

Dr. Dalbir Singh Vs. State of U.P. and Others

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Court : Allahabad

Decided On : May-22-2001

Reported in : [2001(90)FLR482]; 2001LabIC3508; (2001)3UPLBEC2216

Judge : O.P. Garg and ;Onkareshwar Bhatt, JJ.

Acts : Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1991 - Rule 4; Fundamental Rules - Rule 53; General Clauses Act - Sections 16; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 30578 of 1990

Appellant : Dr. Dalbir Singh

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : M.C. Agrawal, ;Bharat Bhushan Paul and ;A.P.N. Giri, Advs.

Disposition : Writ Petition allowed

Judgement :

O.P. Garg and Onkareshwar Bhatt, JJ.

1. Heard Dr. Balbir Singh-petitioner who appeared, in person.

2. It is sad and bad that despite sufficient opportunities, no counter-affidavit has been filed in this case. The petitioner has filed a supplementary affidavit. which remains uncontroverted as no supplementary counter-affidavit has been filed. Even no one is present to oppose this petition on behalf of the respondents, including. State of U.P.

3. The petitioner, a doctor belonging to Provincial Health Service of the State, was posted at Agra in 1985. According to the petitioner, Dr. M.K. Ansari, who was the then Chief Medical Officer. Agra wanted to post his own man in place of the petitioner and therefore, at his behest, the petitioner was transferred from Agra to Mainpuri. On the representation of the petitioner, his transfer order from Agra to Mainpuri was cancelled. However, Dr. M.K. Ansari. Chief Medical Officer relieved the petitioner from Pinahat. Agra and also withdrew the financial powers of the petitioner. The petitioner, on account of order of cancellation of his transfer order, passed by higher authority, did not hand over the charge and continued to function as such at Agra. Ultimately, the orders passed by Director General Medical Health. Lucknow, dated 3.7.1987 and 25.7.1987 In favour of the petitioner were complied with by Dr. K. M. Ansari on 16.11.1987 but he did not pass consequential order regarding handing over of charge and payment of back wages. Against this attitude of Dr. Ansari, wife of the petitioner made representations to the higher authorities. On her representation. Joint Director (Personnel) passed an order on 21.1.1988 directing Chief Medical Officer, Agra to comply with the order dated 25.7.1987. He also directed the Chief Medical Officer to inform as to why the aforesaid orders were not complied with for such a long period. It is in these circumstances that Dr. Ansari. Chief Medical Officer had to issue order allowing the petitioner to take charge at Pinahat. Agra and to draw his arrears of salary. It is alleged that at the behest of Dr. Ansari, Chief Medical Officer, Agra, false and concocted complaints were filed against the petitioner and an inquiry into the matter was entrusted to one Dr. B.D. Mehrotra, Deputy Chief Medical Officer. Agra. On inquiry, the complaints were found to be baseless and report to this effect was submitted by Dr. Mehrotra. In the meantime. Dr. Ansari was promoted to the post of Additional Director and he was posted at Agra. In his place, one Sri Daulat Ram took over as Chief Medical Officer, and according to the petitioner. Dr. Daulat Ram was prejudiced and biased against the petitioner for . certain personal

reasons. On account of connivance of Dr. Daulat Ram and Dr. Ansari, false case was made out against the petitioner and he was placed under suspension on 26.4.1990 on the charges of dereliction of duty embezzlement of Government fund financial irregularities : Indiscipline false vesectomy, and misuse of Government vehicle. At the relevant time, the petitioner was posted at Almora. The petitioner denied all the allegations levelled against him. According to the petitioner. Secretary, Medical Health, Government of U.P. being not his appointing authority is not competent authority to pass the Impugned suspension order. Besides this, the petitioner has challenged the impugned order of suspension on variety of grounds. In the supplementary affidavit, the petitioner has stated that till date neither any inquiry has been conducted nor subsistence allowance is being paid to him.

4. There can be no doubt about the fact that an employer has an innate and unqualified right to place an employee under suspension in accordance with the rules, in contemplation of departmental inquiry. This right has received statutory recognition in Service Rules as well as various Government orders. During the period of suspension, the relationship of master and servant does not come to an end. A suspended employee continues to be a member of the service though he is not allowed to work and during the period of suspension, he is paid an amount which is Initially half of the salary which the suspended employee was drawing prior to the Issuance of the suspension order. This reduced amount is known as 'subsistence allowance'. The subsistence allowance is paid in accordance with the provisions of Financial Hand Book. Volume II. Parts II to IV. If the employee remains under suspension for a period of more than six months, the subsistence allowance is enhanced upto 3/4th of the salary. It is the bounden duty of the concerned authorities to pay subsistence allowance to the delinquent official/officer during the period of suspension. Hon'ble Supreme Court in a number of decisions has held that non-payment of subsistence allowance to the employee under suspension, amounts to administering slow poison to him. Subsistence allowance means payment of salary at the reduced rates. If the salary at the reduced rate is not given, in that event, the delinquent employee, without any means of sustenance, will starve to death. These observations came to be made In a recent decision of Apex Court In Capt. M. Paul Anthony v. Bharat Cold Mines

Ltd., and another, 1999 (82) FLR 627. In view of the firm law laid down by the Apex Court, the appointing authority is not justified in depriving the petitioner to receive subsistence allowance. The Apex Court in Capt. M. Paul Anthony's case (supra) has deprecated the tendency of the departmental authorities in suspending the Government servants on flimsy and trivial charges on their whims and fancies, just for nothing. The following observation of the Apex Court is relevant :

'Exercise of right to suspend an employee may be justified on facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by 'suspension syndrome' and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension.'

If a person is placed under suspension, it is neither in the public interest nor in the interest of the employer concerned. In view of his remaining under suspension, no Government work can be taken from him and the department becomes handicapped by depriving itself to take any official work from the suspended employee. On the other hand, the order of suspension visits a Government servant with evil consequences and not only he but all his family members are adversely affected by such order. One of the most painful effect of putting an employee under suspension is that the delinquent employee receives salary at reduced rates, which is hardly sufficient to make both ends meet in these days of sparkling prices and inflation. In Capt. M. Paul Anthony's case (supra), learned counsel for the appellant in that case contended that during the period of suspension, the respondents had not paid the appellant subsistence allowance with the result that he could not undertake a Journey from his home-town in Kerala to Kolar Gold Fields in Karnataka where the departmental proceedings were being held. This plea was not accepted by the High Court on the ground that it was not raised before the Inquiry Officer and it was not pleaded before him that it was on account of nonpayment of subsistence allowance that the appellant could not go to Kolar Gold Fields for participating in the disciplinary proceedings. It was in these circumstances that the Apex Court held that to place an employee under suspension is an unqualified right of the employer. This right is conceded to the employer in service jurisprudence everywhere. It has even received statutory

recognition under service rules framed by various authorities, including the Government of India and the State Governments. Even under the General Clauses Act, this right is conceded to the employer by Section 16 which, inter alia, provides that power to appoint includes power to suspend or dismiss. However, the order of suspension does not put an end to an employee's service and he continues to be a member of the service though he is not permitted to work and is paid only subsistence allowance which is less than his salary. Service Rules also usually provide for payment of salary at a reduced rate during the period of suspension (Fundamental Rule 53). This constitutes the 'subsistence allowance'. If there is no provision in the rules applicable to a particular class of service for payment of salary at a reduced rate, the employer would be liable to pay full salary even during the period of suspension. Similarly, in *State of Maharashtra v. Chandrabhan Tale*, (1983) 3 SCO 387, the Apex Court held that the right of the civil servant under suspension to get the normal subsistence allowance pending consideration of his appeal against his conviction should not depend upon the chance of his being released on bail and not being lodged in prison on conviction by the trial court.

5. This Court in Civil Misc. Writ No. 51928 of 2000, *Constable CP 117, Yad Ali and 2 others v. Superintendent of Police, Chandraul and another*, has laid down the following guidelines to be followed by the departmental authorities before placing a delinquent employee under suspension :

1. It is one of the Implied terms of relationship between employer and employee that the employer is entitled to exercise disciplinary control over the employees. Power of disciplinary control is an indicia of the relationship of 'master and servant',
2. The order of suspension comes within the sweep of disciplinary action. To place an employee under suspension is an unqualified right of the employer.
3. In the absence of specific powers, the employer can always forbid the employee and. In fact, suspend him as an interim measure, but he would have to pay the wages during the period of Interim suspension (which is popularly known as subsistence allowance).

4. the Service Rules usually provide that an employee may be placed under suspension

(i) where any disciplinary proceeding against him is contemplated or is pending, and

(ii) where a case of a criminal nature against him is under investigation, Inquiry or trial.

5. The order of suspension may be passed by the appointing or disciplinary authority, (who may be an authority Inferior in rank to the appointing authority) provided there is a specific rule or delegation or authorization in favour of the latter.

6. The order of suspension does not put an end to the employee's service and he continues to be a member of the service though he is not permitted to work and is paid only subsistence allowance which is less than the normal salary or emoluments.

7. The order of suspension, no doubt, affects an employee injuriously. An interim order of suspension visits an employee with serious evil consequences. He is not only forbidden from performing his duties but is paid salary at considerable reduced rates which is hardly sufficient to meet both ends.

8. In view of the serious repercussions on the career and the livelihood of the suspended employee, it is, therefore, necessary that the order of suspension should not be passed at the fancy, frenzy or caprice of the authority concerned, meaning thereby, an employee should not be suspended Just for nothing. A note of caution is sounded that the authority concerned should not be afflicted by 'suspension syndrome'.

9. Where the disciplinary authority seeks to suspend an employee pending inquiry or contemplated inquiry into grave charges of misconduct or serious acts of commission or omission, the order of suspension would be passed after taking into consideration the gravity of the misconduct thought to be inquired into and the nature, of the evidence placed before the disciplinary authority and on application

of mind by such authority. Even in a case of Interim suspension, the disciplinary authority should apply its mind and pass an order of suspension only when it is necessitated taking into consideration the gravity of the allegations and to maintain discipline in the department. The disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be an administrative routine and in every case of Inquiry, automatic order of suspension is not to follow.

10. Normally suspension should not be resorted to unless the allegations against the Government servant are so serious that in the event of their being established may ordinarily warrant major penalty. This has now come to be incorporated in the shape of a proviso to Rule 4 of the Uttar Pradesh Government Servant (Disciplinary and Appeal) Rules, 1991 published in the U.P. Gazette (Extraordinary) dated 9th June, 1999.

11. The preliminary inquiry by its nature implies that it is a sort of informal probe or to say, a fact finding exercise into the allegations made against the delinquent employee.

12. In order to ascertain the true facts and to gauge the veracity of the complaint or the allegations made against an employee, an order of suspension is passed after a preliminary Inquiry. The order of preliminary inquiry is made with a view to ascertain the correct facts and unless the correct facts are made available, it would be unwise to pass an order of suspension. The disciplinary authority is required to wait for the outcome of the preliminary inquiry and after the receipt of the report of such inquiry, if it is found that the allegations are so serious that in order to maintain discipline, the delinquent employee is required to be placed under suspension, then only an order of suspension should, in the ordinary course, be passed.

13. It is a rule of prudence that the disciplinary authority should await the result of the preliminary inquiry before passing an order of suspension but it is not an inflexible rule of law. Since suspension is not a punishment but is only one way of forbidding from disobeying to discharge of duties by an employee of the office or post held by him, an order of suspension, even without a preliminary Inquiry, may

be passed to refrain the delinquent employee to avail further opportunity to perpetrate the alleged misconduct or to remove the Impression among the members of service that dereliction of duty would pay fruit and the offending employee would get away even pending Inquiry without any indictment. There may be cases where an employee may be suspended to prevent an opportunity to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc.

14. The discretion of the disciplinary authority to suspend an employee pending inquiry or In contemplation of inquiry cannot be taken away by prescribing a straitjacket formula. Each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact which creates in the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. The suspension must be a step in aid to the ultimate result of the Investigation or inquiry.

15. Even without a preliminary inquiry, if the disciplinary authority feels satisfied or convinced that the accusations against a delinquent employee are trustworthy, substantial and serious enough and with a view to maintain discipline, it is necessary to suspend him, he shall brook no delay to pass an order of interim suspension in public Interest.

16. The decision in *Tejpal Singh v. Deputy Inspector General of Police, P.A.C., Agra and another*, 1999 (82) FLR 262, cannot be stretched to the unreasonable length that without receipt of the preliminary inquiry report, an employee in no circumstance can be suspended in spite of the fact that the expression 'inquiry' occurring in the Rules of 1991 means a regular departmental inquiry.

17. The order of interim suspension, which is, no doubt, discretionary in nature and is passed in diverse and variegated circumstances, is open to judicial review under Article 226 of the Constitution and can be tested on grounds of bad faith, mala fide (personal or legal) or irrationality, unreasonableness or non-application of mind.

18. The Court or the Tribunal must consider each case on its own facts and no general rule can be laid in that behalf.

19. Even in those cases where preliminary inquiry has been ordered, it would not necessarily mean that such an inquiry has been ordered with a view to collect prima facie material against the delinquent employee. In a case where the preliminary inquiry has been ordered, the order of suspension cannot be treated to have vitiated merely on the ground that the competent authority has not waited for the result of the preliminary inquiry. The preliminary inquiry may be ordered simultaneously with the order of suspension with a view to ascertain whether on the facts and in the circumstances and the nature of the allegations against a delinquent employee the procedure prescribed for inflicting the major punishment or the minor punishment is to be adopted.

20. The crux of the matter is that a Government servant can be placed under suspension by the competent authority after objective consideration of the allegations, the material available and the telling circumstances requiring suspension in public interest, even without a preliminary inquiry. If a preliminary inquiry has been ordered simultaneously with the order of suspension, it shall not stand vitiated, and in all the cases it is not necessary for the competent authority to wait for the result of the preliminary inquiry.

6. In the instant case, the petitioner was placed under suspension as far back as in 1990. More than a decade has gone by. neither any inquiry has been conducted nor any subsistence allowance has been paid to the petitioner. It has come on record that the petitioner has not been paid a single penny as subsistence allowance right from the date of order of suspension, i.e.. 26.4.1990 till date. Non-payment of subsistence allowance obviously vitiates the order of suspension. It is further stated that in spite of the fact that the petitioner has submitted a reply to the charge-sheet, the departmental inquiry has not been concluded without any justifiable reason even though more than a decade has elapsed.

7. In the conspectus of the above facts, it is a fit case in which Intervention of this Court under Article 226 of the [Constitution of India](#) is warranted.

8. In the result, the writ petition is allowed to the extent that the order of suspension dated 26.4.1990. Annexure-25 to the writ petition shall stand quashed. The respondents are directed to forthwith reinstate the petitioner in service and to pay to him the total amount of subsistence allowance for the period 26-4.1990 till the date of reinstatement within a period of two months from the date of reinstatement.

9. It is made clear that this order shall not be construed to mean that the appointing authority shall have no power to suspend the petitioner again if on objective consideration as per guidelines given above, it may be necessary. It is further directed that the departmental inquiry initiated against the petitioner shall also be brought to a logical conclusion within a period of six months subject to active co-operation and regular participation of the petitioner. The question of payment of salary to the petitioner for the period 26.4.1990 till the date of reinstatement shall abide the result of inquiry.

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