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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-14803-2024

Date of decision: 19.07.2024

HITESH DAHIYA

...Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Sunil Kumar Nehra, Advocate  
for the petitioner.

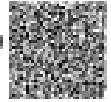
Ms. Rajni Gupta, Addl. A.G., Haryana  
for respondents No.1 to 3.

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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 20.06.2024 (Annexure P-12), vide which the petitioner has been placed under suspension without conducting any enquiry with a further prayer to direct the official respondents to immediately reinstate the petitioner in service along with all consequential benefits.

2. The brief facts of the present case are that the petitioner was working as an Assistant Engineer (Civil) in the respondent-Municipal Corporation, Gurugram and within the limits of the Municipal Corporation, Gurugram, some illegal constructions and encroachments were reported and vide Annexure P-2, a Division Bench of this Court while dealing with the



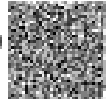
illegal construction being raised directed that the Deputy Commissioners of Faridabad and Gurugram shall be responsible to stop any new construction in the area in dispute and stern action will be taken in case of failure to do the needful. Thereafter, vide Annexure P-6 dated 05.10.2023, the District Magistrate, Gurugram passed an order for appointment of Duty Magistrate in this regard and in this way, in pursuance of powers under Section 23(2) of the Code of Criminal Procedure, one Sh. Sanyog Sharma, Assistant Engineer, Municipal Corporation, Gurugram was appointed as a Duty Magistrate for a period from 06.10.2023 to 06.01.2024 till the completion of work for the action pertaining to demolition of illegal construction. The aforesaid order dated 05.10.2023 (Annexure P-6) passed by the District Magistrate, Gurugram is reproduced as under:-

**Office of the District Magistrate, Gurugram.**

**Order**

*Joint Commissioner-II, Municipal Corporation, Gurugram has informed through his office letter No. MCG/JC-II/2023/1350 dated 04.10.2023 that "To remove encroachment and to demolish the illegal construction in Zone-II, including 900 Mtr., of Ammunition Depot, Gurugram" action is to be taken. Hence in view to maintain law and order, a demand has been made to appoint duty magistrate and provide male/ female police force along with police assistance.*

*Therefore, I, Nishant Kumar Yadav, I.A.S., District Magistrate, Gurugram, in view of the above, using the powers given in 23 (2) of Code of Criminal Procedure 1973, Sh. Sanyog Sharma, Assistant Engineer, Municipal Corporation, Gurugram (9310021186) is appointed Duty*

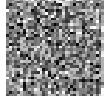


*Magistrate from 06.10.2023 to 06.01.2024 till the completion of the work for the above action. Duty Magistrate will exercise the powers conferred under Code of Criminal Procedure, 1973.*

*Signature/-  
District Magistrate,  
Gurugram.*

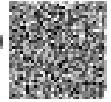
3. Thereafter, a demolition drive was carried on by a team consisting of about ten persons and the aforesaid Sh. Sanyog Sharma, Assistant Engineer, Municipal Corporation, Gurugram was the Duty Magistrate. So far as the present petitioner is concerned, he was also a part of the aforesaid team and demolition was carried on 15.11.2023 in the area which was within 900 meters of Ammunition Depot, Gurugram. However, after about 5-6 months when the Cabinet Minister, Government of Haryana, Urban Local Bodies Department visited the area, then on the basis of a complaint made by one Krishan Chawla and Abhishek Khaneja vide Annexure P-11 against the petitioner that he has demanded a bribe of Rs.13 lacs, on the next date, the petitioner was placed under suspension vide impugned order dated 20.06.2024, which is annexed as Annexure P-12. The petitioner thereafter filed a representation dated 27.06.2024 vide Annexure P-14 to the Director, Urban Local Bodies, Haryana to reinstate him in service because he was not at fault. The aforesaid representation is still under consideration and no order has been passed on the same.

4. Learned counsel for the petitioner submitted that the aforesaid impugned suspension order was a result of a *mala fide* on the part of the Cabinet Minister, Government of Haryana, Urban Local Bodies Department, who has been impleaded as respondent No.4 in the present petition because he



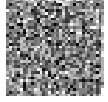
visited the area on the basis of the complaint of the affected persons, which is Annexure P-11 in which they stated that their marriage lawn is in Palam Vihar which was being renovated and they got many trees and plants planted and they were getting the pantry and bathroom built but the petitioner as soon as he got information as aforesaid, he demanded a bribe of Rs.13 lacs from them and he threatened to break the same. He further submitted that the petitioner was part of the team which had acted in the demolition drive in pursuance of the order passed by the District Magistrate, Gurugram vide Annexure P-6 dated 05.10.2023 because of the order passed by a Division Bench of this Court on 13.08.2012 as aforesaid and so far as the demolition is concerned, he was acting and discharging his duties as an official and a part of the team and he was not the only person who was the part of the team and on the basis of the direction issued by the higher officials as aforesaid, he participated in the team for demolition and therefore, he discharged his official duties in this respect and on the basis of a complaint of the aforesaid two persons who were aggrieved, he has been suspended and therefore, the impugned order of suspension dated 20.06.2024 (Annexure P-12) is liable to be set aside.

5. On the other hand, learned State counsel appearing on behalf of respondents No.1 to 3 submitted that in pursuance of the order passed by this Court on 03.07.2024, the entire original record has been brought to this Court and some Senior Officers of the respondent-Municipal Corporation, Gurugram and respondent-State in the department of Urban Local Bodies are also present to assist her on the basis of the original record which has been brought. While referring to the aforesaid record, she submitted that when the Cabinet Minister,



Government of Haryana, Urban Local Bodies Department visited the area, then various complaints were received by the Cabinet Minister qua the present petitioner and it was not the only present complaint which has been attached as Annexure P-11 on the basis of which the concerned Cabinet Minister had to make an order in this regard. While referring to the aforesaid notings from the record, she further submitted that rather the petitioner is facing two other charge-sheets and after receiving number of complaints against the petitioner, it was thought fit that the petitioner be placed under suspension so that at least fair enquiry can be conducted in this regard. She also submitted that there was no *mala fide* either on the part of the officials or on the part of the concerned Cabinet Minister and it was only because of the complaint Annexure P-11 and various other complaints received against the petitioner that action had to be taken against him in accordance with law.

6. She further submitted that the aforesaid impugned order is only an order of suspension and the petitioner has no legal right to challenge the same. She also submitted that even otherwise also, the petitioner has already filed a representation vide Annexure P-14 for his reinstatement in service and she has instructions to state that the aforesaid representation filed by the petitioner seeking reinstatement in service is in active consideration with the Government and the Government will consider and decide the aforesaid representation as expeditiously as possible and preferably within a period of six weeks from today. She further submitted that considering the allegations against the petitioner as aforesaid, an enquiry is being conducted by the Chief Vigilance Officer (CVO) of the Department and therefore, at least six weeks are required

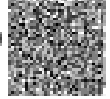


to pass an order on the aforesaid representation (Annexure P-14) of the petitioner.

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

8. It is a case where the petitioner has filed the present writ petition in which the State of Haryana, Director General, Urban Local Bodies Department, Haryana, Commissioner of Municipal Corporation, Gurugram and one Cabinet Minister of the State of Haryana, Urban Local Bodies Department as respondent No.4 have been impleaded as party. Notice of motion was issued by this Court on 03.07.2024 to the State of Haryana, Director General, Urban Local Bodies Department, Haryana and Commissioner, Municipal Corporation, Gurugram i.e. respondents No.1 to 3 only at that stage. This Court also directed to produce the entire original record pertaining to the suspension of the petitioner. The entire original record has been brought today through the learned State counsel. Learned State counsel has also read over the relevant portion of the notings on the basis of which the suspension order of the petitioner has been effected.

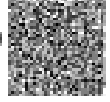
9. The grievance of the petitioner is that when he was posted as Assistant Engineer (Civil), then by virtue of the order passed by the District Magistrate, Gurugram vide Annexure P-6 dated 05.10.2023, he was also a part of the team constituted of about ten officials, who carried out the demolition drive and he was acting in discharge of his official duties and therefore, if a person was aggrieved by the demolition, then no order against the petitioner could have been passed because he was acting in discharge of his duties. Another grievance of the petitioner is that the aforesaid impugned suspension



order has been passed in a *mala fide* manner of the concerned Cabinet Minister, who is respondent No.4 in the present case.

10. Both the aforesaid submissions of the learned counsel for the petitioner can be considered together. There is no doubt that the demolition drive was carried out in accordance with law and rather a Duty Magistrate was specially appointed for the said purpose vide Annexure P-6 and thereafter, a team was constituted which included the petitioner also. The reason for suspension as so stated by the learned State counsel was pertaining to the notings which she has read today in the Court, according to which, various other complaints were also received qua the petitioner and the petitioner was also facing two more charge-sheets in other cases. Therefore, on the basis of the aforesaid position, the petitioner was put under suspension. It is a settled law that method of suspension is resorted to only as a kind of interim arrangement so that the employee, who is placed under suspension cannot make access to the relevant record of the case. The aforesaid impugned order of suspension has been passed vide Annexure P-12 on 20.06.2024, which is about one month ago and the learned State counsel has specifically stated on instructions that the representation of the petitioner Annexure P-14, by which he has sought reinstatement in service on various grounds is in active consideration but requires only six weeks' time because now the entire enquiry is being conducted by the Chief Vigilance Officer (CVO) of the respondent-department based upon the complaints made against the petitioner including the present complaint.

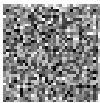
11. So far as the allegation of *mala fide* against the aforesaid Cabinet Minister is concerned, learned counsel for the petitioner has referred to paras



No.20 to 25 of the present writ petition in this regard. A perusal of the aforesaid paragraphs would show that it has been so averred by the petitioner that he has been placed under suspension with a pre-determined mind of respondent No.4- Cabinet Minister, Government of Haryana, Urban Local Bodies Department without even calling for his explanation and in order to please the electorate. Apart from the above, there is no specific averment made in the aforesaid paragraphs. A perusal of para No.23 would show that the allegations which have been made against the aforesaid Cabinet Minister are vague. It is a settled law that when personal *mala fides* are alleged, then they have to be very specific and there has to be a strong reason because making allegation against any person or any authority, a person who makes an allegation has to be extremely cautious and unless details with specific averments are so stated, the allegations which are vague in nature should not be gone into. The contents of the writ petition in the aforesaid paragraphs would show that the allegations are evasive and vague in nature.

12. This Court is of the considered view that the argument raised by the learned counsel for the petitioner that he was discharging his duties in accordance with law as a member of the team and therefore, suspension order would not have been passed against him is not sustainable in view of the fact that the reason for suspension appears to be not the act of demolition but the reason of suspension appears to be the complaint, which has been made against the petitioner pertaining to demanding of bribe, which is an independent action.

13. This Court is also of the considered view that since the allegations of *mala fide* are vague and evasive, the order of suspension cannot be set aside



and even otherwise also, the petitioner cannot claim as a matter of right that he should have been given an opportunity before an order of suspension is passed. Apart from the above, the learned State counsel has made a statement before this Court that the representation filed by the petitioner against the aforesaid impugned order of suspension (Annexure P-12) will be considered within a period of six weeks from today.

14. In view of the aforesaid facts and circumstances, the present writ petition is hereby dismissed. Respondent No.2-Director General, Urban Local Bodies Department, Haryana is hereby directed to consider and decide the representation dated 27.06.2024 (Annexure P-14) of the petitioner strictly in accordance with law within a period of six weeks from today.

19.07.2024  
Chetan Thakur

(JASGURPREET SINGH PURI)  
JUDGE

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