

242

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5034-2022

Date of decision: 30.07.2024

TEK SINGH DAGAR

...Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

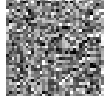
Present:- Mr. Johan Kumar, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Ms. Saloni Sharma, Advocate for
Mr. Prateek Mahajan, Advocate for respondent No.3.

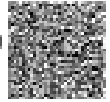
JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 15.11.2021 (Annexure P-1), whereby the petitioner has been suspended during the pendency of contemplated charge-sheet, which is not issued to the petitioner till date and same be declared as inoperative in view of Rule 5(1) of Haryana Civil Services (Punishment and Appeal) Rules, 2016 with a further prayer to direct the respondents to reinstate the petitioner in service on the post held by him i.e. Assistant Engineer with continuity of service from the date of his suspension i.e. 15.11.2021 along with all consequential benefits in view of the aforesaid Rules of 2016.



2. Learned counsel for the petitioner submitted that it is a case where the petitioner was suspended vide Annexure P-1 dated 15.11.2021 by the Municipal Corporation, Faridabad. He further submitted that as per Rule 5 of the Haryana Civil Services (Punishment and Appeal) Rules, 2016, which is applicable to the respondent-Corporation, there is a specific provision which has been reproduced in Para No.5 of the present writ petition that when an employee is suspended because of some charge-sheet or in contemplation of a charge-sheet then the same can be operative only for a period of 90 days in terms of the proviso so appended in the aforesaid Rules in which it is so provided that where a Government employee against whom disciplinary proceedings are contemplated is suspended then such suspension shall not be valid where the disciplinary proceedings are not initiated against him before the expiry of a period of ninety days from the date from which the employee was suspended with an added proviso that the aforesaid time can be extended for a further period of 90 days but for that purpose before the expiry of aforesaid 90 days under some special circumstances, an order can be passed. He further submitted that as per Note 1 appended thereon in the aforesaid provision it has also been provided that the order of suspension shall stand revoked being invalid unless the punishing authority obtains the approval of the next higher authority and informs the Government employee under suspension the specific period of extension of suspension before the expiry of aforesaid 90 days or extended period of another 90 days, as the case may be.

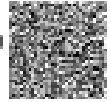
3. Learned counsel for the petitioner also submitted that in the present case there is no order by which any extension was sought but as per the reply



filed by the respondent-Corporation, the charge-sheet was issued to the petitioner on 19.04.2022, which was beyond the period of 90 days. He further submitted that the plea taken by the respondent-Corporation was that they have sent the draft charge-sheet to the State who was to take action but it is undisputed fact that the charge-sheet has been issued on 19.04.2022 after expiry of period of 90 days and no extension has been sought at all and therefore, in terms of the aforesaid provision, the suspension becomes *void ab initio* and the petitioner was entitled for grant of all the benefits during which he remained suspended. He further submitted that it is a settled law that the disciplinary proceedings commence from the issuance of the charge-sheet and not before that and the charge-sheet in the present case has been issued after the expiry of 90 days. He further submitted that there was an interim order passed by this Court vide order dated 20.04.2022 that as an interim measure, the petitioner would be permitted to join the duty forthwith. He also submitted that thereafter, the petitioner has attained the age of superannuation on 31.01.2023 and has retired but the charge-sheet is still pending against him. He further submitted that after the retirement of the petitioner, retiral benefits have not been paid to him at all.

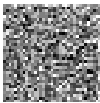
4. On the other hand, Ms. Saloni Sharma, Advocate appearing on behalf of Mr. Prateek Mahajan, learned counsel for respondent No.3-Municipal Corporation, Faridabad submitted that within the period of 90 days, the draft charge-sheet was sent to the State but it was not approved and the same was ultimately issued to the petitioner on the aforesaid date i.e. on 19.04.2022.

5. I have heard the learned counsels for the parties.



6. The prayer made in the present writ petition is with regard to challenge to the order of suspension dated 15.11.2021 (Annexure P-1). However, during the pendency of the present petition, the petitioner has already retired. One of the issues involved in the present case is as to whether the aforesaid order of suspension would be a valid order or not after the expiry of 90 days. The petitioner in pursuance of the order passed by this Court on 20.04.2022 was already taken back on duty and thereafter, he has retired from service. The suspension order is dated 15.11.2021 and the charge-sheet was issued on 19.04.2022, which is beyond 90 days. There is nothing on the record to show that the same has been extended by any authority and therefore, clearly the suspension order was beyond the period as so stipulated in the aforesaid Rules, which are stated to be applicable to the respondent No.3-Municipal Corporation, Faridabad. Therefore, this Court is of the considered view that so far as the aforesaid order of suspension is concerned, it would be deemed to have been revoked immediately on the expiry of 90 days. Since the petitioner has already retired, now the grievance of the petitioner is that he has not been granted his pensionary benefits.

7. After hearing the learned counsels for the parties, this Court is of the considered view that a direction is required to be issued to respondent No.3-Municipal Corporation, Faridabad to pass a speaking order pertaining to the grant of retiral benefits to the petitioner of which now the petitioner has a grievance that he should be paid his retiral benefits along with interest. It is also held that the petitioner's suspension stood revoked by operation of law as aforesaid on the expiry of 90 days and in case the petitioner was not granted any



benefits pertaining to the remaining period after the aforesaid expiry of 90 days, then he shall be granted all the arrears with regard to the same, within a period of three months from today. Let a speaking order be passed by respondent No.3- Municipal Corporation, Faridabad within a period of two months from today.

8. Consequently, the present writ petition is disposed of in the aforesaid terms.

30.07.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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