

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(129)

CWP-22488-2022

Date of Decision : September 28, 2022

Yash Pal Mann

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sanjiv Kumar Aggarwal, Advocate, for the petitioner.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present writ petition, the grievance of the petitioner is that the petitioner has been suspended from service in the anticipation of the disciplinary proceedings vide order dated 10.01.2022 (Annexure P-6) and later on, the petitioner has been charge-sheeted on 28.04.2022 and the said proceedings have been initiated against the petitioner on the direction of the State Commission for the persons with Disability Haryana, which act of the respondents is totally arbitrary and illegal and contrary to the settled principle of law.

Learned counsel for the petitioner argues that respondent No.6, who is the Principal of the School where the petitioner was working prior to the date of his suspension, who is also 100% blind, had made a complaint regarding the harassment against the petitioner, after respondent No.6 had made a complaint against the petitioner alleging misconduct. Learned counsel for the petitioner argues that respondent No.2-Commission in pursuance to the proceedings undertaken on the complaint filed by

respondent No.6 had directed the Department to suspend the petitioner and to initiate disciplinary proceedings and in pursuance to the said direction of the State-Commission, the petitioner was suspended on 10.01.2022 and disciplinary proceedings were initiated against him on 28.04.2022 vide Annexure P-10.

The arguments of the learned counsel for the petitioner is that the suspension and initiation of the disciplinary proceedings against the petitioner on the direction of respondent No.2 is bad in law. The further arguments of the learned counsel for the petitioner is that the petitioner should have been granted an opportunity of hearing by the Department concerned before suspending the petitioner or initiating the disciplinary proceedings against him. The third argument of the learned counsel for the petitioner is that State Commission had directed the Deputy Commissioner of the District concerned to hold an enquiry into the allegations of respondent No.6 hence, the Department should have awaited the outcome of the said proceedings before initiating any action against the petitioner.

I have heard learned counsel for the petitioner and have gone through the record with his able assistance.

A bare perusal of the order dated 10.01.2022 by which the petitioner has been suspended shows that the action has been taken by the competent authority to suspend the petitioner, but there is no mention that the same has been taken so as to comply with the direction of respondent No.2. Even if any order has been passed by respondent No.2-Commission, the same is only of a recommendatory value. If after due application of mind, the Department is of the opinion to initiate disciplinary proceedings against the petitioner or to suspend the petitioner, the same cannot be

treated as arbitrary and illegal merely because respondent No.2-Commission had made a recommendation to that effect but actual decision is of the Department and under the rules governing the service, it is a conceded position that the Administration Department is well within its jurisdiction to initiate disciplinary proceedings and to suspend the petitioner, hence, no infirmity exist in the impugned order.

Further, the suspension is not a punishment, hence, it cannot be said that the petitioner has been imposed any punishment while issue an order of suspension dated 10.01.2022, a copy of which has been appended as Annexure P-6. Furthermore, the disciplinary proceedings have already been initiated against him on 28.04.2022 wherein, allegations have been alleged against the petitioner so as to harass a Principal, who is 100% blind after, the petitioner was found committing misconduct. Once, the competent authority has a power to initiate action against an employee on receiving a knowledge of some alleged misconduct on part of employee, the disciplinary proceedings can be initiated against the employee concerned and the power to suspend exist with the Department, which fact has been conceded by the learned counsel for the petitioner as well, hence, the assertion of the petitioner that the petitioner has been suspended in compliance of the direction of respondent-Commission is not correct and is also not borne out of the order impugned in the present petition for suspending him or initiating disciplinary proceedings, hence, the same cannot be accepted.

The second reason for challenging the impugned order of suspension and initiation of the disciplinary proceedings is that the petitioner was not given opportunity of hearing by the Department.

No such rule has been cited by learned counsel for the petitioner that before initiating disciplinary proceedings or suspending an employee, a show cause notice or an opportunity of hearing needs to be extended. In the absence of any such rule, the claim of hearing by the petitioner before passing the order of suspension or initiating disciplinary proceedings, cannot be accepted.

Even otherwise, the suspension is not a punishment, hence, the grant of hearing to the employee prior to the passing of the order of suspension does not arise at all. Hence, the ground being raised by the petitioner to challenge the order of suspension or the initiation of disciplinary proceedings on non-grant of hearing prior to the passing of the said order, is liable to be rejected and is accordingly rejected.

The further prayer of the petitioner is that once the Deputy Commissioner of the District was already seized of the matter upon direction of respondent No.2 to look into the allegations of respondent No.6, the Department should not have been initiated the action, the same is also not meritorious to be accepted. Both the remedies operate in a different sphere. The Commission is taking action under the Right to Disability Act for which, a criminal proceeding can be initiated against the petitioner for which the Deputy Commissioner's report has been sought, which is perfectly valid and legal. For initiating disciplinary proceedings, there is no requirement of any order from the Deputy Commissioner as the competent authority on receiving any complaint or information about any misconduct by an employee, is well within its jurisdiction to initiate disciplinary proceedings against the employee, which action has been taken by the respondents Department against the petitioner. As both the remedies

operate in a different sphere, the claim of the petitioner that the disciplinary authority should not have been initiated till the report of the Deputy Commissioner, is no consequences for initiating disciplinary proceedings against the petitioner or suspending him.

Learned counsel for the petitioner argues that the action of the respondents in suspending the petitioner or initiating disciplinary proceedings is contrary to the order passed by the Hon'ble Supreme Court of India in ***Civil Appeal No.1718 of 2010 titled as State Bank of Patiala and others. vs. Vinesh Kumar Bhasin, decided on 22.01.2010.*** The said argument has been raised without going through the factual aspect in ***Vinesh Kumar Bhasin's case (supra)***. In the matter before the Hon'ble Supreme Court of India, a disabled employee had approached the Disability Commission for seeking the service benefits, which order was passed by the Commission giving direction to the Department to grant certain service benefits to a disabled employee, which was held to be bad.

In the present case, no such direction has been given with regard to the Commission to the Department concerned, only a recommendation has been made informing the Department about the conduct of the petitioner qua a disabled employee, which was brought to the notice of the Commission by respondent No.6. Hence, the judgment in ***Vinesh Kumar Bhasin's case (supra)***, cannot be come to the rescue of petitioner.

No other point was raised by the learned counsel for the petitioner.

Keeping in view the above, no ground is made out to grant the benefit as being prayed by the petitioner in the present petition.

Accordingly, the present writ petition is dismissed.

September 28, 2022

harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes