

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-15915-2022 (O&M)

Date of Decision:25.07.2023

Sunil Kumar

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Amit Parashar, Advocate for the petitioner.

Mr. Pankaj Middha, Addl. A.G. Haryana.

HARSIMRAN SINGH SETHI J.(Oral)

1. In the present petition, challenge is to the order dated 17.06.2022/06.07.2022 (Annexure P-8) by which the petitioner has been reverted from the post of District Horticulture Officer to that of Horticulture Development Officer and has further been suspended keeping in view the criminal proceedings pending against him in respect of FIR No.9 dated 14.02.2009.

2. Certain facts which are necessary for the adjudication of the issue are being mentioned for the ready reference.

3. The petitioner was selected by way of direct recruitment on 09.10.2006 as Horticulture Development Officer and while he was in service, an FIR No.09 dated 14.02.2009 under Sections, 409, 120, 467, 468, 471 and

120-B of IPC was registered at Police Station Vigilance Bureau, Hisar, District Hisar. The allegations was that prior to being appointed as Horticulture Development Officer, the petitioner was a contractor and he had misused his position and misappropriated tender money causing loss to the department. The department promoted the petitioner as District Horticulture Officer on temporary basis vide order dated 08.07.2020. At the time of temporary promotion, the department was of the view that the FIR registered against the petitioner was trivial in nature hence the petitioner could be promoted despite pendency of the FIR in question.

4. While the petitioner was working on the promoted post of District Horticulture Officer on temporary basis, the impugned order dated 06.07.2022 was passed wherein it was mentioned that as the allegations alleged in the FIR against the petitioner are serious in nature as those relates to misappropriation in the earnest money of the tenders and even the charges have been framed against the petitioner under Section 420 read with Section 120-B of IPC hence an employee who is facing criminal proceedings cannot be promoted and rather is liable to be suspended, the temporary promotion given to the petitioner on the post of District Horticulture Officer was withdrawn and the petitioner was suspended. Keeping in view the FIR pending against the petitioner, the said order is under challenge in the present petition.

5. Learned counsel for the petitioner argues that once the department knowing the fact of the pendency of the FIR, against the petitioner, promoted him on temporary basis, the department cannot take a somersault thereafter so as to pass the impugned order not only to withdraw the temporary promotion granted to the petitioner but also to suspend him on the ground that the criminal

proceedings are pending against him, hence, the impugned order is liable to be set aside.

6. The learned State counsel on the other hand submits that though it is a matter of fact that the department at the time of promotion had the knowledge of the FIR pending against the petitioner but the same was being treated as a “trivial in nature” which decision was incorrect keeping in view the allegations alleged against the petitioner, hence the said mistake have been rectified keeping in view the service rules governing the service accordingly to which Rule an employee who is facing the criminal proceedings as the allegation which reflect on a moral turpitude, cannot be promoted during the pendency of the said criminal proceedings and further the department has a right to suspend such employee, hence, the impugned order is perfectly valid and legal in consonance with the rules governing service thereunder.

7. I have heard learned counsel for the parties and have gone through the record with their able assistance.

8. It is conceded position before this Court that as per the rules governing the service, which have been reproduced in paragraph 17-A of the petition, an employee who is facing criminal proceedings can be suspended by the department. The Rule 97 of the Haryana Civil Service (General Rules), 2016, is applicable upon the petitioner and therefore as the petitioner has already been charged under Section 406, 420 as well as 120-B of IPC which involves the moral turpitude, the department was well within its right to suspend the petitioner from service therefore the grievance being raised by the petitioner that the Rules 1997 stood relaxed in his favour which granted him temporary promotion, cannot be accepted.

9. Further, the promotion extended to the petitioner to the post of District Horticulture Officer is not a regular promotion but was a temporary promotion given to the petitioner and the temporary promotion can be withdrawn by the department in case such facts exists to pass the order of reversion. In the present case, as per the rules governing service, once the petitioner is facing criminal proceedings and the allegations alleged against the petitioner involves the moral turpitude, even the temporary promotion could not have been granted. Further the respondents have reconsidered the matter and found that the earlier order dated 16.03.2020 was not correct in the facts and circumstances of this case. No ground is made out for any interference by this Court with the impugned order.

10. Dismissed.

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Application is dismissed as such.

(HARSIMRAN SINGH SETHI)
JUDGE

25.07.2023
shweta

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