

Case :- SERVICE SINGLE No. - 10862 of 2021

Petitioner :- Gaurav Bansal

Respondent :- State Of U.P. Thru. Prin. Secy. Home. Lko & Others

Counsel for Petitioner :- M.P. Raju

Counsel for Respondent :- C.S.C.

Hon'ble Rajnish Kumar,J.

Heard, Shri M.P. Raju, learned counsel for the petitioner and Shri Pankaj Srivastava, learned Additional Chief Standing Counsel.

Submission of leaned counsel for the petitioner is that the petitioner had gone on three days' casual leave on 03.04.2021 but on 07.04.2021 he was detected COVID positive therefore he could not join the duties back and his brother had informed through speed post to the concerned authorities and sent the COVID positive report of the petitioner. The petitioner was found COVID negative on 02.05.2021 and on 03.05.2021 he had joined back. But without considering it, the petitioner has been placed under suspension by means of order dated 05.05.2021 in contemplation of preliminary inquiry which is apparent from the letter dated 08.05.2021 of the opposite party no.4 written to the petitioner informing that the petitioner has been suspended by means of the order dated 05.05.2021 and the preliminary inquiry is being conducted by him and called to the petitioner for recording his statement and he has got recorded his statement.

On the basis of above and relying on the judgment and order passed in Writ-A No.53895 of 2013; Chandra Prakash S.I. Vs. State of U.P. and Others, learned counsel for the petitioner submitted that the petitioner has been suspended on a non-existing ground before completion of the preliminary inquiry which could not be done. Considering the aforesaid judgment this Court had also quashed the suspension order in the case of Nizamuddin Vs. State of U.P. and Others in Writ Petition No.6600 (S/S) of 2015.

Learned Additional Chief Standing Counsel could not dispute the legal position and submission of learned counsel for the petitioner. However, he submitted that the liberty may be granted to pass a fresh order after completion of the preliminary inquiry.

Having considered the submissions of learned counsel for the parties and perusing the records, it is apparent that the legal position is settled vide judgment and order dated 03.09.2013 passed in Writ-A No.53895 of 2013 that a suspension order can not be passed during pendency of a preliminary inquiry. The aforesaid judgment has been passed relying on a full bench decision of this Court in the case of Raj Veer Singh Vs. State of U.P. and Others; 2010 (10) ADJ 246.

In view of the settled position and the facts before the Court the order of suspension dated 29.04.2021 contained in annexure no.1 to the writ petition can not be sustained in the eyes of law and the same is accordingly quashed. It is, however, open for the competent authority to pass a fresh order after receipt of report of preliminary inquiry as per law. The consequences shall follow accordingly as per law.

The writ petition is **disposed of** in aforesaid terms.

Order Date :- 20.5.2021

Haseen U.