

IN THE HIGH COURT OF PUNJAB ANDHARYANAAT
CHANDIGARH

CWP No. 2718-2016
Date of decision:-03.03.2020

Surender Kumar

.....Petitioner

vs.

State of Haryana and ors.

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. B.R. Vohra, Advocate
for the petitioner.

Mr. Harish Nain, AAG, Haryana

RITU BAHRI, J.(Oral)

Petitioner is seeking quashing of order of his suspension dated
14.05.2015 (P-1).

On 07.03.2019, this Court passed the following order:-

The petitioner is facing trial in case FIR No.102 dated 10.04.2015 registered under Sections 306/506/34 IPC, Police station Sadar, Hansi. Mr. Vohra submits that till now only one prosecution witness has been examined out of a list of 30 prosecution witnesses. The petitioner was detained in judicial custody from 14.05.2015 to 05.06.2015. He was admitted to bail on 05.06.2015. As a result of the FIR and judicial custody, the petitioner's services were placed under suspension vide order dated 14.05.2015 and his headquarter was fixed in the office of Block Development and Panchayat Officer, Hansi- II. Since then he is getting subsistence allowance.

Cases of suspension are covered by Rule 7.5 of the Punjab

Civil Services Rules, Volume I, Part I, as applicable to Haryana which

reads as follows:

“An employee of Govt. against whom proceeding have been initiated either for his arrest for debt or on a criminal charge or who is detained under any law providing for preventive detention should be considered as under suspension for any periods during which he is detained in custody or is undergoing imprisonment, and not allowed to draw any pay and allowance (other than any subsistence allowance that may be granted in accordance with the principles laid down in rule

7.2) for such periods until the final termination of the proceedings taken against him or until he is released from detention and allowed to rejoin duty, as the case may be. An adjustment of his allowances for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him were for his arrest for debt) of it being proved that the officer’s liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified.”

The suspension of the petitioner was ordered only on account of his detention by the police and it is argued on his behalf that during the period of trial, the suspension order was liable to be revoked by the competent authority on the date he was admitted to bail pending trial since purpose has been served. No further order was passed extending suspension.

It is not disputed that no departmental enquiry has been initiated against the petitioner. The question is whether continuation of suspension is lawful and in the interest of administration. The government is paying the subsistence allowance without taking work from a person who is facing trial for abetment to suicide which is grave but is not an office misdemeanor or misconduct or has anything to do with his employment. Mr. Vohra has placed reliance on a short and crisp order passed by the Division Bench of this Court in Hem

Chander Vs. State of Haryana and others, 1995 (1) RSJ 266, which reads as follows:

“Annexure P-18 is a telegraphic order placing Hem Chand, Clerk present petitioner under suspension fixing his headquarter at the office of Civil Surgeon, Narnaul. As per allegations of the petitioners, first information report was registered against him on February 5, 1994 (Annexure P5) and on the following day, he was arrested. He was released on February 10, 1994 and thereafter resumed duty. Order Annexure P18 was subsequently passed on April 27, 1994. As per his case, he could not be placed under suspension beyond the period of detention. According to him, he would be deemed to have been suspended after 48 hours of his detention and his suspension ended with the period of detention.

2. On notice of motion, written statement has been filed by the State. In para 14, it is specifically stated that the suspension of the petitioner was on account of his detention in police custody and not on account of departmental enquiry. As per Rule 7.5 of Punjab Civil Services Rules, Vol-I, Part-I, period of suspension had to be up to the period of detention. The aforesaid rule has been considered and interpreted likewise by the Division Bench of this Court in CWP No.619 of 1994, Ram Pal Vs. State of Haryana & others decided on August 25, 1994, wherein view has been expressed that suspension on account of detention under Rule 7.5 aforesaid has to be during the period of detention. We agree with the aforesaid view. Thus, placing the petitioner under suspension subsequently on April 27, 1994 by issuing order Annexure P18 cannot be sustained in law and is, therefore, quashed.

3. Learned counsel for the respondents states that departmental enquiry is to be held against the petitioner for the misconduct for which first information report was lodged and since the charge-sheet is yet to be served, the order of suspension cannot be sustained during the period of enquiry. This

contention cannot be accepted on the facts of the present case. It has been stated in para 14 of the written statement that basis for the suspension order was detention of the petitioner. Even otherwise, in every case of misconduct a person is not to be placed under suspension. It is only in exceptional cases of gross misconduct resulting in dismissal that the resort should be had to be provision of suspension. Otherwise, enquiry can continue and normal consequences can follow. No observation has been made in this order regarding the departmental enquiry, if any, to be initiated against the petitioner on the alleged misconduct. While quashing Annexure P18, it is directed that the petitioner would be paid arrears of salary within a period of two months. Writ petition is disposed of.”

In view of the interim order proposed to be passed, so that in one order the Deputy Commissioner, Hisar would have a full view of the case, it is deemed fit and appropriate to issue direction to decide afresh whether to continue with the suspension order or not. A direction is therefore issued to the respondent Deputy Commissioner, Hisar to pass a fresh order keeping in view the prescriptions in Rule 7.5 of the Rules, the judgment of the Division Bench and the waste which may be caused to the administration by keeping the man out of service only to pay him subsistence allowance during the trial which may be protracted and take years. The Deputy Commissioner, Hisar would keep in mind that there is no charge of financial corruption or the like against the petitioner which may affect his work as a Gram Sachiv while dealing with the public and the administration. That apart, the Deputy Commissioner, Hisar would pass the order in the light of Rule 169 of the Haryana Civil Services Rules, 2016 repealing and replacing the Punjab Civil Service Rules 1970 in the State of

Haryana. The fresh order be passed within 2 weeks and produced before the court on the next date of hearing.

In compliance of order dated 07.03.2019, compliance report by way of affidavit has been filed in the Court today and the same is taken on record. In the affidavit, it has been stated that the petitioner has been reinstated into service pending regular enquiry and has been posted against a vacant post at BDPO, Uklana (R-1).

In view of the above affidavit, no further orders are required to be passed in the present petition.

Disposed of.

03.03.2020
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No