



2023:DHC:8318



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 7th November, 2023**
+ **W.P.(C) 14521/2023, CM APPL No. 57577/2023 & 57578/2023**

BALBIR SINGH KHANDELWAL Petitioner
Through: **Mr. Achintya Dvivedi, Advocate.**

versus

JAWAHARLAL NEHRU UNIVERSITY & ORS. Respondents
Through: **Ms. Monika Arora and Mr. Subhrodeep Saha, Advocates for JNU.**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition has been filed on behalf of the petitioner seeking the following reliefs:

“(i) issue an appropriate writ or order to aside the impugned order dated 11.10.2023 in placing the petitioner in suspension in contemplation of enquiry;

(ii) pass any other writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case”

2. The relevant facts necessary for the adjudication of the instant petition are as follows:

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- a) The petitioner is an ex-serviceman, appointed as a Sanitary Inspector in the Estate Branch of the respondent university vide office order dated 27th September 2009.
- b) The administration of the respondent university, vide office order dated 13th July 2022, transferred the petitioner from Sanitary Inspector, Estate Branch to Inter-Hall Administration (hereinafter “IHA”), and the other Sanitary Inspector who was posted in IHA was transferred to the Estate Branch.
- c) Subsequently, the petitioner handed over his charges in Sanitation Cell (Estate Branch) on 8th August 2022, and joined the IHA on the same day. The petitioner was not given the charge of IHA Hostels since earlier the Sanitary Inspector had not handed over his charges.
- d) Thereafter, the respondent university vide letter dated 22nd August 2022, posted the petitioner at a different rank i.e., ‘office in-charge of any hostel’. It has been stated that the said letter has been challenged by the present petitioner in writ petition bearing W.P (C) no. 13832/2023 before the Coordinate Bench of this Court, and the same is pending for adjudication.
- e) Pursuant to the above, on 11th October 2023, the respondent university issued an order, thereby, suspending the petitioner in contemplation of enquiry under Rule 51 of the Jawaharlal Nehru University Rules (hereinafter referred to as “the Rules”), which governs the terms and conditions of services of non-teaching staff of the University, and also constituted a disciplinary committee vide notification dated 11th



October 2023.

- f) Being aggrieved by the order dated 11th October 2023, whereby, the petitioner was placed under suspension, the petitioner has approached this Court under its writ jurisdiction seeking setting aside of the impugned order.
3. Learned counsel appearing on behalf of the petitioner submitted that the impugned order is bad in law as the same is violative of the principles of natural justice, and the said impugned order impugns the petitioner's fundamental and legal rights.
4. It is submitted that the impugned order by virtue of which the petitioner has been placed under suspension does not disclose a *prima facie* case of misconduct and in the absence of such *prima facie* view, the said suspension order is arbitrary and illegal in nature.
5. It is submitted that there is a gross abuse of power on behalf of the respondent university since it has passed the said order in a routine manner and the respondent has failed to assign any reasons behind such action. Moreover, no opportunity of being heard was provided to the petitioner.
6. It is submitted that although Rule 51 of the Jawaharlal Nehru University Rules governing the terms and conditions of services of Non-Teaching Staff of the University; prescribes that there may be suspension of an employee in contemplation of an enquiry; even so, it would not mean that the suspension is automatic in every case.
7. It is submitted that there is no consideration of the gravity of the alleged misconduct, or the nature of the allegations imputed to the



delinquent petitioner and therefore, the impugned order is illegal.

8. It is submitted that the impugned order of suspension of the petitioner in contemplation of enquiry without any substantial charges of misconduct is stigmatic and harassment which has ultimately led to the infringement of the petitioner's fundamental rights guaranteed under the Constitution of India.

9. It is submitted that the respondent university, before resorting to the suspension of petitioner, ought to have exercised the proper application of mind, which would prevent unnecessary harassment and humiliation of suspension. In the present case, no serious misconduct has been committed by the petitioner that led to the issuance of the impugned suspension order. Therefore, the instant impugned suspension order is bad in law as well as contrary to the university's rules and regulations.

10. In view of the foregoing submissions, it is submitted that the impugned order may be set aside and the present petition may be allowed.

11. *Per Contra*, learned counsel appearing on behalf of the respondent university vehemently opposed the instant writ petition and submitted that the same is filed with the intent to abuse the process of law, hence liable to be dismissed being devoid of any merits.

12. It is submitted that as per Rule 51 of the Rules governing the terms and conditions of services of Non-Teaching Staff of the University, the respondent university is well within its powers to suspend the petitioner in contemplation of an enquiry and the same is the due process of law.

13. It is further submitted that the impugned order passed by the competent authority is in accordance with provisions of the rules applicable



to the university. Therefore, there are no illegalities or arbitrariness in the impugned order.

14. It is submitted that the allegations advanced by the petitioner against the respondent university have no force since the suspension order has been passed in consonance to the settled legal principles and there is no infirmity with the decision rendered thereto.

15. It is submitted that the impugned order of suspension does not violate any principles of natural justice and no fundamental or legal rights of the petitioner has been infringed upon.

16. In view of the foregoing submissions, it is submitted that the instant petition may be dismissed, being devoid of any merit.

17. Heard learned counsel for the parties and perused the material available on record.

18. It is the case of the petitioner that the respondent university has passed the impugned order dated 11th October 2023, which has placed the petitioner under suspension in contemplation of enquiry. The petitioner has argued that the passing of the said impugned order without any charges and also without informing the petitioner about the alleged misconduct violates his right and principles of natural justice ascribed to him under the Constitution of India. In view of the said submissions, the petitioner has prayed that the suspension order may be aside.

19. In rival submissions, the respondent university whilst opposing to the petitioner's submissions contended that the respondent university neither has acted contrary to the law nor been there any violation of petitioner's rights.



Hence, the petitioner's case is liable to be dismissed.

20. Before deciding the issues raised in the instant petition, it is prudent to understand the settled position of law *qua* the principles governing the concept of suspension.

21. This Court is of the view that the purpose of suspension of an employee in service jurisprudence may be two-fold. *Firstly*, it may be done as an interim measure, to aid and assist a disciplinary enquiry which cannot be termed as punishment and *secondly*, suspension might be done to impose punishment.

22. In the event the suspension is made in contemplation of a disciplinary enquiry, the purpose of the same, as also said above, is merely to aid the process of enquiry. Suspension takes out the delinquent employee from his domain of influence and this in turn ensures that the enquiry is completed in an independent and fair manner.

23. This Court is of the further view that suspension takes off the charged employee from his regular duties enabling the employee to join the enquiry proceedings and cooperate with the enquiry. It also gives adequate time to the employee to prepare his defense. Moreover, continuing the employee on his regular duties, along with a pending enquiry, might not be in the institution's interests either. The official work would suffer and the enquiry proceedings would be impeded. Hence, suspension in such cases is not a punishment.

24. At this stage, the question to be considered in the instant petition is whether the respondent university has passed the impugned order placing the



petitioner under suspension in contemplation of an enquiry is within the ambit of due process of law. The law regarding the said issue is well settled.

25. The Hon'ble Supreme Court has stated the basic principle of law that needs to be followed while dealing with such matters of suspension in the matter of ***R.P. Kapur v. Union of India, (1964) 5 SCR 431***. The relevant paragraph is as follows:

“10. Before we investigate what rights a member of the former Secretary of State's Services had with respect to suspension, whether as a punishment or pending a departmental enquiry or pending criminal proceedings, we must consider what rights the Government has in the matter of suspension of one kind or the other. The General law on the subject of suspension has been laid down by this Court in two cases, namely, Management of Hotel Imperial New Delhi v. Hostel Workers' Union [(1960) 1 SCR 476] , and T. Cajee v. U. Jormanik Siem [(1961) 1 SCR 750] . These two cases lay down that it is well settled that under the ordinary law of master and servant the power to suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and the servant but must arise either from an express term in the contract itself or a statutory provision governing such contract. It was further held that an order of interim suspension could be passed against an employee while inquiry was pending into his conduct even though there was no specific provision to that effect in his terms of appointment or in the rules. But in such a case he would be entitled to his remuneration for the period of his interim suspension if there is no statute or rule existing under which it could be withheld.

11. The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is



no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in Section 16 of the General Clauses Act, 10 of 1897, which lays down that where any Central Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention appears. Though this provision does not directly apply in the present case, it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. This suspension must be distinguished from suspension as punishment which is a different matter altogether depending upon the rules in that behalf. On general principles therefore the government, like any other employer, would have a right to



suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. Or the government may proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. These general principles will apply to all public servants but they will naturally be subject to the provisions of Article 314 and this brings us to an investigation of what was the right of a member of the former Secretary of State's Services in the matter of suspension, whether as a penalty or otherwise.”

26. The Hon’ble Supreme Court has held that an order of suspension is not an order imposing punishment on a person found to be guilty. It is an order made against him before he is found guilty to ensure smooth disposal of the proceedings initiated against him. Such proceedings should be completed expeditiously in the public interest and also in the interest of the government servant concerned.

27. The above stated principle has also been laid down by the Hon’ble Supreme Court in the case of ***State of Orissa v. Bimal Kumar Mohanty, (1994) 4 SCC 126***, which offers reliable guidance and is applicable to the facts of this case. The relevant extracts of the judgment are reproduced below:

“13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought



to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge.”



28. Now adverting to the facts of the present matter. The respondent university has passed the impugned order dated 11th October 2023, in exercise of the power conferred upon it under sub-rule (1) (a) of Rule 51 of the Rules Governing the terms and conditions of service of the Non-Teaching Staff of the University. The relevant paragraphs of the impugned order is reproduced below:

“Whereas a disciplinary proceeding against Shri Balbir Singh Khandewal, Sanitary Inspector is contemplated.

Now, Therefore, the undersigned, in exercise of the power conferred by sub-rule (1) (a) of Rule 51 of the Rules Governing of services the terms and conditions of services of the Non-Teaching Staff of the University, hereby places said Shri Balbir Singh Khandewal, Sanitary Inspector under suspension with immediate effect.”

29. The relevant portion of Rule 51 prescribed under the Jawaharlal Nehru University Rules governing the terms and conditions of services of Non-Teaching Staff of the University, is quoted herein for reference:

“ Rule 51..

(1) The appointing authority or any authority to which it is subordinate or any other authority empowered by the university in that behalf may place any employee under suspension:

(a) Where a disciplinary proceeding against him in contemplation....”

30. The above said provision deliberates to the fact that the University is



empowered to suspend any employee in the event it is found that a disciplinary proceeding is in contemplation. In other words, in case a disciplinary enquiry has been initiated against a particular employee with respect to a purported allegation of misconduct, then, in such circumstances, the university may exercise its powers under sub-rule (1) (a) of Rule 51, thereby, placing the said employee under suspension till the pendency of the said disciplinary enquiry.

31. Similarly, with respect to the facts of the instant matter, the disciplinary enquiry has been constituted to enquire into the allegations of misconduct against the petitioner and the accordingly the respondent university suspended the petitioner.

32. Upon perusal of the judgments mentioned herein above and the relevant rules governing the suspension of Non-Teaching Staff of the University, this Court is of the view that respondent university is well within its powers to suspend the petitioner in contemplation of enquiry.

33. It is to be noted that the act of suspension must be distinguished as per the facts and circumstance of each case. In context to the matter at hand, the petitioner is placed under suspension and the disciplinary proceeding against him is contemplated. The word 'contemplation' as used in the above said rule implies that the concerned authority has given thought and consideration to the allegations brought against the petitioner and the suspension in contemplation of enquiry is done after the authority finds it appropriate that a *prima facie* case of misconduct exists against such an employee, which calls for enquiry.



34. Keeping the above in mind, this Court is of the considerable view that the scope of judicial review is limited in cases of suspension for the reason that passing of the suspension order is of an administrative nature and suspension is not a punishment. The intent behind placing an employee under suspension is only to forbid the delinquent to work in the office and the same is in the exclusive domain of the employer. It is pertinent to mention herein that the Courts cannot function as an authority sitting in appeal over the decision taken by the authority placing the employee under suspension.

35. Until and unless the decision of the authority is found to be logically incoherent, or it is concluded that the said administrative decision suffers from procedural impropriety, or it shocks the conscience of the Court in a manner that the decision is illegal on the face of it, the same cannot be set aside.

36. In view of the observations made herein above, this Court does not agree with the contentions of the petitioner in the manner that the suspension order dated 11th October 2023, in contemplation of enquiry is infringing upon his rights since no charge or any allegation of misconduct has been ascribed to him. The respondent university has suspended the petitioner and constituted a disciplinary committee to enquire into the allegations that have been made against him, and there is nothing on the face of it that makes the said acts of the respondent university liable to be set aside.

37. In view of the above discussions of facts and law, it is held that the impugned order has been passed in accordance to the law. The petitioner has



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been unable to make out his case and this Court finds no force in the propositions put-forth by the petitioner.

38. Upon finding no infirmity within the impugned order, it is, hereby, held that the instant petition is not a fit case to exercise the writ jurisdiction of this Court.

39. In view of the above, the instant petition stands dismissed along with the pending applications, if any.

40. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 7, 2023

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