

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

218

CWP-9205-2018
Date of Decision: 09.01.2024

Amit

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Sunil K. Nehra, Advocate with Mr. Arnav Udai Singh Ahlawat, Advocate for the petitioner

Mr. Ravi Pratap Singh, DAG, Haryana

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the order dated 27.07.2017 endorsed on 01.08.2017, Annexure P-2, vide which the petitioner has been placed under suspension. Further, a writ of *mandamus* has been sought directing the respondents to immediately withdraw the suspension order being invalid in terms of Haryana Civil Services (Punishment & Appeals) Rules, 2016 (hereinafter referred to as '2016 Rules').

2. Facts of the case in brief are, the petitioner was appointed as Canal Guard in the Department in 2009. While serving at Yamuna Water Service Circle, Jind, he was transferred, vide order dated 22.08.2016, to Water Services Division, Safidon, Jind, on the asking of a member of the Haryana

Public Service Commission. The transfer order was challenged by the petitioner before this Court, by filing Civil Writ Petition No.18216 of 2016 titled *Amit v. State of Haryana and others*, whereupon the transfer order was stayed vide an interim order dated 02.09.2016. The writ petition was subsequently allowed by this Court on 15.05.2019, and the order of transfer was quashed. During pendency of the aforesaid petition, the petitioner was placed under suspension vide the impugned order dated 27.07.2017. It has been alleged that the order of suspension is *mala fide*, and has been passed only to harass the petitioner for approaching this Court challenging the order of transfer. Despite having been placed under suspension, no chargesheet was issued to the petitioner for over nine months, nor was the order of suspension withdrawn. Also, the order was not extended beyond ninety days in terms of Rule 5 of the 2016 Rules. However, the respondents continued paying subsistence allowance to the petitioner during suspension. In these circumstances, the instant petition was filed.

3. Learned counsel for the petitioner contends that the impugned order of suspension is not sustainable being violative of Rule 5 of the 2016 Rules, as the period of suspension was not extended. Therefore, it becomes invalid and is liable to be set aside.

4. Learned State counsel, on the contrary, does not dispute the facts averred in the petition, nor does he dispute that pursuant to the order of suspension no chargesheet was issued to the petitioner. He, however, vehemently contends that the petitioner is in the habit of levelling vague allegations against officials of the Department. He wanted to malign their

image by making false complaints, and on that account his service was rightly placed under suspension.

5. Heard.

6. To decide the issue of validity of the suspension order, it apt to refer to Rule 5 of the 2016 Rules dealing with suspension and withholding of emoluments, which is as under:

5. Suspension and withholding of emoluments.—

- (1) The appointing authority or any other authority to which it is subordinate or the punishing authority or any other authority empowered in that behalf by the Governor, by general or special order, may place a Government employee under suspension where—
 - (a) a disciplinary proceeding against him is contemplated or is pending, or
 - (b) a case against him in respect of any criminal offence is under investigation, inquiry or trial: or
 - (c) in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State;

Provided that where a Government employee against whom disciplinary proceedings are contemplated is suspended, 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:

Provided further that the competent authority in the matter may, at any time before the expiry of the said period of ninety days and after considering the special circumstances for not initiating disciplinary proceedings, to be recorded in writing and after seeking the approval of next higher authority allow continuance of the suspension beyond ninety days but not beyond one hundred eighty days without the disciplinary proceedings being initiated;

Note 1.— The order of suspension shall stand revoked, being invalid, unless the punishing authority obtains the approval of next higher authority and informs the Government employee under suspension the specific period of extension of suspension before the expiry of period of ninety days or extended period of another ninety days, as the case may be.

Note 2.— xxxx xxxx xxxx

 (2) to (8) xxxx xxxx xxxx

7. Rule 5 entitles the competent authority to place a government employee under suspension where disciplinary proceedings are contemplated or pending against him/her. Proviso to the Rule stipulates, in case the disciplinary proceedings are not initiated before expiry of ninety days from the date of suspension, the suspension shall not be valid. Meaning thereby, unless proceedings are initiated within ninety days, the order of suspension shall lose validity. However, as per proviso to the Rule, in special circumstances, the period of suspension can be extended beyond ninety days but not beyond one hundred and eighty days without disciplinary proceedings

being initiated. Such extension has to be for reasons recorded in writing and after seeking approval of the next higher authority. Note 1 of the Rule further stipulates, unless the approval for extension is obtained and the employee concerned is informed about it before expiry of ninety days or the extended period, as the case may be, the order of suspension shall stand revoked being invalid. Accordingly, legitimacy of the suspension order is dependent upon issuing of chargesheet/initiation of disciplinary proceedings within the stipulated period, since an employee can be placed under suspension only in contemplation thereof or during pendency of the same. In the absence of disciplinary proceedings the order becomes invalid as it loses all justification. An invalid order has no legal force, and is of no consequence.

8. In the instant case, the petitioner was placed under suspension, vide office order dated 27.07.2017, with immediate effect. The period of suspension was not extended beyond ninety days from the date of suspension, i.e., 27.07.2017. Merely because he was placed under suspension and a chargesheet was contemplated for maligning the image of Department officials, that in itself is not sufficient to extend validity of the order of suspension beyond ninety days in the light of clear provisions of Rule 5 of the 2016 Rules, as aforementioned. Therefore, the impugned suspension order being invalid stands revoked on expiry of ninety days from the date of suspension in terms of Note 1 to Rule 5(1), and being bereft of any legal force, it can have no effect on the petitioner's service.

9. In view thereof, the present petition is allowed, the order of suspension, dated 27.07.2017, is set aside and the respondents are directed to

treat the entire period during which the petitioner remained under suspension as duty period for all intents and purposes.

10. Pending miscellaneous application(s), if any, stand(s) disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

09.01.2024
Payal

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>