

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

**CWP No.3731 of 2020
Date of decision: 17.03.2020**

Kashmir Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Nehra, Advocate,
for the petitioner.

Ritu Bahri, J.

Petitioner is seeking quashing of the suspension order of the petitioner dated 21.10.2016, endorsed on 24.10.2016 (Annexure P-2) and order dated 09.01.2020, endorsed on 23.01.2020 (Annexure P-14).

The petitioner was appointed as Sub Inspector in the respondent-department in the year 2001. Thereafter, he was promoted to the post of Inspector in the year 2009. While the petitioner was posted as P.R. Incharge in Julana Centre, FIR No.280 dated 30.09.2016, under Sections 379/420/467/468/471 read with Section 120-B IPC was registered against him at Police Station Julana (Annexure P-1). Consequent upon registration of said FIR, vide order dated 21.10.2016 (Annexure P-2) passed by the Director, Food and Supplies, Haryana, petitioner was placed under suspension w.e.f.30.09.2016. In the criminal case, regular bail was granted to the petitioner vide order dated 18.01.2017 (Annexure P-3). Thereafter, charge sheet dated 26.09.2017 (Annexure P-4) was issued to the petitioner under Rule 7 of the Haryana Civil Services (Punishment and Appeals)

Rules, 2016. To this charge sheet, petitioner gave his reply (Annexure P-5).

Learned counsel for the petitioner has argued that earlier, the petitioner had approached this Court by filing CWP No.33777 of 2019 and sought quashing of the impugned suspension order and release of subsistence allowance. The said petition was disposed of by this Court vide order dated 04.12.2019 (Annexure P-13) by giving direction to the respondents to consider and decide the claim of petitioner for revocation of suspension in accordance with law. Finally, vide order dated 09.01.2020, endorsed on 23.01.2020 (Annexure P-14), claim of the petitioner has been rejected. Hence, the petition.

Heard.

Reference, at this stage, can be made to a decision given by Hon'ble the Supreme Court in **Union of India and others vs. Ashok Kumar Aggarwal**, 2013 (16) SCC 147, whereby it has been held that the competent authority, after considering the gravity of alleged misconduct, has a right to suspend an employee. The Court is only to examine, if, such an order is passed with *mala fide*, arbitrariness and ulterior purpose. Whether an employee should continue to join office during the period of enquiry, is a matter to be assessed by the disciplinary authority. In para no.14 of the judgment, it has been observed as under:-

“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***, (1070) 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 (2) SCT 510; (1996) 3 SCC 157; and Allahabad Bank & Anr. v. Deepak Kumar Bhola, 1997 (2) SCT 643; (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 cannot 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.”

In the facts of the present case, the petitioner is facing criminal trial on account of commission of offences, which involve moral turpitude. The competent authority has observed that sanction for prosecution was granted on 27.06.2018 and Judicial Magistrate, Ist Class, Jind, has framed the charges on 31.01.2019 against the petitioner under Section 420 read with Section 120-B IPC. Hence, the delinquent would be under deemed suspension automatically w.e.f. 31.01.2019 being a case of Government employee, involving moral turpitude in terms of Rule 97 of the Haryana Civil Services (General) Rules, 2016. The period from 19.01.2017 to 30.01.2019 has been treated as the period spent on duty for all intents and purposes.

After going through the facts of the present case and perusing the impugned order in the light of the judgment passed in **Ashok Kumar** Aggarwal's case (supra), no ground is made out to interfere in the impugned order(s).

No merits.

Dismissed.

17.03.2020
ajp

(RITU BAHRI)
JUDGE

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