

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.18982 of 2011

Date of decision: 29.09.2015

Sarabjit Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. L.S.Sandhu, Advocate for the petitioner

Mr. Pankaj Mulwani, Deputy Advocate General, Punjab
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The petitioner, who was employed as Education Volunteer challenges the termination order dated 20.9.2011 (Annexure P/5) passed by respondent no.3 which was on the basis of the petitioner being absent on 29.9.2010.

The pleaded case of the petitioner is that she was appointed as Education Volunteer with effect from 24.1.2009. On not being allowed to join duties on the ground that Education Volunteers had been appointed after their attaining the age of 35 years, they approached this Court by way of Civil Writ Petition no.17679 of 2010 titled as Monika and others Vs. State of Punjab and others. While issuing notice of motion on 29.9.2010, the petitioners were protected by ordering that they would not be denied joining on the ground that they were above the age of 35 years. Eventually the writ petition was disposed of vide order dated 29.3.2011 extending the age for engaging the Education Volunteers to 37 years.

The petitioner on the date of absence i.e. 29.9.2010 had suffered a pain in the stomach and had been taken to the nearest Doctor in the village and after taking medicine had returned to the school at 10.15 AM but due to her absence, she had been issued a show cause notice dated 23.12.2010 (Annexure P/3) proposing the penalty of termination. She submitted the reply to the show cause notice on 3.2.2011 (Annexure P/4) giving her explanation that she had come back to school at 10.15 AM and during the period of absence the checking had been done and therefore, she be excused for her absence. The said defence was ratified by the Head Mistress of the Government Primary School, Sakkanwali,

Mukatsar and thereafter the impugned order was passed which reads as under:-

“With regard to subject cited above, Sarabjit Kaur, Education Worker, Govt. Primary School, Sangrana was found absent during inspection conducted on 29.9.10 and she has been strictly warned vide letter No.2011/DEO/Coordination/Inspection-2/17022 dated 29.6.11. The explanation received from worker is found unsatisfactory. Hence services of above noted worker may be terminated within a period of 7 days under intimation to the undersigned. It may be treated as most important and there may be no delay in this matter.”

The said order has thus been challenged on the ground that no opportunity of hearing was given and there was never any complaint earlier against the work and conduct of the petitioner and she had been prejudiced by the extreme penalty of termination without following any proper procedure.

In the written statement filed on behalf of respondent no.1, the plea taken was that the petitioner was appointed on stop gap arrangement on temporary basis under the Sarva Shiksha Scheme and reply being not found satisfactory her services were dispensed with in accordance with law. It was submitted that Village Education Development Committee had been now replaced by the School Management Committee in compliance with the Right to Free and Compulsory Education Act, 2009.

In the written statement filed on behalf of respondent no.2, defence was that under the new policy/instructions dated 29.4.2011, it has been decided not to appoint any volunteer with effect from the said date. The factum of the petitioner being not given an opportunity of being heard at the time of passing of the impugned order has not been disputed.

During the pendency of the present petition, the petitioner filed a Civil Misc. Application bearing no.2659 of 2014 that she be released the salary from September, 2011 till date as she was continuously working thereafter also in spite of the termination order. Notice in the said application was issued to the State and a direction was issued that respondent no.3 would look into the matter and ensure release of salary for which the petitioner had worked. In compliance with the said direction, an affidavit was filed wherein it was averred that a sum of ₹ 2,36,000/- in lieu of salary has been paid by way of cheque dated 4.8.2014. It is thus apparent that the petitioner continued to work and has also been paid her

salary from 20.9.2011 to 4.8.2014. The impugned order has been reproduced above.

A perusal of the same would go on to show that the punishing authority has never even considered the defence of the petitioner who was absent on account of pain in stomach for a particular point of time at the time of inspection. Even as per the show cause notice her attendance had been marked at 7.15 AM on the said date. The specific defence that the petitioner had taken ill and gone to take medicine from the Doctor of village was not even taken into consideration. The order passed thus is not sustainable and does not show any application of mind and is totally bereft of reasoning and simple justification was that explanation was not found satisfactory. Even otherwise the petitioner was never even heard when the said order was passed and the punishment also is shockingly disproportionate to the gravity of alleged misconduct even if it was for a temporary/stop gap arrangement employee. Accordingly, the impugned order dated 20.9.2011 (Annexure P/5) cannot be held to be justified in any manner and the same is quashed.

Resultantly, the present writ petition is allowed.

September 29, 2015
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(G.S.SANDHAWALIA)
Judge