



2026:AHC:59522

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 3481 of 2026

Vipin Singh

.....Petitioner(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Petitioner(s)	:	Kailash Prakash Pandey
Counsel for Respondent(s)	:	C.S.C.

Court No. - 6

HON'BLE PRAKASH PADIA, J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State respondents.

2. The challenge in the instant writ petition is to an order of suspension dated 10th February, 2026. Since the impugned order is assailed only on a legal ground, learned counsel for parties have consented to the disposal of the present petition without exchange of affidavits.

3. The order of suspension is assailed principally on the ground that although the power to suspend an employee inheres in the respondent to be exercised in contemplation of disciplinary proceedings as provided under the 1991 Rules, the communication appearing at page-37 of the paper book dated 14.02.2026 establishes that the power to suspend has been exercised while a preliminary enquiry is being undertaken. According to the petitioner, the aforesaid communication clearly establishes that the impugned order represents a colorable exercise of power without satisfaction having been recorded on the issue of a regular departmental enquiry being necessitated.

4. Undisputedly the law with respect to the ambit of the power to suspend under the 1991 Rules stands settled in light of the judgment rendered by a learned Judge of the Court in **Sachchida Nand Tripathi v. State of U.P. And 2 Others [Writ A No. 69308 of 2013]**. Dealing with an identical question the learned Judge in the case of Sachchida Nand Tripathi held thus:-

"11. On this aspect, I am fortified by the observations made by Full Bench

in Raj Veer Singh (supra). While answering question (b), the Court said that word "inquiry" under the Rules cannot include a preliminary enquiry and it means a regular departmental enquiry as held by Larger Bench in Jay Singh Dixit (supra) and question no. (b) was answered accordingly. However, while further considering question no. (b) and (c), the Court noticed Larger Bench decision and observed that whether a preliminary enquiry has been conducted or not, or, if conducted, but is not complete, that by itself would not vitiate an order of suspension inasmuch as in order to make an order of suspension valid, what is required is that the competent authority has satisfied itself on objective consideration of material that a regular departmental enquiry is contemplated and if it is already pending, the question of preliminary enquiry would not arise at all. This is evident from what has been said in para 43 and 46 of the judgment reproduced as under:

"43. The answer No.1 by the Full Bench is to the effect that Rule 17(1)(a) of the 1991 Rules does not prohibit passing of suspension order during pendency of preliminary inquiry. The five Judges Larger Bench in State of U.P. vs. Jai Dingh Dixit case (supra) had considered the question in context of Rule 49-A of the C.C.A. Rules, which is a pari materia rule. As notice above, the three Judges Full Bench in State of U.P. vs. Jawahar Lal Bhargava (supra) has taken the view that the occasion for passing a suspension order shall arise only when a firm decision is taken to hold an inquiry and at any earlier point of time the power of suspension cannot be exercised. The aforesaid view of the three Judges Full Bench in State of U.P. vs. Jawahar Lal Bhargava (supra) was disapproved by the Full Bench. As noticed above, the rationale of three Judges judgment in State of U.P. vs. Jawahar Lal Bhargava (supra) was that till a preliminary inquiry is not completed, no firm decision can be taken by the appointing authority for suspension. The five Judges Larger Bench in paragraph 37, while considering the question as to when departmental inquiry can be said to have been contemplated, has laid down that a departmental inquiry is contemplated when on objective consideration of the material the appointing authority considers the case as one which would lead to a departmental, inquiry, irrespective of whether any preliminary inquiry, summary or detailed, has or has not been made or if made, is not complete. The above ratio of the Full Bench clearly lays down that the

fact that preliminary inquiry has, or has not been made or if made, is not complete is not relevant, relevant is objective consideration of the materials by the appointing authority. The ratio of the five Judges Larger Bench in State of U.P. vs. Jai Singh Dixit still holds good and in view of the above ratio, the answer given by the Full Bench in Shahroj Anwar Khan's case (supra) is in accord with the above ratio. The answer No.1 of the Full Bench in Shahroj Anwar Khan's case (supra) lays down that there is no prohibition of passing a suspension order during pendency of preliminary inquiry. However, whether a suspension order passed during pendency of preliminary inquiry is valid or not is another question which has to be answered according to the test as laid down by the Larger Bench in State of U.P. vs. Jai Singh Dixit (supra) i.e. when on objective consideration of the materials the appointing authority considers the case as one which would lead to a departmental inquiry. Thus the answer No.1 given by the Full Bench in Shahroj Anwar Khan's case laying down that there is no prohibition of passing a suspension order during pendency of preliminary inquiry, is in accord with the ratio of five Judges Larger Bench in State of U.P. vs. Jai Singh Dixit case (supra) as noted in paragraph 37 of the judgment. We, however, add that the question that a suspension order passed during pendency of inquiry is valid or not, is a separate question, which may be considered in the light of the ratio of five Judges Larger Bench in the case of State of U.P. vs. Jai Singh Dixit. As noticed above, in the event a suspension order does not satisfy the test laid down by the five Judge Larger Bench in paragraph 99, i.e. there is no objective consideration by the appointing authority on the materials that a formal department inquiry is expected, the suspension can be quashed. Hon'ble Satish Chandra, J. giving concurring judgment in State of U.P. vs. Jai Singh Dixit (supra) has laid down in paragraph 72 that existence of power which should not be confused with its abuses. The power of suspension may be vested with the appointing authority during pendency of the preliminary inquiry but whether the power has been exercised validly is another question which had to be separately looked into in the light of the ratio of five Judges Larger Bench in State of U.P. vs. Jai Singh Dixit case. The five Judges Larger Bench in paragraph 72 of the judgment laid down following:-

"72. The existence of power which should not be confused with its abuses.

In case of abuse, the particular exercise of the power will be bad and will be quashed. But that has no bearing on the question of law as to when, on a proper construction of the Rule, does the power arise."

"46. The view taken by the Division Bench in Kripa Shanker Prasad's case (supra) that suspension could not have been ordered while directing preliminary inquiry is not in accord with the ratio of five Judges Larger Bench in State of U.P. vs. Jai Singh Dixit case (supra) and thus no exception can be taken to answer No.2 given by the Full Bench in Shahroj Anwar Khan's case (supra). As observed above, while considering challenge to a suspension order passed during pendency of preliminary/fact finding inquiry, the test to be applied in examining the correctness or otherwise of the suspension order is as to whether on objective consideration of the materials the appointing authority considers the case as one which would lead to a departmental inquiry, as laid down by the five Judges Larger Bench in State of U.P. vs. Jail Singh Dixit case. The issues having already covered by the five Judges Larger Bench, the Question No.(b) needs no reference to the Larger Bench."

12. The Court also said, on a challenge that the order of suspension has been passed in contemplation or pendency of a preliminary enquiry and not in a contemplation of departmental enquiry, it would be for the State Government to justify by placing such material on record, as necessary, to show that irrespective of preliminary enquiry, the authority concerned was satisfied that the suspension was warranted in the facts of the case. Para 47 of the judgment in Raj Veer Singh (supra) reads as under:

"47. Whether, while directing preliminary inquiry, the power to suspend has to be exercised on objective consideration of material on record of each case and therefore it is for the State Government on a challenge being made to an order of suspension in contemplation of an inquiry to justify by such material on record that irrespective of preliminary inquiry the authority was satisfied that suspension was warranted in the facts of the case."

13. The Court, in absence of any further material, would be justified in drawing an inference that the order of suspension containing endorsement in itself for directing a preliminary enquiry and to submit

preliminary report, is nothing but an order of suspension in contemplation or pendency of a preliminary enquiry only, and, there is no material with the competent authority showing objective consideration about regular departmental enquiry. In the order, where factum of contemplation of enquiry is mentioned, simultaneously, with conduct of a preliminary enquiry, unless the objective consideration on the part of respondent-competent authority is shown by appropriate pleading(s) and material, the Court may draw an inference that there is no objective consideration on the part of competent authority and order of suspension has been passed without proper application of mind, mechanically, and, on the one hand, an attempt has been made to depict if the requirement of statute has been fulfilled but simultaneously since requisite material is not available on record to allow competent authority to form an opinion, an order has been passed for preliminary enquiry, so as to collect such material. In fact, such an enquiry is a fact finding enquiry which would subsequently make relevant material available to the competent authority, to take an appropriate decision in the matter. Such an order, in effect, is a colourable exercise of power and it is difficult to sustain the same in a case where the State has miserably failed to justify its order in the manner as has been observed in para 47 of the judgment in Raj Veer Singh (supra)."

5. In light of the legal position so enunciated and the absence of material to establish that the requisite satisfaction had been arrived at notwithstanding the pendency of a preliminary enquiry, the impugned order of suspension is rendered unsustainable.

6. Accordingly and following the reasons assigned in the case of **Sachchida Nand Tripathi (Supra)** the instant writ petition is **allowed**. The impugned order dated 10th February, 2026 is hereby quashed. This order however shall not preclude the respondents from initiating fresh proceedings in accordance with law and the provisions made in the 1991 Rules.

(Prakash Padia,J.)

March 23, 2026

Swati