

Court No. - 16

Case :- WRIT - A No. - 20262 of 2018

Petitioner :- Deepika Shukla

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Vijay Kumar Singh, Hritudhwaj Pratap Sahi, Manoj Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Ajay Bhanot, J.

1. Petitioner is posted as Executive Officer, Nagar Panchayat, District Fatehpur. The petitioner was suspended by order dated 21.8.2018 passed by respondent no.2.
2. The petitioner was suspended in contemplation of a departmental enquiry. The suspension order discloses certain acts of misconduct committed by the petitioner.
3. The petitioner is aggrieved by the order of suspension dated 21.08.2018. The petitioner has assailed the suspension order dated 21.08.2018 in the instant writ petition.
4. Subsequently a charge-sheet was also drawn up wherein specific charges of misconduct are laid out against the petitioner. The charge-sheet is appended as annexure 14 to the writ petition. However no date is recorded in the charge-sheet.
5. Sri J. N. Maurya, learned Additional Chief Standing Counsel-I submits that the charge-sheet was served upon the petitioner on 28.9.2018. This fact has not been disputed by the petitioner.
6. Shri Vijay Singh, learned counsel for the petitioner submits that some of the charges relate to a period when the petitioner was not posted as Executive Officer, Nagar Palika Parishad, Sikandra Rao, District Hathras. Learned counsel for the petitioner contends that petitioner is currently posted as

Executive Officer, Nagar Panchayat, Fatehpur and cannot influence the course of an enquiry in district Hathras. Consequently there was no justification to pass the order of suspension.

7. Sri J. N. Maurya, learned Chief Standing Counsel-I has defended the order of suspension.

8. Heard learned counsel for the parties.

9. A perusal of the charge-sheet prima facie discloses that the charges laid out against the petitioner relate to commission of various acts of misconduct by the petitioner while discharging of duties as Executive Officer, Nagar Palika Parishad, Sikandra Rao, District Hathras.

10. The purpose of suspension of an employee in service jurisprudence is two fold. The traditional and dominant purpose of suspension is to aid and assist a disciplinary enquiry against an employee. Suspension in such cases is not a punishment. The second known purpose of suspension is to impose it as a punishment.

11. Law on suspension has been settled by high judicial authority. In the light of consistent judicial pronouncements, principles of the law on suspension can be stated.

12. When suspension is made in contemplation of a disciplinary enquiry, certain prerequisites have to be satisfied. An enquiry should be contemplated or underway into charges of misconduct. The charges of misconduct, if proved, should be serious enough to warrant a major penalty.

13. The order of suspension should be passed after due and independent application of mind. The suspension should not be made as a matter of routine resulting from a suspension syndrome.

14. At the stage of suspension the veracity of the charges cannot be ascertained and the merits of the defence cannot be examined. However, the order of suspension should disclose a prima facie act of misconduct.

15. Suspension in contemplation of an enquiry, is made to aid the process of enquiry. Suspension takes out the delinquent employee from his domain of influence. This ensures that the enquiry is independent and fair.

16. Suspension also takes off the charged employee from his regular duties. This enables the employee to join the enquiry proceedings and give fulsome cooperation to the enquiry officer. It also gives him adequate time to prepare his defence. Continuing the employee on regular duties, with an enquiry on foot, would not be in institutional interests either. The official work would suffer and the enquiry proceedings would be impeded. The suspension in such cases not a punishment.

17. It would now be apposite to reinforce the legal narrative, with some judicial authority in point.

18. The Bombay High Court in the case of ***Machhindra Pandurang Chavan Vs. State of Maharashtra and ors.*** reported in 1989 (2) LLJ 353 held thus :-

"4. It is by now well settled that suspension is of two kinds i.e. as a punishment or as in interim measure pending disposal of the enquiry or pending criminal proceedings. On general principles Government like any other employer has right to suspend a public servant in one of two ways. It may be suspension of public servant pending departmental enquiry or pending criminal proceedings which is called as interim suspension or the Government may proceed to hold departmental enquiry and after his being guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. (See R.P. Kapur V. Union of India and

another). (1964- II-LLJ-164) and *B.R. Patel V. State of Maharashtra*, (1968-II-LLJ-700) as also *P.L. Shah V. Union of India* and ords. (1989-I-LLJ-302).

19. The law laid down by the Hon'ble Supreme Court in the case of ***State of Orissa Vs. Bimal Kumar Mohanty*** reported at **1994(4) SCC 126**, offers reliable guidance and is applicable to the facts of this case. The relevant extracts of the judgment are reproduced below :-

"13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or 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 as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him 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 fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer 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. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."

20. The facts may now be understood in the light of the law discussed above.

21. The charge-sheet discloses that the petitioner is charged with collusion with the contractors, substandard execution of civil works and suboptimal cleaning of the public drainage system. The acts of commission and omission ascribed to the petitioner affects the public exchequer and public health at large. The allegation of the collusion of officials with private contractors for personal enrichment at the cost of public exchequer and to the detriment of public interest, reflects a larger malaise in public administration. The conflict of public duty with private interest, of private enrichment from public assets is the bane of public administration today. This menace to public interest can be purged only if such charges are

investigated with dispatch and independence. In the light of these facts, an enquiry into the veracity of the charges cannot be delayed or declined by the disciplinary authority.

22. The charges of misconduct against the petitioner, as disclosed in the suspension order are grave. If the charges are proven in the departmental enquiry, they will warrant a major penalty. The disciplinary authority had duly applied its mind to the gravity of charges and the necessity of an enquiry. Even prior to passing the order of suspension, the disciplinary authority had given deliberate thought to the issue.

23. Admittedly a disciplinary enquiry has been instituted against the petitioner and an enquiry officer has been appointed. The charge-sheet has been served upon the petitioner and the investigation of the charges is underway.

24. The petitioner is currently posted as Executive officer, Nagar Panchayat, District Fatehpur. The enquiry is being held at District Hathras. In case the petitioner continues to function as Executive Officer, Nagar Panchayat, Fatehpur, the enquiry proceeding at Hathras would be impeded. The petitioner needs to be in District Hathras or in the vicinity thereof to ensure that the enquiry proceedings are conducted without delay or impediment. The suspension order of the petitioner subserves this purpose. The impugned order of suspension has been passed to assist the enquiry and ensure its speedy conclusion. The order of suspension does not have the attributes of a penal order.

25. The prerequisites of a valid order of suspension as provided in the service rules and as required by law laid down by the courts are satisfied.

26. In such view of the matter the order of suspension suffers from no infirmity and is lawful and is valid. The prayer in the instant writ petition for quashment of the order dated 21.8.2018

is rejected.

27. The respondents authorities are directed to complete the enquiry within a period of three months from the date of service of a certified copy of this order.

28. The writ petition is disposed of finally.

29. Let a copy of this order be supplied to Sri J. N. Maurya, learned Additional Chief Standing Counsel-I for compliance.

Order Date :- 3.10.2018/Pramod