliance which has not been relied upon resulting into passing of impugned order, beyond 90 days. This view of mine is derived from the ratio decidendi culled out by the Hon'ble Supreme Court in **Union of India and others vs. Dipak Mali 2010(2) Supreme Court Cases 222**. It would be apt to reproduce paragraphs 10 and 11 of the judgment which read thus:-

“10. Having carefully considered the submissions made on behalf of the parties and having also considered the relevant dates relating to suspension of the Respondent and when the Petitioner's case came up for review on 20th October, 2004, we are inclined to agree with the views expressed by the Central Administrative Tribunal, as confirmed by the High Court, that

having regard to the amended provisions of Sub- rules (6) and (7) of Rule 10, the review for modification or revocation of the order of suspension was required to be done before the expiry of 90 days from the date of order of suspension and as categorically provided under Sub- rule (7), the order of suspension made or deemed would not be valid after a period of 90 days unless it was extended after review for a further period of 90 days.

11. The case sought to be made out on behalf of the petitioner, Union of India as to the cause of delay in reviewing the Respondent's case, is not very convincing. [Section 19\(4\)](#) of the Administrative Tribunals Act, 1985, speaks of abatement of proceedings once an original application under the said Act was admitted. In this case, what is important is that by operation of Sub-rule (6) of Rule 10 of the 1965 Rules, the order of suspension would not survive after the period of 90 days unless it was extended after review. Since admittedly the review had not been conducted within 90 days from the date of suspension, it became invalid after 90 days, since neither was there any review nor extension within the said period of 90 days. Subsequent review and extension, in our view, could not revive the order which had already become invalid after the expiry of 90 days from the date of suspension.”

The impugned order is accordingly not sustainable and hereby set aside. The respondents are directed to re-instate the petitioner into service subject to outcome of contemplated disciplinary proceedings and as well as FIR, in accordance with law.

(AMIT RAWAL)
JUDGE

October 29, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No