

basis of the periodic reports recorded under Rule 19.5 we find no basis for such a contention. As already observed, the reports under Rule 19.5 have to be recorded and submitted by the Sub-Inspector or the Inspector under whom the constable is working. The assessment recorded by these officers is not binding on the Superintendent of Police. Furthermore, even in a case where the periodic reports are good, some material can come to the notice of the authority which may show that the concerned constable is not likely to become a good police officer. There may be a complaint against a constable which may show that his integrity is doubtful or that he is not disciplined. If on the basis of such a material, the Superintendent of Police forms an opinion that the constable is unlikely to become an efficient police officer, there is nothing which debars him from passing an order of discharge under Rule 12.21.

No other point was urged.

In view of the above it is held that :—

- (1) A constable can be discharged from Service under Rule 12.21 at any time within three years of his enrolment in spite of the fact that there is a specific allegation which may even amount to misconduct against him;
- (2) A Superintendent of Police can form his opinion regarding the likelihood or otherwise of a constable making a good police officer not only on the basis of the periodic reports contemplated under Rule 19.5 but also on the basis of any other relevant material; and
- (3) The provisions of Rule 16.24 and Article 311 shall be attracted only when the punishing authority decides to punish the constable.

In these case, there is nothing to show that the petitioners have been punished or that the action is not in conformity with the Rules. Consequently there is no merit in these petitions, which are dismissed. The parties are, however, left to bear their own costs.

R.N.R.

Before : Hon'ble G. R. Majithia and S. K. Jain, JJ.  
AMARJIT SINGH,—Petitioner.

*versus*

STATE OF PUNJAB,—Respondent.  
Civil Writ Petition No. 3941 of 1993

October 15, 1993

*Constitution of India, 1950—Art. 226 and 227—Punjab Civil Services (Punishment and Appeal) Rules, 1970—Rule 4(2)—Employee*

*convicted and sentenced—Appellate Court staying suspension of sentence—Such employee suspended—Validity of suspension.*

*Held*, that if the operation of the order of sentence has been stayed in appeal by this Court after it had been in operation for more than forty-eight hours, the mandate of the rule will be deemed to have become applicable and the order of the suspension is automatic. The impugned order of suspension is referable to Rule 4 (2) (b) of the Rules and is perfectly valid and legal.

(Para 6)

Sarjit Singh, Advocate with Jagdev Singh, Advocate, for the Petitioner.

G. S. Cheema, A.A.G., Punjab, P. S. Kadian, DAG, Haryana, for the Respondent.

#### JUDGMENT

(1) The petitioner has challenged the order dated March 29, 1993, issued by the Government of Punjab, Department of Public Works (B & R I Branch), Chandigarh placing him under suspension with immediate effect, in this petition under Articles 226/227 of the Constitution of India.

(2) F.I.R. No. 175, dated November 22, 1986 under Section 5(1)(e) read with Section 5(2) of the Prevention of Corruption Act, 1947, Sections 465 and 467, Indian Penal Code, was registered at Police Station Ropar, against the petitioner. He was tried in the Court of the Special Judge, Ropar for the offence under Section 5(1)(e) read with Section 5(2) of the Prevention of Corruption Act and was convicted and sentenced to undergo two years' rigorous imprisonment and to pay a fine of Rs. 2,000 or in default of payment of fine, to undergo further rigorous imprisonment for two months.—*vide* judgment and order dated January 22, 1993.

(3) The petitioner challenged the judgment and order of conviction and sentence in this Court in Crl. Appeal No. 48—SB of 1993 which came up for motion hearing on February 18, 1993. The motion Bench passed the following order :—

“Notice. Bail to the satisfaction of Chief Judicial Magistrate, Ropar.”

On April 8, 1993, the petitioner filed Crl. Misc. No. 3673 of 1993 in Crl. A. No. 48-SB of 1993 for suspension of the sentence during the

pendency of the appeal and the learned Single Judge passed the following order :—

“Sentence awarded to the appellant is suspended till disposal of the appeal.”

When the writ petition came up for motion hearing, it was submitted by the learned counsel for the petitioner that the order of suspension was not envisaged under Rule 4(2) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short, the Rules). On May 18, 1993, the writ petition was admitted to hearing by a Division Bench of this Court and it is how the matter has come up before us.

(4) The solitary question which arises for determination is : Can be Government servant who has been convicted in a criminal trial be placed under suspension in view of the provisions of Rule 4 of the Rules ?

(5) The order of suspension does not amount to termination or dismissal from service. The effect of an order of suspension of a Government servant is that his services under the Statute are not put to an end. He continues to be a member of the Service in spite of the order of suspension, but he is not permitted to work and further, during the period of his suspension he is only paid allowance generally called “subsistence allowance”, which is normally less than his salary, instead of the pay and allowances he would have been entitled to if he had not been suspended. Rule 4 of the Rules reads thus :—

“4. *Suspension* :—

(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 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 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 the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

- (3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government employee under suspension is set aside in appeal or on review under these rules and the case is remitted for further enquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.
- (4) Where a penalty or dismissal, removal or compulsory retirement from service imposed upon a Government employee is set aside or declared or rendered void in consequence or by a decision of a court of law and the punishing authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of

dismissal, removal or compulsory retirement was originally imposed, the Government employee shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

- (5) (a) 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.
- (b) Where a Government employee is suspended or is deemed to have been suspended whether in connection with any disciplinary proceeding 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 him in writing, direct that the Government employee shall continue to be under suspension until the termination of all or any of such proceedings.
- (c) An order or suspension made or deemed to have been made under this rule may 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."

A bare reading of the aforementioned rule indicates that under sub-rule (1) a Government employee can be placed under suspension (a) where either a disciplinary proceeding is contemplated/pending against him or (b) where a case against him in respect of criminal offence is under investigation, inquiry or trial. This provision is permissive. Under sub-rule (2) by legal fiction a Government employee shall be deemed to have been placed under suspension (a) if he is detained in custody on a criminal charge or otherwise for a period exceeding forty-eight hours or (b) he is convicted for an offence and is sentenced to a term of imprisonment exceeding forty-eight hours. The Explanation below this sub-rule further clarified that the period of forty-eight hours is to be computed taking into account even intermittent periods of imprisonment. Thus even if the Government does not pass the order of suspension, by operation

of Rule 4(2) (b), which is a deeming provision, the Government employee shall be deemed to have been placed under suspension. No order is required to be passed for placing him under suspension once he is convicted or an criminal offence and sentenced to imprisonment for a term exceeding forty-eight hours. "Sentence" means a judgment formally pronounced by a Court upon the accused after his conviction in a criminal prosecution, awarding the punishment to be inflicted. It formally declares to the accused legal consequences of guilt of which he has been convicted.

(6) The petitioner was convicted by the learned Special Judge. Ropar of an offence under Section 5(1)(e) read with Section 5(2) of the Prevention of Corruption Act and was sentenced for a period of imprisonment exceeding forty-eight hours. Although the sentence was suspended by this Court on April 8, 1993, but the sentence awarded by the learned Special Judge was in operation from January 22, 1993 to April 8, 1993. Thus, the petitioner remained sentenced for a period exceeding forty-eight hours and the rigorous of Rule 4 (2) (b) of the Rules is attracted. A close reading of Rule 4 indicates that Rule 4(2) (a) talks of suspension on detention in custody exceeding a period of forty-eight hours, while Rule 4(2) (b) only speaks of conviction. Thus even if the operation of the order of sentence has been stayed in appeal by this Court after it had been on operation for more than forty-eight hours, the mandate of the rule will be deemed to have become applicable and the order of suspension is automatic. The impugned order of suspension is referable to Rule 4(2) (b) of the Rules and is perfectly valid and legal.

(7) For the reasons stated above, the writ petition fails and is dismissed.

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S.C.K.

Before : Hon'ble J. S. Sekhon and A. S. Nehra, JJ.

GOVERNMENT FOOD INSPECTOR,—Petitioner.

*versus*

HANUMAN SINGH,—Respondent.

Criminal Appeal No. 365DBA of 1990

April 27, 1994.

*Prevention of Food Adulteration Act, 1954—Ss. 2(ix) (e), 2(v), 7, 11(i) (b) and 16(1) (a) (i)—Prevention of Food Adulteration Rules.*