

(1996) 01 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 425 of 1996

Smt. Kiran Sharma

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 10-01-1996

Acts Referred:

Haryana Civil Services (Punishment and Appeal) Rules, 1987 — Rule 4A, 4A(2)

Citation : (1996) 112 PLR 704

Hon'ble Judges : S.S. Sudhalkar, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : S.P. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Singhvi and S.S. Sudhalkar, JJ.—This writ petition is directed against the order of suspension Annexure P5 passed by the Inspector General of Police/ Director, Haryana State Crime Record Bureau, Madhuban (Karnal) on 15.12.1995 placing the petitioner under suspension with effect from 9.12.1995 due to her arrest in case FIR No. 581 dated 9.12.1995 Under Sections 420, 379, 170, 171 of the Indian Penal Code.

2. Learned counsel for the petitioner has advanced three-fold contentions in support of the writ petition. His first contention is that the order of suspension has been passed without giving any notice and opportunity of hearing and, therefore, it is contrary to the principles of natural justice. The second contention of the learned counsel is that the Inspector General of Police is not competent to pass an order of suspension. The third contention of the learned counsel is that the order . of suspension could not have been passed with retrospective effect. In support of his arguments, learned counsel placed reliance on a decision of the Division Bench of Bombay High Court in Rajeshwar Savanna v. The State of Maharashtra and Anr. 1983(1) S.L.J. 484 and also on a judgment of the Division Bench of Calcutta High Court in Hemanta Kumar Bhattacharjee Vs. S.N. Mukherjee, .

3. Having given our thoughtful consideration to the contentions of the learned counsel, we find that none of them is having merit. Admittedly, the conditions of service relating to the suspension of the petitioner are regulated by the provisions of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 which have been framed by the Governor of Haryana in exercise of the powers conferred upon him by the proviso to Article 309 and Clause (b) of Article 318 read with Clause (3) of Article 187 of the Constitution of India. Rule 4-A of these Rules deals with suspension. Relevant extract of this Rule reads as under:-

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

(2) A Government employee shall be deemed to have been placed under suspension by an order of the 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 sentenced to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed or compulsorily 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 imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(3) xx xx xx

(4) xx xx xx

(5) 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.

(6) 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 proceeding is commenced against him during the

continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by it in writing, direct that the Government employee shall continue to be under suspension until the termination of all or any of such proceedings.

(7) An order of suspension made or deemed to have been made under this rules may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate."

4. Perusal of the above quoted provisions shows that not only the appointing authority to which it is subordinate, the punishing authority or any other authority empowered in that behalf by general or special order can place a government employee under suspension. By virtue of Rule 4-A(2) a deeming provision has been incorporated for suspension of an employee who is detained in custody whether on a criminal charge or otherwise for a period exceeding 48 hours. The logic extension of the deeming provision is that even without passing of an order by a competent authority an employee who is detained in custody for a period of 48 hours would be treated under suspension and such suspension is effective from the date of detention. The petitioner, as per the frank statement made by the learned counsel, was detained on 9.12.1995 and she remained under detention for a period of more than 48 hours. Thus by virtue of the deeming provision contained in Sub-rule (2)(a) of Rule 4-A, the petitioner would be deemed to have been suspended with effect from 9.12.1995.

5. As per Sub-rule (5) of Rule 4-A, an employee who is suspended or is deemed to have been suspended under this Rule, continues to remain under suspension until the order of suspension is modified or revoked by the competent" authority. Sub-rule (7) of Rule 4-A empowers the competent authority to modify or revoke the order of suspension or an order which has been deemed to have been made by any authority. In view of these provisions, the petitioner cannot contend that her suspension is bad because it has been made effective with effect from" 9.12.1995 although the order was passed on 1.5.12.1995.

6. The argument of the learned counsel for the petitioner regarding violation of the principles of natural justice deserves to be rejected summarily. Suspension as contemplated by Rule 4-A is not one of the specified penalties under the service rules. Such type of suspension only prevents a government servant from discharging official duties and at the same time entitles the government servant to subsistence allowance during the period of suspension. No civil or vested right of the employee is taken away by such suspension and, therefore, it is not necessary for the employer to give a notice or an opportunity of hearing to the employee before passing of an order of suspension.

7. The argument of the learned counsel that the order of suspension has not been passed by the competent authority cannot be accepted for the simple reason that it has not been pleaded by the petitioner that the Inspector General

of Police, Haryana has not been delegated with the powers by the Government to exercise the power under Rule 4-A. Moreover, we find that the officer who has passed the order of suspension has sent the papers to the Director General of Police, Havana requesting that necessary approvals for suspension of the petitioner may kindly be accorded. The petitioner should have made a representation to the Director General of Police against the request made by the Inspector General of Police/Director, State Crime Record Bureau, Haryana, Madhuban to grant of approval for her suspension and it would have been for the Director General of Police to consider whether the suspension of the petitioner should be approved or not and whether the suspension should be continued or not.

8. The writ petition is without substance and is therefore, dismissed.