



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CWP-29261-2024

Date of decision : 28.10.2024

Rajesh Kumar

.....Petitioner

V/S

State of Punjab and others

....Respondent

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Nikhil Anand, Advocate for the petitioner.

Mr. Surya Kumar, A.A.G., Punjab.

NAMIT KUMAR, J. (ORAL)

1. The instant petition has been filed by the petitioner under Articles 226/227 of the Constitution of India, seeking a writ of mandamus, directing the respondents to consider the case of the petitioner sympathetically for revocation of suspension and alternative prayer has been made to direct the respondents to consider the representation dated 16.01.2024 (Annexure P-7) submitted by the petitioner in a time bound manner.

2. The brief facts of the case, as have been pleaded in the petition, are that the petitioner joined the Municipal Council, Kurali as Sewadar in the year 1998 and thereafter, he was promoted as Clerk in the year 2003 and as Junior Assistant in the year 2021. On 03.03.2023, the petitioner was arrested by a Team of Vigilance Bureau on the allegations that he was taking bribe of Rs.8,000/- from one Nirmal

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Singh s/o Ganja Singh in relation to issuance of some NOC to him. The raid was conducted by Vigilance Bureau on a complaint made by one Balkar Singh. Consequently, FIR No.11 dated 03.03.2023 under Section 7 of Prevention of Corruption Act, 1988 (as amended through PC (Amendment) Act, 2018) was registered against the petitioner at Police Station Vigilance Bureau, Mohali. After the arrest of the petitioner, he was placed under suspension vide order dated 06.03.2023. Thereafter, the petitioner was granted regular bail by learned Special Judge, Mohali on 10.04.2023 and he remained in custody from 03.03.2023 to 10.04.2023. It is the case of the petitioner that the challan has not been filed in the said case and the same is at investigation stage. It has further been averred that the petitioner is being paid 70% of his pay as subsistence allowance and he has made representations dated 25.04.2023, 19.06.2023, 18.10.2023 and 16.01.2024 requesting the respondents to revoke his suspension and allow him to rejoin his duties. However, the said representations have not been responded. It has also been averred that suspension of another employee namely Sukhdev Singh, who is also working as Junior Assistant and is involved in similar incident and was caught red-handed taking illegal gratification to the tune of Rs.12,000/- from some person, was revoked.

3. Attention is invited towards Rule 4 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred to as '1970 Rules') which deals with suspension and provides as under :-

“4. Suspension:

(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:

- (a) where a disciplinary proceeding against him is contemplated or is pending or*
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial;*

Provided where the order of suspension is made by an authority lower than appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which order was made.

(2) A government employee shall be deemed to have been placed under suspension by an order of appointing authority:

- (a) with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise for a period exceeding forty-eight hours.*
- (b) with effect from the date of his conviction if in the event of a conviction for an offence, he is sentence to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed, removed or compulsory retired consequent to such conviction.*

Explanation: The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(3) to (4) XXXXXXXX

(5)(a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.



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- (b) *Where a government employee is suspended or is deemed to have been suspended whether in connection with any disciplinary proceedings or otherwise, and any other disciplinary proceedings is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for the reasons to be recorded by him in writing, direct that the Government employee shall continue to be under suspension until the termination of all or any of such proceedings.*
- (c) *An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order by any authority to which that authority is subordinate.”*

4. Learned counsel for the petitioner submits that action of the respondents in not revoking the suspension order of the petitioner is totally illegal, arbitrary and discriminatory and he is liable to be reinstated in service during the pendency of the criminal trial as in similar case another employee namely Sukhdev Singh has been ordered to be reinstated in service.

5. Pursuant to receipt of advance copy of the petition, learned State counsel has put in appearance and vehemently opposed the claim of the petitioner made in the petition.

6. I have heard learned counsel for the parties and perused the record.

7. The facts are not in dispute that the petitioner, who was working as Junior Assistant, was arrested by Vigilance Bureau, Punjab



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on 03.03.2023, while he was taking bribe of Rs.8,000/- from one Nirmal Singh s/o Ganja Singh in relation to issuance of some NOC to him and FIR No.11 dated 03.03.2023 under Section 7 of Prevention of Corruption Act, 1988 (as amended through PC (Amendment) Act, 2018) was registered at Police Station Vigilance Bureau, Mohali against the petitioner. Thereafter, he was placed under Suspension vide order dated 06.03.2023 and he has been granted regular bail by the Court of learned Special Judge, Mohali on 10.04.2023 and the petitioner remained in custody from 03.03.2023 to 10.04.2023.

8. The only question which arises for determination before this Court is as to whether the petitioner has indefeasible right for reinstatement in service during the pendency of criminal trial. Before proceeding further, the facts recorded in the bail order dated 10.04.2023 are required to be stated and the same reads as under :-

“xx xx xx xx xx

5. *Facts of the case are that complainant Balkar Singh made statement to the vigilance bureau to the effect that he had entered into an agreement to sell with Nirmal Singh regarding plot measuring 113 sq. yards. Nirmal Singh had asked him to obtain NOC and site plan in respect of the plot from Municipal Council, Kurali. He after preparing the file submitted in the office of M.C. Kurali and also deposited the requisite fee. The site plan was sanctioned but NOC was to be obtained for the purpose of registration of sale deed. He met Rajesh Kumar Clerk in the said office and requested him to issue NOC. Rajesh Kumar demanded Rs.10,000/- for issuance of NOC but on request of the complainant, Rajesh Kumar agreed to receive Rs.8000/-. The complainant was not ready to give bribe and made*



false promise to Rajesh Kumar to give amount of Rs.8000/-. He also recorded conversation which took place him and said Rajesh Kumar. Accordingly, he produced the amount of Rs.8000/- before the vigilance bureau and requested to take action against Rajesh Kumar. After completing all the formalities, trap was laid and accused was apprehended while accepting bribe of Rs.8000/- from the complainant. Accordingly, he was arrested in the present case on 3.3.2023.

6. xx xx xx xx xx

7. *Perusal of the police record reveals that as per the allegations the bail applicant-accused was caught red handed while accepting illegal gratification of Rs.8,000/- from the complainant. Recovery of tainted currency has already been effected from him. xx xx xx xx xx xx”*

9. A perusal of the abovesaid facts revealed that the petitioner was arrested red-handed, while taking a bribe of Rs.8,000/- and criminal trial in FIR No.11 dated 03.03.2023 is still at the investigation stage. Rule 4 of 1970 Rules confers power upon the appointing or any other authority to place an employee under suspension where a disciplinary proceedings against him is contemplated or is pending or where a case against him in respect of criminal offence is under investigation, inquiry or trial. The competent authority has taken a decision to keep the petitioner under suspension. As per Rule 5(a), the order of suspension will continue to remain in force until it is modified or revoked by the competent authority.

10. As per settled law, the suspension is not a punishment. Since the petitioner is getting admissible amount of subsistence



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allowance as per the relevant rules, no prejudice has been caused to him. Further, this Court will not sit upon the order of the competent authority to revoke the suspension of the petitioner at this stage when the criminal trial is under investigation.

11. So far as the plea of the petitioner that action of the respondents in not revoking the suspension of the petitioner is discriminatory, as in para 8 of the petition, it has been averred by the petitioner that in a similar incident, one Sukhdev Singh, who was caught red-handed taking illegal gratification of Rs.12,000/- from some person and he was also arrested in an FIR and thereafter, after grant of regular bail, he has been reinstated in service. No document to support the said contention has been placed on record except the bald statement of the petitioner. Even otherwise, the parity cannot be claimed in a negative manner.

12. In view of the above, finding no merits in the present petition, the same is dismissed accordingly.

28.10.2024

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**(NAMIT KUMAR)
JUDGE**

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