

**(1970) 08 AHC CK 0023**

**Allahabad High Court**

**Case No:** Writ Petition No. 991 of 1969

Mritunjai Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Aug. 20, 1970

**Acts Referred:**

- Constitution of India, 1950 - Article 311

**Citation:** AIR 1971 All 214 : (1971) 1 LLJ 597

**Hon'ble Judges:** G.D. Sahgal, J

**Bench:** Single Bench

**Advocate:** R. Nath, for the Appellant; Standing Counsel and Sudhir Shanker, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

G.D. Sahgal, J.

The petitioner is an overseer in the Irrigation Department of the Government of Uttar Pradesh. He was posted at Kalagarh Division in the District of Bijnor and was suspended on 22-3-1969. The suspension order is contained in annexure 1 to the writ petition. It purports to be signed by the Additional Chief Engineer. This writ petition has been filed for the quashing of that order.

2. After the suspension of the petitioner which order of suspension was served on him on 24-3-1969, it was only on 29-10-1969 that a charge-sheet was framed against him and his contention is that the suspension order was issued without there being any basis for the passing of the same. He also challenges the order of suspension passed against him on the ground that it was passed by an authority which was not the appointing authority and it could be passed only by such an authority which is the Chief Engineer and not the Additional Chief Engineer. The suspension order also mentions that the petitioner will draw 1/3rd (one third) of his pay plus dearness allowance as subsistence allowance during the period of suspension. The petitioner

claims that he should be allowed his increments as due from the date of suspension and the subsistence allowance should accordingly be raised from time to time as and when the increments fall due.

A writ of mandamus also is accordingly prayed for commanding the respondents -- State of U. P., Chief Engineer, Additional Chief Engineer and the Chief Engineer, Ramganga River Project to allow the petitioner his annual increment which fell due on 1-4-1969 and naturally the other increment which fell due during the pendency of the writ petition.

3. The writ petition is contested We have, therefore, to see as to whether the contentions raised on behalf of the petitioner or any of them can be accepted.

4. The first contention is that the order of suspension was not passed by the appointing authority but was passed by an authority who was not such an authority. The order of suspension Is contained in annexure 1. It reads:

"Sri Mirtunjai Singh Overseer of Ramganga Project, Kalagarh is hereby placed under suspension with immediate effect and attached to the camp of P. A. to Addl. Chief Engineer. Ramganga Project, Kalagarh.

He will draw 1/3 (one third) of his pay plus dearness allowance as subsistence allowance during the period of suspension.

Ravi Dutt,

Addl. Chief Engineer (I. & P)"

Prima facie the order has been passed by the Additional Chief Engineer (Irrigation and Power) and not by the Chief Engineer. It is not disputed that the appointing authority of the petitioner is the Chief Engineer and not the Additional Chief Engineer. According to Rule 1-A of the Punishment and Appeal Rules for subordinate service published with notification No. 2627/11-264, dated August 3, 1963 (as amended upto December 31, 1965) a government servant against whose conduct an inquiry is contemplated, or is proceeding, may be placed under suspension pending the conclusion of the inquiry in the discretion of the appointing authority:

Provided that in the case of any government servant or class of government servants, not belonging to a State service, the appointing authority may delegate its power under this rule to the next lower authority.

5. It is also not disputed that the Additional Chief Engineer is next lower authority than the appointing authority but in order that he may suspend the petitioner there must be a delegation of the power of suspension to him under Rule 1-A. It is nobody's case that there has been such a delegation. Therefore, the suspension if it has been made by the Additional Chief Engineer, is not in accordance with Rule 1-A.

6. We find from the counter-affidavit filed on behalf of the opposite parties, paragraph 27, however, that the order of suspension was issued by the Government in compliance to which the petitioner was placed under suspension by the Additional Chief Engineer. The order annexure 1, therefore, is an order which has been passed by the Additional Chief Engineer in compliance with the order of the Government suspending the petitioner. The question is whether in view of Rule 1-A which provides for the suspension order to be passed by the appointing authority or by the next lower authority to whom the power may have been delegated, will the suspension order of the petitioner passed by the State Government be a proper order of suspension?

7. Article 309 of the Constitution so far as it is relevant, provides that it shall be competent for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under that Article and any rules so made shall have effect subject to the provisions of any such Act. Rule 1-A of the Rules above referred to was made under this Article. This rule has statutory force. It does not provide that the State Government may suspend an employee. It provides for a suspension of a State employee by the appointing authority or by an authority next lower to him provided such power has been delegated to him.

Prima facie, therefore, the suspension order, even if it was passed by the State Government, is not a proper order of suspension. In the alternative even if it was passed by the next lower authority than the appointing authority, there being no assertion on behalf of the State that the next lower authority had the power delegated to him by the appointing authority, it would not be a proper order. The contention on behalf of the State, however, is that in spite of Rule 1-A the State has power to suspend its employees even though there might not be a specific rule to that effect.

8. In that connection we have to examine certain authorities of the Supreme Court.

9. The first in the line is to be found in The [The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers" Union](#), In paragraph 10 of that report their Lordships observed:--

"The first question therefore that falls for consideration is the extent of the power of the employer to suspend an employee under the ordinary law of master and servant. It is now well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the

contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the so called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay."

10. This authority does not help us as it does not specifically lay down as to whether the master has any power apart from contract or statute to suspend the servant. The matter, however, was clarified in [R.P. Kapur Vs. Union of India \(UOI\) and Another](#), the judgment in which case was delivered on behalf of the Supreme Court by the same learned Judge. The observations in paragraph 11 of that report are as follows:--

"The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him.

This general principle is illustrated by the provision in Section 16 of the General Clauses Act, No. X of 1897, which lays down that where any Central Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention appears. Though this provision does not directly apply in the present case, it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. This suspension must be distinguished from

suspension as a punishment which is a different matter altogether depending upon the rules in that behalf. On general principles therefore the Government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings this may be called interim suspension. Or the Government may proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. These general principles will apply to all public servants but they will naturally be subject to the provisions of Article 314 of the Constitution."

11. A perusal of this statement of law laid down by the Supreme Court would show that on general principles the Government like any other employer will have a right to suspend a public servant, This right is exercised in case of a Government servant by the appointing authority who is treated as the employer. The remarks made by the Supreme Court only indicate that though the Government itself who is the employer has power to suspend, it exercises that power through the agency of an officer who acts for it and that officer is the appointing authority. That does not however, mean that the general power of government to suspend an employee is in any way abrogated by the rule that the appointing authority is to pass the order of suspension. The matter becomes clear on a perusal of [Balvantray Ratilal Patel Vs. The State of Maharashtra](#), at p. 803, where the position as to the power of the suspension of an employer has been further clarified. In paragraph 3 we find the following observations in that judgment:--

"It is now well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work he will have to pay wages during the period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. This principle of law of master and servant is well established; (See *Hanley v. Pease and Partners, Ltd.* (1915) 1 KB 698; *Wallwork v. Fielding* 1922 2 KB 66 and the judgment of Cotton, L. J. in *Boston Deep Sea Fishing and Ice Co. v. Ansell*. (1888) 39 Ch D 339. It is equally well settled that an order of interim suspension can be passed against the employee while an inquiry is pending into his conduct even though there is no such term in the contract of appointment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which it could be withheld. In this

connection it is important to notice the distinction between suspending the contract of service of an officer and suspending an officer from performing the duties, of his office on the basis that the contract is subsisting. The suspension in the latter sense is always an implied term in every contract of service. (The underlining is mine). When an officer is suspended in this sense it means that the Government merely issues a direction to the officer that so long as the contract is subsisting and till the time the officer is legally dismissed he must not do any thing in the discharge of the duties of his office. In other words, the employer is regarded as issuing an order to the employee which, because the contract is subsisting, the employee must obey."

12. It would thus appear that every contract of employment gives the power to the employer to suspend an employee which simply amounts to telling him that he must not do anything in the discharge of the duties of his office till he is legally dismissed. This is an inevitable conclusion on account of the subsistence of the contract for an employee is bound to obey his employer whether he should do any work for him during the continuance of the contract of service. This power is no less in the case of government than in the case of any private employer and under this power there seems to be no reason why the government may not suspend an employee of theirs when they may have made a rule also to the effect that an appointing authority would suspend their employee. By making such a rule the power which is inherent under the contract of service cannot be taken away. Under Article 309, no doubt the Governor or such person as he may direct can make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts in connection with the affairs of the State and this rule will have statutory force but this does not take away their power to suspend an employee of theirs which is inherent in every employer. In this view of the matter, therefore, in my opinion the suspension order passed in this case by the Government was a valid order in spite of the provisions contained in Rule 1-A.

13. The next question that is to be determined now is whether the suspension order was issued without there being any basis for the issue of the same under the punishment rules. My attention was drawn to a note below Rule 1-A which provides that as a rule, suspension should not be resorted to unless the allegations against the government servant are so serious that in the event of their being established, they may ordinarily be expected to warrant his dismissal, removal or reduction. Suspension, where deemed necessary, should, as far as possible, immediately precede the framing of charges and their communication to the government servant charged. Attention was also drawn to certain portions of paragraph 15 of the Report of the Disciplinary Proceedings Inquiry Committee which Report was accepted by the Government and in pursuance of which the rule was amended providing that the suspension should not ordinarily be resorted to unless the allegations are serious enough to warrant removal, dismissal or reduction and should in such cases immediately precede the framing of charges and their communication to the accused government servant. A perusal of the note as well as

this direction would show that the rule is only recommendatory and not mandatory. The appointing authority is expected to pass an order of suspension only when it finds that the contemplated charges against the government servant are so serious that in the event of their being established, they may ordinarily be expected to warrant his dismissal, removal or reduction and suspension should as far as possible, immediately precede the framing of charges. None of these things, however, existed in this case. It may be unfortunate that it was so but the power of suspension is there and even if it has been exercised by the Government in expectation of the proceedings that may be started against the petitioner, without fully satisfying themselves of the seriousness of the matter, it cannot be said that the power has no legal basis for being exercised. This point also, therefore, should be decided against the petitioner.

14. We now come to the last point, namely, whether the petitioner should be allowed to earn his increment due during the suspension. In that connection again my attention was drawn to the same authority of the Supreme Court which has already been referred to as the first authority, namely, that relating to the Management Hotel Imperial. It has been laid down therein that the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. Emphasis is laid down on the words "master is not bound to pay" on behalf of the State and it is said that if the master is not bound to pay during the suspension how can the servant claim that he is entitled to earn his increment during the period of suspension. The matter, however, has been clarified in the later authority of [Balvantray Ratilal Patel Vs. The State of Maharashtra](#), where it is indicated that even if there is no express term of suspension in the contract of employment, the employer has power to suspend his employee and it amounts to the issuing of an order to the employee which, because such contract is subsisting, the employee must obey. This shows that the contract of service subsists during the period of suspension and if the contract subsists, even though there is suspension, the employee remains in service and if he remains in service, he is entitled to all benefits of service even though he is not expected to work during the period of suspension. Rule 24 of the Financial Hand Book Volume II issued under the authority of the Government of the Uttar Pradesh in Chapter IV Part II provides that an increment shall ordinarily be drawn as % matter of course unless it is withheld. An increment may be withheld from a government servant by the Government or by any authority to whom the Government may delegate this power under Rule 6, if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments. As the contract of the service of the petitioner continued even though he was under suspension, the increment should be allowed ordinarily to be drawn unless it is withheld in the manner provided under Rule 25.

As it is not the case of the opposite parties that it has been so withheld, the petitioner is entitled to the increments during the pendency of his suspension and the subsistence allowance shall be calculated accordingly, it being 1/3rd of the pay plus dearness allowance.

15. The writ petition is accordingly dismissed in so far as it prays for the quashing of the order of suspension contained in annexure 1. A mandamus, however, is issued commanding the respondents to allow the petitioner his annual increments which have fallen due or are likely to fall due from time to time during the period of his suspension, subsistence allowance being paid in terms of the order contained in annexure 1 on the basis of the increased pay as and when the increment falls due. The opposite parties also are directed to pay the arrears to the petitioner on that account.