

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

CWP No.22693 of 2014(O&M)

Date of decision : 06.04.2015

Neelam Kharangar

..... Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Ravi Verma , 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?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

By this petition the petitioner has challenged the punishment order and the Appellate order. The petitioner was issued a chargesheet alleging that she had no sense of discipline; that she would take leave whenever she wanted and that even on those occasions when she took leave that was either on the ground of her own illness or on the ground of illness of her husband without getting the same sanctioned and when asked she did not submit medical certificate nor did she submit her attendance register and on one occasion she was not present in the College till 10.45 a.m. though the college time was 8:30 a.m. After this chargesheet was issued by the Managing Committee, the principal issued yet another charge sheet. Ultimately inquiry was held and she was found guilty of all charges except one. Consequently the Managing Committee proposed punishment of dismissal upon her and sent it to the Director General of Higher Education-respondent No.2 who came to the conclusion that the second chargesheet had not

been approved by the Managing Committee and that the principal was not competent to have issued the same and consequently set aside the proceedings in the second chargesheet even while giving an opportunity to the Managing Committee to consider the matter afresh and pass necessary orders. As regards the charges of the first chargesheet, respondent No.2 upheld the disciplinary proceedings but found that the punishment of dismissal was too harsh and consequently substituted the punishment by reduction in rank to the original grade. Further, for the period regarding her suspension her claim was restricted to the subsistence allowance which she had been paid. Both the parties filed appeals before respondent No.1. At one stage respondent No.1 was apprised that pursuant to the direction of the Director General Higher Education, the Managing Committee had issued a fresh chargesheet on the petitioner. He, therefore, directed that that matter be also finalised and file be put up for both of them. In that chargesheet the petitioner has been exonerated. Consequently both the original appeals (filed qua the punishment proposed in the first chargesheet) remained to be decided.

Respondent No.1, after going through the facts, noticed that the whole case of the petitioner was that the managing committee had no objection in granting her various leaves but it was only the principal who was harassing her. He, however, found that this allegation had not been made at the first instance and consequently disregarded the same. He also noticed that the inquiry officer found the petitioner guilty of all the charges except one. Ultimately he upheld

the order passed by the Director General Higher Education of imposing lesser penalty to the petitioner than that of dismissal. Hence the present petition.

The first argument made by learned counsel is that the original resolution of the managing committee authorised only an inquiry into the allegations of absence but the principal added further charges. However, I find that in the reply to the chargesheet Annexure P-6 the petitioner did not take up this plea. In the circumstances I reject this argument.

The second argument is that all the documents were not handed over to the petitioner when the chargesheet was issued and only the statement of allegations was given. In this regard it is important to note that the principle of audi alteram partem cannot be straight jacketed into a mathematical formula. It is not the case of the petitioner that the material against her was not shown to her at any stage. Further the allegations were primarily of late coming and absence and of not producing medical certificate when required. Learned counsel has not been able to tell as to which was the document which she was to get at the time of chargesheet and the absence of which prejudiced her.

Learned counsel ha further argued that the respondents changed the witnesses during the inquiry. In my opinion in context of the present case where the allegations are of unauthorised absence and where the absence is admitted, there is no prejudice caused to the petitioner because instead of one clerk another clerk has come to show

that she was absent on 02.04.2010. The petitioner has sought leave on two occasions, one on account of her illness and on account of the illness of her husband and on both occasions she had not been able to get a medical certificate. Even before this Court the matter was adjourned thrice to enable the petitioner to place the material on record which would show that the medical leave was applied but nothing has been placed on record.

The Hon'ble Supreme Court in the case of Union of India and another vs S.S.Ahluwalia, 2007(7) SCC 257, held as follows :-

“... The scope of judicial review in the matter of imposition of penalty, as a result of disciplinary proceedings, is very limited. The Court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case, the Court is to remit the matter to the disciplinary authority for reconsideration of the punishment. In an appropriate case, in order to avoid delay the court can itself impose lesser penalty.....”

In the circumstances the order of the Director General Higher Education reducing penalty of dismissal to that of reduction in rank and the rejection of the appeal cannot be held to be illegal or unfair.

Petition is dismissed.

Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

April 06, 2015

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