

2024:PHHC:017633-DB
CWP-27329-2023
Date of Decision: 08.02.2024

...Petitioner

...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE HARSH BUNGER**

1. The petitioner is an Inspector in the Office of the District Food and Supplies Controller, Rohtak.

2. An FIR No.740 dated 23.12.2018, for offence under Sections 419, 420, 511, 201 and 120-B of the Indian Penal Code, 1860, was registered against the petitioner at Police Station Mahendergarh, wherein the allegations were levelled of the petitioner supplying unauthorized material during an examination being conducted by the Haryana Government for the post of Constable. After a charge sheet was filed against the petitioner, he was suspended vide order dated 04.09.2023. Faced with suspension, the petitioner challenged the *vires* of the Haryana Civil Services (General) Rules, 2016, (hereinafter referred to as ‘the Rules, 2016’), which provides that as soon a criminal charge is framed by the Court against a government employee in a case involving moral turpitude, suspension shall follow automatically.

3. In the present case, charges were framed against the petitioner for the aforesaid offences vide order of the learned trial Court dated

01.03.2023. Learned counsel for the petitioner submits that the provision is arbitrary and unconstitutional and does not leave any room for the appointing authority to take an independent decision with regard to suspension. Learned counsel submits that framing of charge does not finally indict the accused and he is entitled for a fair trial as he may be acquitted ultimately, therefore, the automatic suspension provision provided under Rule 97 (1) is *ultra-vires* and violative of Articles 14 and 21 of the Constitution of India. Learned counsel also submits that there is no such similar provision available either in the Central Services or any other Services and it is only the State of Haryana which has made such a provision. Learned counsel further submits that the automatic suspension could be only with reference to cases where a person is under arrest or detention which is provided under Rule 96 of the Rules, 2016, thus, there was no occasion to suspend the petitioner merely because the charges have been framed against him by the learned trial Court. In support of his submissions, learned counsel relies upon the judgments of the Hon'ble Supreme Court in the case State of Orissa vs. Bimal Kumar Mohanty Civil Appeal Nos.911-1 of 1994, Union of India and another vs. Ashok Kumar Aggarwal Civil Appeal No.9454 of 2013 and Ajay Kumar Choudhary vs. Union of India through its Secretary and another Civil Appeal No.1912 of 2015.

4. We have considered the submissions.

5. This Court find that the petitioner was suspended by an order dated 04.09.2024 and the same would become automatic from the date, the learned trial Court framed charges against the petitioner i.e. 01.03.2023 in terms of Rule 97 (1) of the Rules, 2016, which reads as under:-

“Suspension in case of criminal charges are pending:-

(1) A Government employee against whom a criminal charge is pending may, at the discretion of the competent authority, be placed under suspension by the issue of a specific order to this effect during the periods when:-

(a) he is not actually detained in custody or imprisoned;

(b) detained but released on bail; or

(c) not detained due to anticipatory bail,

if the charge made against him is connected with his position as Government employee or is likely to embarrass him in the discharge of his duties as such or involves moral turpitude. However, as soon as a criminal charge is framed by a court against a Government employee in a case involving moral turpitude, suspension shall follow automatically.”

6. It is settled law that suspension is not a punishment and is rather a temporary release from actual duty of a government employee against whom there may be allegations of such a nature which the employer may feel sufficient to keep away the employee from active duty. The concerned employee has been provided subsistence allowance during the period of suspension. Thus, it is not a case of punishment. It is true that suspension results in lowering down the image of government employee, however, that cannot be said to be a stigma as the government employee is required to be kept away as he may cause hindrance in the regular proceedings being conducted against him. Also in cases where there are serious allegations in a criminal case, it becomes necessary to maintain the atmosphere of the

department that a government employee should be kept away from the regular duty.

7. The State Government has in consonance with the aforesaid provided to keep a person away against whom there are allegations of committing offences involving moral turpitude. A look at Rule 3(3) of the All India Services (Discipline and Appeal) Rules, 1969, reveal that the Central Government has also made provisions which reads as under:-

3. Suspension:-

xx xx xx

(3) A member of the Service in respect of, or against, whom an investigation, inquiry or trial relating to a criminal charge is pending may, at the discretion of the Government¹³ be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a [member of the Service] or is likely to embarrass him in the discharge of his duties or involves moral turpitude.”

8. The only difference is that the Central Government has left it for the concerned Officers to take a decision while the Haryana Government has provided in the rules itself to automatic suspension of an employee against whom the charges have been finally framed for committing offence of moral turpitude. Making such a provision in the rule itself would not make the same illegal or arbitrary and in fact it maintains the same standards for all and leaves no discretion for the concerned Officers to allow some employees against whom there are serious charges of committing moral turpitude to continue working while the rest are kept under suspension. Such a rule therefore, cannot be said to be discriminatory nor can it be said to be violative of Article 14 or 21 of the Constitution of India as it cannot be said that the person has been punished by keeping him under suspension. The

judgments cited by learned counsel for the petitioner would be of no avail as all relate to different facts where there was a pending inquiry, contemplated inquiry or pending investigation and the appointing authority was given discretion to suspend an employee. However, in cases where charges have been finally framed by a Court of law after investigation is over, it would be all the more appropriate to keep a person under suspension. Therefore, the rule cannot be said to be *ultra vires*.

9. In view of the above, we do not find any merit in the writ petition and the same is accordingly dismissed.

10. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(HARSH BUNGER)
JUDGE

08.02.2024
rajesh

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| 1. Whether speaking/reasoned? | : | Yes/No |
| 2. Whether reportable? | : | Yes/No |