but the candidate who had already been declared successful was still found to have polled majority of the votes. On that both sides applied for withdrawal of the petition, which application was rejected by the learned Judges, may be so as not to permit the petitioner in that case to escape forfeiture of security and burden of costs. So that this is a case which supports the view that the allegations in the election petition of respondent 2 for miscount in this case were not vague and on this ground the Prescribed Authority or the Tribunal could not have proceeded to dismiss his petition, and, in this Court, there cannot be interference with the decision of the Prescribed Authority or the Tribunal on this matter in a petition of the petitioner under Articles 226 and 227 of the Constitution. No doubt frivolous petitions on this ground may come before the Prescribed Authority or the Tribunal for challenging elections, but the consequences will be forfeiture of security as required from a petitioner under section 13-C of the Act and the burden of the opposite party's costs on him.

(11) In the result, this petition fails and is dismissed with costs, counsel's fee being Rs. 100.

BALRAJ TULI, J.—I agree.

K. S. K.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

MALVINDERJIT SINGH,—*Petitioner*

Versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 2719 of 1965

July 29, 1968

Punjab Civil Services Rules *(1953)—Volume I, Part I—Rule 7.3—Applicability of—Whether limited to those suspensions of Government servants where departmental inquiry is held—Suspension of a government servant—Whether can be ordered only during the pendency of a departmental inquiry against* him.

Held, that under Rule 7.3 of Punjab Civil Service Rules, Volume I, Part I, the Government is competent not to make payment of the full salary for the period of suspension of a Government servant. The language employed in the Rule shows that its applicability cannot be limited to cases of only those suspensions where departmental enquiry was held against the Government servant and he had later not been fully exonerated. No restricted meaning can therefore be given to the Rule.

(Para 9).

Held that there is no rule empowering the Government to suspend an officer except by way of punishment. It is only by virtue of the inherent powers vested in an employer that he can suspend his employee. No limitation of any kind can be placed on the power of the Government who is the employer of the Government servant, because it is not by virtue of any specific rule that the Government has such a power and if that had been the case, the Government would have been bound by the limitations prescribed in the rule itself. Hence a government servant can be suspended even without a departmental inquiry being pending against him. (Para 4).

Petition under Articles 226 *and* 227 *of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the order of suspension dated* 18*th of January*, 1963, *ordering to the effect that the whole of the period of suspension be treated as leave and not as duty and further quashing the order dated* 16*th of August*, 1965 *whereby two other punishments had been imposed.*

ABNASHA SINGH, ADVOCATE, for the Petitioner.

G. S. CHAWLA, ADVOCATE, FOR ADVOCATE-GENERAL, PUNJAB, for the Respondents.

JUDGMENT

PANDIT, J.—This petition under Articles 226 and 227 of the Constitution filed by Malvinderjit Singh, is directed against three orders, dated 18th of January, 1963, 23rd of November, 1963 and 16th of August, 1965, passed by the Secretary to Government, Punjab, Medical and Health Department.

(2) According to the allegations of the petitioners, he joined Government service in July, 1955 in V. J. Hospital, Amritsar, in the grade of Rs. 140—10—250. Subsequently, he was selected by the

Punjab Public Service Commission for the gazetted post of a Dietician in the grade of Rs. 250—20—550 and he was sent to Rajendra Hospital, Patiala, where he joined on 9th of May, 1959. Before the petitioner joined the Patiala hospital, the Medical Superintendent of the said hospital, respondent No. 4, held the charge of the Diet Department. He had complete control over the Store-keeper and the working of the Stores Department was carried on under his personal directions. When the petitioner joined the said hospital, respondent No. 4 was relieved of those duties. Apart from teaching the students, the duties of the petitioner were of a purely supervisory nature. The stores and provisions of the hospital were in the custody and under the care of a Store-keeper and the kitchen staff used to run the kitchen where food for patients was prepared. The petitioner exercised powers of supervision over those branches as well. After assuming charge of his duties at Patiala, the petitioner observed that a number of irregularities were being committed by the staff. He, therefore, submitted a number of reports and proposals to respondent No. 4 for the improvement of efficiency in the departments under his control. His reports contained allegations against the Store-keeper and the Contractors who supplied provisions to the hospital. Respondent No. 4, however, did not take notice of most of those reports and suggestions. The Director, Research and Medical Education, Punjab, respondent No. 2, received a report from the Superintendent, Rajendra Hospital, Patiala, that on 22nd of October, 1962, the Store-keeper attempted to take away a tin of ghee from the hospital and that on physical verification of the store, huge excess was noticed. Thereupon respondent No. 2 appointed Jagdish Rai Garg, Accounts Officer, to make a report after checking the diet store of the hospital. Jagdish Rai made his report on 3rd of September, 1962. The checking by him was done under the supervision and direction of respondent No. 2. Evidence was taken by him during the absence of the petitioner and without affording any opportunity to him to cross-examine the witnesses. His report contained aspersions against the petitioner and that was done without giving any chance to the petitioner to tender his explanation. On 18th of January, 1963, by means of the first impugned order, the petitioner was suspended from service with immediate effect. The said order was passed without affording the petitioner a reasonable opportunity of showing cause against the said action. That order had been made not as a punishment, but pending the holding of a departmental enquiry. Although the

suspension order subsisted for more than 10 months, no charge-sheet or summary of allegations was served upon the petitioner. On 23rd of November, 1963, by the second impugned order, the petitioner was re-instated with immediate effect, but it was laid down that the period, which he had spent under suspension, would not be treated as period spent on duty, but would be converted into leave of the kind due and that, in any case, the petitioner would not be paid more than what he had already drawn as subsistence allowance for the said period. This order, according to the petitioner, was contrary to law. During the course of the petitioner's suspension from service, the Vigilance Department held a confidential enquiry to which the petitioner was not made a party and evidence was recorded by the said department in the absence of the petitioner without giving him an opportunity to cross-examine the witnesses. He was not called to disprove any charge against him or lead any evidence. On 18th of April, 1963, he was interrogated by an officer of the Vigilance Department and his answers were recorded in the form of a statement. In November, 1963, he was served with a show-cause notice together with a statement of allegations against him. He was called upon to give his reply within 21 days. By means of the said notice, the petitioner was informed that if for the purpose of preparing the written statement, he wished to have access to the relevant official records, he could inspect the same after making prior appointment. He was, however, to be shown only such documents as were in the possession of respondents 2 and 4 and which were strictly relevant to the case. He was not allowed to inspect the record of the confidential enquiry conducted by the Vigilance Department. In the said show-cause notice, the action proposed to be taken against the petitioner was (1) to recover the shortage, amounting to Rs. 6,582, found in fuel wood and *basmati* rice from the petitioner, as this shortage occurred due to his negligence in supervision; and (2) to stop the petitioner's two increments with cumulative effect. Before tendering his reply to the show-cause notice, the petitioner complained that he had not been charge-sheeted before holding any enquiry, that he had not been afforded an opportunity to cross-examine the witnesses who gave evidence against him and that he had not been given any chance to disprove any charge against him. He asked for a copy of the report of the enquiry officer and pending the receipt of the said report, gave his reply to the show-cause notice. The said report was not supplied to the petitioner at all. On 16th of August, 1965, the petitioner

received the third impugned order of the Governor of Punjab imposing the two punishments on him, viz., (1) recovery of Rs. 6,034, i.e., the cost of fuel wood found short and (2) stoppage of his next two increments with cumulative effect. That led to the filing of the present writ petition on 28th of October, 1965.

(3) The first contention raised by the learned counsel was that the impugned order, dated 18th of January, 1963, suspending the petitioner from service was illegal, inasmuch as it could be passed only pending a departmental enquiry. In the instant case, no departmental enquiry had either been initiated or was pending at the time when the said order was passed. Reliance in this connection was mainly placed on two decisions, one in *R. P. Kapur* v. *Union of India and another* (1) and the other a Full Bench decision of this Court in *K. K. Jaggia* v. *State of Punjab* (2). In the former in paragraph 11 of the judgment, it was observed : "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". In the latter, to which I was also a party and had prepared the judgment, it was held—"The Government, like any other ordinary employer, can pass an order of interim suspension against his employee while a departmental enquiry is pending against him, even though there is no specific provision to that effect either in the terms of appointment of that employee or there is no statutory provision in law or rule in that regard."

(4) It may be stated that this point, in the way it had been argued before me, was not taken in the writ petition. It appears that a report had been received against the petitioner and according to the return filed by the State, preliminary investigation showed that he was quite inefficient and negligent in performing his duties and it was not considered desirable to retain him against that post and it was on that ground that he was suspended, but it was an suspension had not been passed as a punishment, but it was an order pending the holding of an enquiry against him. According to the usual practice, the said enquiry, according to the return, was

(1) A.I.R. 1964 S.C. 787.

(2) I.L.R. (1967) 1 Pb. and Hry. 95=A.I.R. 1968 Pb . 97.

entrusted to the Vigilance Department immediately after his suspension and on receipt of the enquiry report from the Vigilance Department, he was charge-sheeted after adopting the usual procedure. It is true that the departmental enquiry had actually not been started against the petitioner, when the order of suspension was passed against him. The question is whether it is essential that a departmental enquiry must either be initiated or actually pending at the time when the order of suspension is made against a particular officer. In the two authorities relied upon by the petitioner, this precise point was not before the courts, inasmuch in R. P. Kapur's case, a criminal case was actually pending against him when he was suspended by the Governor of Punjab, while in K. K. Jaggia's case also, a departmental enquiry was actually pending against him when the order of suspension was passed. It is common ground that there is no rule empowering the Government to suspend an officer except by way of punishment. It is only by virtue of the inherent powers vested in an employer that he can suspend his employee. Can he do so only if a departmental enquiry is pending against him ? In my view, no limitation of that kind can be placed on the power of the Government who is the employer of the Government servant, because it is not by virtue of any specific rule that the Government has such a power and if that had been the case, the Government would have been bound by the limitations prescribed in the rule itself. It is, as I have already said, by virtue of the inherent powers of an employer that the Government can do so and it is difficult to fix a limitation of that kind on the inherent power possessed by the employer. This point has been dealt with in the Supreme Court decision in *S. Partap Singh* v. *State of Punjab* (3). While dealing with rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, Raghubar Dayal, J., who prepared the minority judgment in that case on his own and Mudholkar, J.'s behalf, observed in paragraph 54 of the judgment :—

> "This rule comes into play only after a *prima facie* case is made out against a Government servant and not at the stage of a preliminary investigation into accusations made against a Government servant. But it does not follow that suspension is not permissible till this stage of making a formal charge arrives." (Underlining is mine).

(3) A.I.R. 1964 S.C. 72.

Then again in paragraph 55, it was said—

> "It was contended that the appellant's suspension, without calling him to explain the charges first, was bad as the proceedings to suspend him were of a quasi-judicial character and, therefore, necessitated the Government's obtaining his explanation to the charges of misconduct before passing the order of suspension. The order suspending the Government servant pending enquiry is partly an administrative order. What has been held to be quasi-judicial is the enquiry instituted against the Government servant on the charges of misconduct, an enquiry during which under the rules it is necessary to have an explanation of the Government servant to the charges and to have oral evidence, if any, recorded in his presence and then to come to a finding. None of these steps is necessary before suspending a Government servant pending enquiry. Such orders of suspension can be passed if the authority concerned on getting a complaint of misconduct, considers that the alleged charge does not appear to be groundless, that it requires enquiry and that it is necessary to suspend the Government servant pending enquiry."

(5) Again in paragraph 56, it was stated :—

> "Explanation I to R.2.2 (b), Volume II, 1959 rules, supports the view that there can be suspension of a Government servant even prior to the issue of charges of misconduct to him, the Explanation being,
>
> "Departmental proceeding shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or, if the officer has been placed under suspension from an earlier date, on such date."

(6) It may be mentioned that Ayyangar, J., who wrote the majority judgment in that case agreed in main with the conclusion arrived at by Raghubar Dayal, J., by observing :—

> "The relevant rules on the topic as well as their intepretation have all been dealt in the judgment of Dayal, J., and we

agree in the main with his conclusion that the orders impugned were not beyond the power of the Government.....".

(7) Thus, it would be seen that a Government servant could be suspended even when no departmental enquiry was pending against him. The first contention of the learned counsel, therefore, has no force.

(8) The next contention of the learned counsel was that the impugned order, dated 23rd of November, 1963, withholding payment of the full salary to the petitioner for the period of his suspension was without authority. Rule 7.3 of the Punjab Civil Services Rules, Volume I, Part I, was not applicable to the petitioner's case, because no departmental enquiry had been held against him. This rule was applicable only to those cases, where departmental enquiry was held and the Government servant was not fully exonerated. It was also contended that the petitioner was not heard before the second impugned order was passed. In that connection, reference was made to the Supreme Court decision in *M. Gopala Krishna Naidu* v. *State of Madhya Pradesh* (4). In that authority, the Supreme Court was dealing with Fundamental Rule 54 which, according to the learned counsel, was equivalent to rule 7.3. Rule 7.3 runs as under :—

"(1) When a Government servant, who has been dismissed, removed, compulsorily retired, or suspended, is reinstated, or would have been re-instated but for his retirement on superannuation while under suspension, the authority competent to order the reinstatement shall consider and make a specific order :—

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty, or for the period of suspension ending with the date of his retirement or superannuation, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(4) 1967 S.L.R. 800.

(2) Where the authority mentioned in sub-rule (1) is of opinion that the Government servant has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government servant shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

(3) In other cases, the Government servant shall be given such proportion of such pay and allowances as such competent authority may prescribe:

Provided that the payment of allowances under clause (2) or clause (3) shall be subject to all other conditions under which such allowances are admissible:

Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under rule 7.2.

(4) In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under clause (3) the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires, such authoritiy may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant."

(9) The case of the Government, as mentioned in the return, was that under rule 7.3, Government was competent not to make payment of the full salary for the period of suspension and that rule was applicable in respect of cases of all suspensions. In my opinion, the stand taken by the Government is correct. The language employed in the said rule shows that its applicability cannot be limited to cases of only those suspensions where departmental

enquiry was held against the Government servant and he had later not been fully exonerated. No restricted meaning can, therefore, be given to the said rule, as contended by the learned counsel for the petitioner. Moreover, in the Full Bench decision of this Court in K. K. Jaggia's case, it was held that rule 7.2, which deals with allowances payable to a Government servant during the period of suspension was of general application. On the same analogy, rule 7.3, which occurs in the same chapter and deals with allowances payable to the Government servant on re-instatement would be of general application and its applicability could not be restricted the way it was suggested by the petitioner. In the instant case, the petitioner had not been fully exonerated, inasmuch it had been ordered that Rs. 6,034 be recovered from him and his next two increments be stopped with cumulative effect. Under these circumstances, according to rule 7.3, the competent authority could prescribe the pay and allowances payable to him for the period of suspension and determine how the period of absence from duty was to be treated, whether as a period spent on duty or the same was to be converted into leave. The point that the petitioner was not heard before the impugned order, dated 23rd November, 1963 was passed, was not taken in the writ petition. Besides, rule 7.3 does not state that the Government servant would be heard before an order under that rule was made. Moreover, the rule is self-contained and proper guidance has been given therein to the competent authority to pass an order under various contingencies which have been specified therein. I have held in the latter part of the judgment that adequate opportunity had been afforded to the petitioner before the two punishments were inflicted on him. The second impugned order, in the circumstances of this case, was, therefore, clearly consequential. It had been specifically mentioned in that order that it would not prejudice the action to be taken against the petitioner for shortages in stores which had come to the notice of the Government and necessary action in that respect was being taken separately. The order being consequential and adequate opportunity having been afforded to the petitioner in inflicting the punishments on him, no separate opportunity had to be given to him while passing the order under rule 7.3. If ultimately the petitioner had been completely exonerated and yet the competent authority had wanted to pass an order under rule 7.3 to his detriment, then it could perhaps be argued that in that contingency he should have

been afforded a chance to make his representation against that action. But in a case where the Government servant had been punished and he had been afforded adequate opportunity before that was done, then, in my view, it was not necessary to give another opportunity to him before making the consequential order under rule 7.3. The Supreme Court decision, relied on by the learned counsel for the petitioner, is clearly distinguishable and has no application to the facts of the instant case. There, the Inquiry Officer had found the Government servant not guilty and the Government had also held that the charges against him were not proved beyond reasonable doubt. Still the Government, while re-instating him, ordered that he would not get full pay and allowances for the period of suspension. That according to the learned Judges, was done without affording any opportunity to the Government servant. No such thing has happened in the case in hand. The second contention of the learned counsel is also, therefore, rejected.

(10) The last contention of the learned counsel was that adequate opportunity was not given to the petitioner before making the impugned order, dated 16th of August, 1965. In that connection, he referred to only two grievances—(i) that he had not been given a copy of the report of the enquiry officer; and (ii) that he was not given a personal hearing, though he had asked for the same.

(11) It is true that the said copy had not been given to the petitioner, though he had asked for it in the reply to the show-cause notice and the State was not right in saying in paragraph 19 of its return that no specific request for the supply of the enquiry report was received from the petitioner. But it is clear from the show-cause notice issued to the petitioner under rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, that he was informed that if, for the purpose of preparing his reply, he wished to have access to the relevant official record, he should inspect the same in the office of the Director, Research and Medical Education/Medical Superintendent, Rajendra Hospital, Patiala, after making a prior appointment with him. It was further pointed out that only those documents would be shown to him as were in the possession of the said Director and which were relevant to the case. It was also stated that if the petitioner wished to consult any other relevant record which was not in the custody of the Health Department,

it was for him to undertake its inspection. In paragraph 17 of the writ petition, it was stated by the petitioner that he was not permitted to inspect the records of the confidential enquiry conducted by the Vigilance Department. This averment in the writ petition was denied by the State in its return, where it was said that no specific request for inspecting the record of the confidential enquiry conducted by the Vigilance Department was received from the petitioner. It is clear on the file that no effort was made on behalf of the petitioner to inspect the record of the confidential enquiry in which the report of the enquiry officer would obviously be there. In the show-cause notice, he had been specifically informed that he could inspect the records of the case. If on inspection, he found that some relevant document was not there, he could ask for its inspection which would have not been denied to him by the Department. If he had not availed of that opportunity, the petitioner himself has to be blamed for that. It appears that he was not attaching any importance to the report of the enquiry officer, otherwise he would have immediately asked for the inspection of the same.

(12) As regards the personal hearing alleged to have been claimed by the petitioner, this point was not mentioned in the writ petition. Therefore, the State had no opportunity either to deny or admit the allegation in that behalf. Secondly, action against the petitioner, in the instant case, was taken under rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, as would be apparent from the show-cause notice issued to him and the action which was proposed to be taken and which had actually been taken against him. Rule 8 says—

> "Without prejudice to the provisions of rule 7, no order under clause (i), (ii), or (iv) of rule 4 shall be passed imposing a penalty on a Government servant, unless he has been given an adequate opportunity of making any representation that he may desire to make, and such representation has been taken into consideration :
>
> Provided that this condition shall not apply in a case where an order based on facts has led to his conviction in a criminal court or an order has been passed superseding him for promotion to a higher post on the ground of his

unfitness for the post on account of the existence of unsatisfactory record :

Provided further that the requirements of this rule may, for sufficient reasons to be recorded in writing, be waived where it is not practicable to observe them and there they can be waived without injustice to the officer concerned."

(13) It will be seen from this rule that the granting of personal hearing to a Government servant is not mentioned therein, as it is in the earlier rule 7 which deals with enquiries before the imposition of the three major punishments of dismissal, removal and reduction in rank. All that is stated in rule 8 is that the Government servant would be given adequate opportunity of making any representation. It is conceded that he had submitted a lengthy representation in reply to the show-cause notice and the same was considered by the Secretary to Government, Punjab, Medical and Health Department, before he passed the impugned order, dated 16th August, 1965. Moreover, it has not been shown in what manner the petitioner had been prejudiced by not being granted a personal hearing. As I have said, the only other grievance made by the learned counsel was that the petitioner had not been supplied a copy of the report of the enquiry officer. That point has already been dealt with by me above. The record shows that real opportunity had been given to the petitioner to make representation against the punishment proposed to be awarded to him. In the writ petition, the petitioner never made a complaint about not having been granted a personal hearing and, consequently, no prejudice was caused to him, even if he was not personally heard.

(14) It may be mentioned that the learned counsel relied on two rulings of this Court, in *Shri Kalyan Singh* v. *The State of Punjab* (5), and *R. D. Rawal, Divisional Forest Officer* v. *State of Punjab and others* (6). Both of them are distinguishable on facts and have no application to the instant case. This contention of the learned counsel, therefore, also is without any substance.

(15) The result is that this petition fails and is dismissed, but with no order as to costs.

K. S. K.

(5) I.L.R. (1967) 2 Punj. and Hry. 471=1967 S.L.R. 129.
(6) 1967 S.L.R. 521.