

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Special Appeal No. 235 of 2016

Arun Kumar

.....Appellant

Versus

State of Uttarakhand and others

.....Respondents

Mr. C.S. Rawat, Advocate for the appellant.

Mr. Paresh Tripathi, Chief Standing Counsel for the State/respondents.

Dated: 31st August, 2016

**Coram: Hon'ble K.M. Joseph, C.J.
Hon'ble V.K. Bist, J.**

K.M. Joseph, C.J. (Oral)

Appellant is the writ petitioner. The writ petition was filed seeking the following prayers:

- i) Issue a writ, order or direction in the nature of certiorari to quash the impugned suspension order dated 2.8.2016 passed by respondent no. 3.
- ii) Issue a writ order or direction in the nature of mandamus commanding the respondent no. 6 not to relieve the petitioner from the Government High School, Tari Khet, Block Betalghat, District Nainital.

2. The learned Single Judge dismissed the Writ Petition after noting as follows:

“The petitioner has been suspended vide order dated 02.08.2016 in contemplation of department proceedings. The charge against the petitioner is that he had physically assaulted the Principal of the School. There are other charges against the petitioner as well.

In view of the above fact, the charges against the petitioner are serious in nature, no interference is called for by this Court in the matter. However, in case formal charge-sheet has not been given to the petitioner as of now, the same shall be given within two weeks from the date of production of a certified copy of this order and thereafter within two months the

entire inquiry be completed. In case the same has not been done, as per the directions of this Court, the petitioner would be at liberty to avail appropriate remedy.”

3. Heard Mr. C.S. Rawat, learned counsel appearing for the appellant and Mr. Paresh Tripathi, learned Chief Standing Counsel appearing for the State/respondents.

4. Learned counsel appearing for the appellant drew our attention to Rule 7 (4) of the Uttaranchal Government Servant (Discipline and Appeal) Rules, 2003 (hereinafter referred to as the “2003 Rules”). He also referred us to a judgment of the Apex Court in the case of **Union of India and others vs. B.V. Gopinath** reported in **2014(1) SCC 351**. According to him, there was no document and no inquiry to substantiate the case of the authority that the appellant has assaulted.

5. Power to suspend is, actually, comprehended by Rule 4 of the 2003 Rules. Rule 4 contemplates power to suspend, no doubt, in a case where the allegation is of serious nature and it is likely that, in all probability, it would result in the inquiry establishing a case for imposition of major penalty. Nothing more is required. It is not the law that before suspending a person, there should be an enquiry. As far as imposition of any of the major penalties enumerated in the Rules is concerned, necessarily, in keeping with Article 311 of the Constitution of India, an enquiry is to be held. Therefore, we do not see any substance at all in the case of the appellant for impugning the order of suspension. The judgment of the Apex Court, which has been relied on by the learned counsel for the appellant, does not appear to assist the appellant in the facts of this case. Learned counsel for the appellant also sought to draw our attention to a judgment of the Apex Court in Civil Appeal No. 5701 of 2015. Therein also, the facts are clearly distinguishable and can be of no assistance in this case, which relates to the order of suspension.

6. Accordingly, the appeal fails and is hereby dismissed. No order as to cost.

(V.K. Bist, J.)
31.08.2016

(K.M. Joseph, C.J.)
31.08.2016

Rahul