

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

CWP-6861-2021

DATE OF DECISION: 31.03.2021

Naveen Kumar

.....Petitioner

versus

State of Haryana & others

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Pawan Kumar Hooda, Advocate for the petitioner.

Mr. Rajesh Gaur, Addl. AAG Haryana, for the respondents.

ALKA SARIN, J. :

Heard through video conferencing.

This civil writ petition under Articles 226/227 of the Constitution of India has been filed to challenge the order dated 17.03.2021 (Annexure P-3) by which the petitioner has been placed under suspension.

It is averred in the civil writ petition that on 27.07.2012 the petitioner joined the Department of Food and Civil Supplies, Government of Haryana as a Sub-Inspector and on 04.02.2019 he was promoted as Inspector and after his promotion he was posted at Karnal. It is further averred that there are no complaints against the petitioner and that he has been performing his duties diligently and with sincerity and honesty. The petitioner alleges that one Jasbir Singh, AFSSO has been making false allegations and complaints against him and that the said Jasbir Singh has political and administrative links. According to the petitioner there are several complaints against Jasbir Singh, AFSSO and that the petitioner also

apprised his seniors about Jasbir Singh, AFSO. The petitioner further alleges that on 09.03.2021 he was beaten in the office of the DFSC Karnal by Jasbir Singh, AFSO and his henchmen and on 12.03.2021 the petitioner lodged a complaint (Annexure P-1) with the police and sent copies to respondent No.2 and other senior officers. According to the petitioner, the Superintendent of Police, Karnal has marked his complaint to the Deputy Superintendent of Police, Karnal for enquiry. The petitioner alleges that Jasbir Singh, AFSO, used his links and vide impugned order dated 17.03.2021 (Annexure P-3) the petitioner was suspended from service.

The only argument raised by counsel for the petitioner is that the impugned order (Annexure P-3) is illegal and arbitrary and was passed without giving any notice to the petitioner and without affording any opportunity of hearing to him.

Since advance copy of this petition had been supplied to the office of the Advocate General, Haryana, Mr. Rajesh Gaur, Addl. AG Haryana has put in appearance for the respondents.

Counsel for the State has submitted that there are several complaints against the petitioner and that vide letter dated 16.03.2021 the respondent No.3 had informed respondent No.2 about the incident of 09.03.2021 between the petitioner and Jasbir Singh and that on 10.03.2021 Jasbir Singh had submitted a written complaint against the petitioner. Thereafter, the petitioner submitted a complaint to the police against Jasbir Singh and also posted on social media false accusations against the employees of the Department. In the letter dated 16.03.2021 it was also stated that there were complaints against the petitioner at his earlier place of posting at Sonipat and that the petitioner was charge-sheeted for an incident

which took place in November 2020. The State counsel has produced before the Court a copy of the said letter dated 16.03.2021 and its enclosures. It is also contended by the State counsel that the petitioner has only been suspended from service and has not been dismissed and as such there was no requirement of issuing any notice to him or hearing him before passing the impugned order of suspension. According to the State counsel, 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 disciplinary proceeding against him is contemplated or is pending and till the disciplinary proceedings start the invocation of the principles of natural justice are misplaced.

I have heard counsel for the parties. The petitioner is in the service of the State Government. The power to institute disciplinary proceedings against an erring employee on a charge of misconduct lies solely within the province and jurisdiction of the employer. Whether an employee should be suspended during the pendency of disciplinary proceedings is a matter for the employer to determine, a decision which the employer will arrive at in the best interest of the service. In the case of '**Dr. Jasbir Singh Ahluwalia vs. Sri Guru Granth Sahib World University & Ors.**' [CWP. No.15063 of 2012 decided on 05.02.2013] a Division Bench of this Court *inter-alia* held as under :

“ 21. Law of suspension is well grounded in catena of case law, many of which are already taken note of above. It is not now necessary to restate the principles, as the exercise would become repetitive. We can, however, sum up the position in this behalf. Suspension is, primarily, of two types. There can

be suspension of an employee in contemplation and during the pendency of disciplinary proceedings against an employee or when such an employee is involved in a criminal case. First type of suspension is not by way of punishment. The only purpose is to keep the employee away from work so long as he is under the cloud of departmental proceedings/criminal case. Second type of suspension can be by way of arrangement which can be imposed as one of the penalties prescribed. This punishment of suspension would be inflicted, however, after holding the enquiry in which charge levelled against the delinquent employee stands proved.

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23. The order of suspension is subject to judicial review under Article 226 of the Constitution and while undertaking this exercise of judicial review, the Court would be governed by the aforesaid parameters. The order of suspension would normally be not interfered with unless it is vitiated by mala fides or is arbitrary or is against the specific provisions relating to suspension. It is without jurisdiction in the sense that if it is passed by an authority which was not empowered to take such an action."

Thus, the Court can only exercise its powers of interference in a limited sphere where it is shown that the decision to suspend is arbitrary and/or is a mala fide exercise of power and/or is a colourable exercise of power and/or the State is not able to explain the reasons for suspension. None of these grounds are successfully made out in the present civil writ petition. Further, as pointed out by the State counsel, the respondents have the power to place the petitioner, who is a Government employee, under suspension where a disciplinary proceeding against him is contemplated or is pending and the principles of natural justice would be attracted only when the disciplinary proceedings commence. The suspension in the present case

has not been ordered as a penalty, it is neither a major nor a minor penalty. It is also not stigmatic.

In view of the discussion above, I do not find this to be a fit case for this Court to interfere with the impugned suspension order dated 17.03.2021 (Annexure P-3). Accordingly, the present civil writ petition is dismissed.

(ALKA SARIN)
JUDGE

31.03.2021
Yogesh Sharma

NOTE: Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
