

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP No.5619 of 2020

Date of Decision :20.03.2020

Shamsher Singh

....Petitioner

versus

State of Haryana and others

....Respondent

Coram : **Hon'ble Mr. Justice B.S. Walia**

Present: Mr.A.K. Virdi, Advocate for the petitioner.
 Mr. Harish Rathee, Senior DAG, Haryana for respondent No.1.
 Mr. LokeshSinhal, Advocate for respondent Nos.2 to 4.

B.S. Walia, J. (Oral)

[1] Prayer in the petition under Article 226/227 of the Constitution of India, is for the issuance of a writ, order or direction, especially in the nature of mandamus / certiorari for quashing Annexure P/1 dated 22.02.2020 i.e. order of suspension passed by respondent No.3, without the approval of the appointing / punishing authority i.e. respondent No.2.

[2] Learned counsel contends that the impugned order, Annexure P/1 was passed by the S.E./Administration for CMD, DHBVN, Hisar, placing the petitioner under suspension with immediate effect *in derogation* of Regulation 5(1) of the DHBVN Employees (Punishment & Appeal) Regulations 2019. Relevant extract of Regulation 5(1) is reproduced as under:-

“(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 Nigam, by general or special order, may place a Nigam employee under suspension where –

- (a) a disciplinary proceeding against him is contemplated or is pending, or”*

[3] Learned counsel also relies upon Regulation 6 to contend that the same stipulates the authority competent to impose any of the penalties specified in Regulation 4 upon persons to whom the regulations apply as also the delegation of Administrative powers to inflict Minor / Major punishment on Gazetted / Non Gazetted employees as per Annexure ‘A’.

Regulation 6 is reproduced as under :-

“6. Authority to impose punishment.-

The authorities competent to impose any of the penalties specified in Regulation 4 upon the persons to whom these regulations apply, shall be such, as may be prescribed by the Nigam in the regulations regulating the appointment and conditions of service of such persons. The delegation of Administrative powers to inflict Minor / Major Punishment & Appellate Authority to Gazetted Employees and Non-Gazetted Employees is placed as Annexure ‘A’.”

[4] A perusal of Annexure-A to the regulations attached along with the writ petition as Annexure P/6 reveals that the authority competent to impose a minor / major punishment on an Executive Engineer is the Managing Director of the Nigam.

[5] Learned counsel has also referred to the recommendation of the Chairman-cum-Managing Director, DHBVN, Hisar, as contained in Annexure R-2/3 to initiate disciplinary proceedings against the petitioner under Regulation 8 of the DHBVN Employees (Punishment and Appeal) Regulations, 2019 for imposition of minor penalty by taking into account the totality of circumstances. Relevant extract of the same is reproduced as under:-

“ In the instant matter, Sh. Shamsher Singh, Xen OP Divn., DHBVN, Fatehabad did not attend the BijliPanchayat chaired by Hon’ble Power Minister, Government of Haryana held on 05.01.2020 at Hisar. For that act of indiscipline on the part of the officer, an explanation was called from him (CP/2). In reply to the explanation, the officer has submitted that he could not attend the said BijliPanchayat due to illness of his mother (CP/3). The officer further assured that he will remain more careful and vigilant in future.

Major penalty proceedings are not made out in the instant case as the alleged misconduct neither involves moral turpitude nor corruption/embezzlement. Further, suspension is ordered in cases where gravity of the misconduct is such as to justify imposition of major penalty. Therefore, keeping in view the facts of the case, the undersigned is of the considered opinion that it would be appropriate to initiate disciplinary proceedings against the officer under regulation 8 of the DHBVN Employees (Punishment & Appeal) regulations, 2019 for minor penalty.

*Chairman-cum-Managing Director
DHBVN, Hisar”*

[6] However, the aforesaid recommendation was not accepted by the Power Minister, who not only ordered the suspension of the petitioner by treating the act of not attending the meeting as deliberate but also directed the petitioner to be charge-sheeted for imposition of major penalty vide Annexure R-2/3.

[7] Learned counsel contends that in the circumstances, the impugned suspension order was passed by an authority not competent to do so and that too under the dictation of the Power Minister, Haryana.

[8] Learned counsel has also referred to Annexure P/4 i.e. Medical Certificate issued to the petitioner's mother on 04.01.2020. Relevant extract of the same is reproduced as under :-

*“Name: Gurjit Kaur Age/Sex:65-Female Weight 0 Kg
Address :Fatehabad Haryana Date :2020.01.04 BP 0 MMHG
Un-Paid-0 Rs.*

Rx

*Expired
In August xxxxxx
2019*

IO

Decrease sleep, sadness of mood

Excessive worry, b appetite *Tab. Escitalopram*

Cry spells, Irritable mood x 5 ½ 10 mg(1) – x-x

Stressor: Death of husband *Tab. Etizolam 0.5 mg*

Family History Psychiatric illness of son -x-x (1) x Day 15

H/S/O Anxiety disorder -x-x (½) x Day 25

- & Daughter H/S/O Depressive disorder Sd/- 4/1/2020

H/o any other

Non chronic medical illness

D/D – reaction to severe stressor

Adjustment disorder – Moderate

Depressive disorder”

[9] Learned counsel contends that it was in view of the medical condition of the petitioners mother that the petitioner was unable to attend the meeting scheduled with the Power Minister on 05.01.2020, therefore, informed his Superintending Engineer of his inability to attend the meeting due to ailment of his mother and there being no other person to attend to her and it not being advisable to leave her alone in the medical condition in which she was.

[10] Learned counsel for respondent Nos.2 to 4 on the basis of the reply contended that the stand of the petitioner was factually incorrect as he had not informed of his inability to attend the Bijli Panchayat due to ailment of his mother. However, learned counsel for respondent Nos.2 to 4 has not controverted the fact that as per Annexure-A to the regulations, attached along with the writ petition as Annexure P/6 , the authority competent to impose punishment on an Executive Engineer is the Managing Director, as also that although Annexure P/1 dated 22.02.2020 i.e. the impugned order was passed by the Superintending Engineer/Administration for on behalf of the CMD, yet there was no authorization in favour of the Superintending Engineer / Administration in that behalf by the Nigam by general or special order to place the petitioner i.e. an Executive Engineer under suspension in terms of Regulation 5(1).

[11] I have considered the submissions of learned counsel for the parties.

[12] Admittedly, Regulation 5(1) empowers either the appointing authority or any other authority to which the appointing authority is subordinate or the punishing authority or any other authority empowered in that behalf by the Nigam by general or special order to place a Nigam employee under suspension where disciplinary proceedings against such employees are contemplated or are pending. Admittedly, in the instant case, the appointing authority of the petitioner, as conceded by learned counsel for the respondents, is the Managing Director. Likewise, as per Annexure P/6, the punishing authority in case of an Executive Engineer is the Managing Director of DHBVN. Further there is no special or general order by the Nigam, authorizing the Superintending Engineer / Administration to place the petitioner / an Executive Engineer of the Corporation under suspension. Another aspect of the matter is that the competent authority on consideration of the matter had recommended initiation of disciplinary proceedings against the petitioner for imposition of minor penalty. However, the same was not agreed to by the Power Minister, who directed the placing of the petitioner under suspension due to grave indiscipline for not attending the meeting knowingly and to be charge-sheeted for imposition of major penalty. Since the impugned order has not been passed by the competent authority in terms of Regulation 5(1), therefore, the same is unsustainable and is accordingly *set aside*. However, it would be open to the respondents to take action in the matter, in accordance with law.

[13] Writ petition ***disposed of*** in the aforementioned terms.

March 20, 2020

'Rajneesh'

(B.S. Walia)
Judge

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No