

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.13170 of 2015
Date of decision: 22.07.2015

Lilly Paul

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Harchand Singh Batth, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? YES
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

A writ in the nature of certiorari is prayed for, so as to quash the order dated 16.09.2014 (Annexure P13), passed by respondent No.2, vide which the petitioner was dismissed from service as also the order dated 18.04.2015 (Annexure P15), whereby even the statutory appeal preferred by the petitioner was rejected.

Petitioner was charge-sheeted on 06.01.2004, under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, as she had willfully and unauthorizedly absented from duty.

The chargesheet that was sought to be served upon the petitioner was received back with the remarks "The recipient of the post is not residing here."

Resultantly, the charge sheet was served upon the petitioner by publication in the newspaper on 07.08.2004. Subsequently, Dr. Kanwaljit Singh, Asst. Civil Surgeon, Amritsar was appointed as Inquiry Officer. Even during the course of inquiry repeated letters, vide registered post, were sent to the petitioner at her given address but were received back unserved. As a result, again a public notice was published in the newspapers so that petitioner could join the inquiry. However, neither did she appear in the inquiry proceedings nor even communicated with the Inquiry Officer to explain her version. In the wake of the material produced before the Inquiry Officer and the statement of witnesses, the guilt of the petitioner was established. Accordingly, all the charges against the petitioner were found to have been proved. Again, vide a registered letter dated 24.04.2006, a copy of the inquiry report dated 29.12.2005 was sent at the given address of the petitioner. But, as earlier, that too was received back unserved. Resultantly, a notice was published in two newspapers in July 2006 and it was notified that petitioner could obtain the copy of the inquiry report and send her explanation within a period of one month. And in case no reply is received, further proceedings would be initiated under the

rules. But still, the petitioner never responded. However, the petitioner, who was absenting from duty for an abnormally long period, suddenly appeared and submitted her joining report on 06.12.2011. Consequently, the department sought the advice of the Government in this regard but nothing tangible emerged. However, vide letter dated 12.01.2012, the petitioner was directed to appear for personal hearing at a designated time and place. And she was asked to produce an affidavit, duly attested by the Magistrate, regarding the period of her absence from duty and if during this time, she served in India or abroad. Still, the petitioner did not choose to appear. Vide letters dated 09.11.2012, 12.11.2013, 04.04.2014, 22.05.2014 and 28.05.2014, the petitioner was repeatedly asked to submit the required affidavit. And in response, the petitioner submitted an affidavit in which all what she stated was that during her absence she had not served in India with any government or non-government entity. Vide letter dated 10.03.2014 followed by yet another letter dated 06.08.2014, the petitioner was apprised of the proceedings that had been held against her till that time and she was asked to respond to the inquiry report and appear on 02.09.2014, before the Director, Department of Health Services and Family Welfare, Punjab, for personal hearing. Further, to submit an affidavit attested by the Consulate General of India (UK), and clarify if she had performed a government or non-government service

abroad or in India along with original passport. However, vide letter dated 27.08.2014, the petitioner responded to convey that she was not in a capacity to join her duty on account of her family circumstances and, in fact, she had already applied for voluntary retirement. And, she could neither appear nor submit the required documents. That being so, it was concluded that the charges levelled against the petitioner were proved. Accordingly, services of the petitioner were terminated, under Rule 3.25 of the Punjab Civil Services Rules (Vol. 1 Part 1) w.e.f. 02.08.2001 i.e. from the day she absented from duty, vide order dated 16.09.2014 (Annexure P13). As indicated above, even an appeal preferred by the petitioner has since been rejected by the appellate authority vide an order dated 18.04.2015 (Annexure P15). That is how, petitioner is before this court.

I have heard learned counsel for the petitioner and perused the paper book.

All what has been urged by learned counsel for the petitioner is that in similar circumstances punishment of dismissal from service inflicted upon another employee, namely, Narinderpal Kaur, was reduced to pre-mature retirement by the appellate authority, vide order dated 21.01.2011 (Annexure P16). Accordingly, it is contended that the petitioner could not be discriminated. Further, the petitioner had rendered 26 years of service and, therefore, the

punishment awarded to the petitioner was harsh and disproportionate to the alleged misconduct. Further, respondents never took any decision on the joining report submitted by the petitioner in December, 2011.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the petition is wholly devoid of merit and is thus liable to be dismissed for the reasons that are being narrated hereinafter.

Concededly, petitioner absented from duty w.e.f. 02.08.2001 and returned in December, 2011 i.e. after a period of over ten years. Neither did she ever apply for any leave nor sent any intimation to the department. Thus, her absence was willful and unauthorized. Charges against the petitioner were duly proved in the departmental inquiry. Records show, and as indicated above, petitioner was afforded every possible opportunity to participate in the departmental proceedings and explain her view point. Though, letters that were sent to the petitioner, vide registered post, at her given address, were received back unserved, but apparently she was served and apprised of the proceedings vide repeated publications in the newspapers. Thus, it would be appropriate to record that despite being served and conscious of the proceedings, neither did she choose to submit any reply to the chargesheet nor respond to the inquiry proceedings. The inquiry held against the petitioner, thus, was fair and proper. So much so, when

she arrived suddenly after over a decade in December, 2011, she was afforded an opportunity to respond to the Inquiry Report as also an opportunity of personal hearing. But neither did she submit any explanation nor appeared before the disciplinary authority. Therefore, vide yet another letter dated 06.08.2014, she was asked to appear in person before the Director, Department of Health and Family Welfare and, furnish an affidavit, attested by the office of Consulate General of India (UK) to clarify if she had performed any government or non-government job abroad along with the copy of her original passport. In response, petitioner expressed her inability to rejoin her duty and rather maintained that she had applied for premature retirement. She also expressed her inability to furnish the documents that she was asked to submit. Concededly, the petitioner had moved to England a decade ago. Further, the array of parties and the power of attorney appended with the petition, show that the petitioner has settled abroad i.e. United Kingdom and thus the petition in hand is merely speculative in nature. Ex facie, she never had any mind, intent and will to serve or continue in service. That is how she expressed her inability to join duty. And rather purported to have sought voluntary retirement. Apparently, she is not litigating to be in service but only for service benefits. Indecision, if any, at the end of the respondents vis-

à-vis her joining report is hardly of any relevance, at this stage, in these proceedings.

Argument advanced by learned counsel for the petitioner, that in an identical situation punishment of dismissal awarded to another employee i.e. Narinderpal Kaur, was reduced to premature retirement, is equally misconceived. Firstly, the petitioner cannot draw any such parity as regards the punishment inflicted upon her. Even otherwise, Narinderpal Kaur remained absent from duty for a year and had rendered 31 years of service. Whereas, petitioner was proved to be guilty of willful and unauthorized absence from duty for over 10 years. And not just that she indeed was found to be guilty of multiple charges:

- “1. To remain absence from duty without giving any information or sending leave.**
- 2. To misappropriate the Govt. record.**
- 3. Not to receive the official correspondence intentionally.**
- 4. Not to obey the orders of the senior officers.**
- 5. To cause loss to the public interest.”**

That being so, no interference is warranted in the punishment awarded by the disciplinary authority. No doubt, she had rendered 26 years of service, but she herself demonstrated brazen insensitivity towards said service and never looked back in 10 years.

In the wake of the position, as set out above, no interference is warranted under Article 226 of the Constitution

of India. Petition being devoid of merit is accordingly dismissed, in limine.

July 22, 2015
Rajan

(Arun Palli)
Judge