

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-22869-2023 (O&M)
Decided on : 19.01.2024

Rajesh Kumar

...Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Rajat Khanna, Advocate;
Mr. Vishal Saini, Advocate and
Mr. Vijay Pratap Singh, Advocate for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the challenge is to the order of suspension dated 13.09.2023, copy of which has been annexed as Annexure P-11.

2. Learned counsel for the petitioner argues that the petitioner was put under suspension without even mentioning that the respondents intend to initiate disciplinary proceedings against him and as a matter of fact, even after expiry of four months of suspension order, no disciplinary proceedings have been initiated against him.

3. Learned counsel for the petitioner further argues that the order of suspension dated 13.09.2023 (Annexure P-11) has out-lived its validity keeping in view the rules governing in service. Learned counsel submits that keeping in view the Rule 5 of the **Haryana Civil Services (Punishment & Appeal) Rules, 2016**, an employee can only be suspended for a period of 90 days and within the said period, disciplinary proceedings are to be initiated and in case, the same are not initiated, the suspension period can be

extended but by recording reasons in writing for the same. Whereas, in the present petition, after the expiry of 90 days, no charge-sheet has been served upon the petitioner, meaning thereby, no disciplinary proceedings have been initiated against the petitioner and nothing has come on record that for recording reasons, suspension period beyond 90 days has been extended and hence, the petitioner cannot be continued under suspension any further.

Perusal of the file reveals that vide order dated 18.10.2023, notice of motion as well as notice regarding stay was issued by this Court.

Learned State counsel submits that though no written statement has been filed but keeping in view the instructions which have been received on the basis of the record available with the department concerned from Mr. Rajbir Singh, Superintendent, no disciplinary proceedings have been initiated against the petitioner so far.

Learned State counsel further submits that though the State has a power to extend the suspension period beyond 90 days but for the same, due reasons have to be recorded and an appropriate order has to be passed but as per the instructions of the department, no such procedure has been followed as far for extending the suspension period of the petitioner beyond 90 days by recording any reasons.

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

Keeping in view the facts and circumstances of the present case, especially that no order extending the suspension period of the petitioner beyond 90 days has been passed by the department, which is necessary keeping in view the Rules governing in service, the petitioner cannot be allowed to remain under suspension.

The Rule 5 of the Haryana Civil Services (Punishment &

Appeal) Rules, 2016, is reproduced herein below:

“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 Haryana Civil Services (Punishm ent & Appeal) Rules, 2016 9 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.**— Where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.”*

A Bare perusal of the above reproduction would show that the suspension order is to be passed in contemplation of initiation of the disciplinary proceedings and the disciplinary proceedings are to be initiated within a period of 90 days from the date of suspension order but where no such disciplinary proceedings are initiated, only when the reasons are recorded in writing, the suspension can be extended beyond 90 days whereas in the present case, it is a conceded position that no disciplinary proceedings had been initiated against the petitioner within a period of 90 days of the suspension order and no extension has been sought for the suspension period by giving due reasons for the same. Hence, the petitioner cannot be allowed to remain under suspension in view of the Rule 5 of the **Haryana Civil Services (Punishment & Appeal) Rules, 2016.**

Hence, the respondents are directed to reinstate the petitioner

forthwith.

It is made clear that no observation is made with regard to initiation of the disciplinary proceedings against the petitioner for which the respondents will be free to pass an appropriate order in case they deem it appropriate.

Keeping in view the above facts and circumstances, the present petition stands allowed in above terms.

Pending civil miscellaneous application, if any, also stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

19.01.2024
Riya

Whether speaking/reasoned: Yes/~~No~~
Whether Reportable: ~~Yes~~/No