

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14902 of 2016

Date of Decision: 28.07.2016

Lila Ram

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. P.R. Yadav, Advocate,
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. The petitioner was elected as a Panch on July 05, 2000. He was offered appointment as Turner Instructor in ITI by letter dated August 25, 2003. The next day i.e. August 26, 2003 he submitted his resignation to the Sarpanch and joined service on August 27, 2003. However, he was asked by the Sarpanch etc. to carry on as Panch till alternative arrangements were made. This ad hoc arrangement continued for about eight months and he performed duties till May 24, 2004 as Panch concurrently with his Govt. job.

2. After serving for 13 years in ITI he was issued a charge-sheet by the disciplinary authority for not informing employer that he worked as a Panch while holding a job in Government. An inquiry has been conducted. The petitioner did not dispute the position but only explained the circumstances. He produced his resignation letter as Panch on the inquiry file. He has been held guilty of the charge of moonlighting.

3. It is argued by Mr. Yadav that a Panches were not paid salary or even an honorarium till the year 2010 when the new law came. Therefore, the office of Panch prior to 2010 cannot be said to be an office of profit. The inquiry has led to the extreme punishment of removal from service vide order dated July 15, 2016 passed by Director Industrial Training Department, Haryana.

4. Aggrieved by the order of removal, the petitioner has filed an appeal before the Additional Chief Secretary to Govt. of Haryana, Industrial Training Department, Chandigarh under Section 9 of the Haryana Civil Service (Punishment and Appeal) Rules, 1987 praying for setting aside the charge-sheet dated February 04, 2016, the inquiry report dated April 26, 2016 and the impugned order dated 15/19.07.2016. The appeal was presented before the appellate authority on July 25, 2016 together with an application for stay. The appeal is now fixed for August 09, 2016. The removal order has been served on the petitioner but he says that he has not yet been formally relieved of his duties.

5. In view of pendency of appeal which is an alternative remedy, the present petition is premature since statutory remedy stands availed but looking to the reasonable apprehension expressed by the petitioner that the appellate authority may not enjoy plenary power to grant interim stay on the pending application he has approached this Court. This Court has no doubt that the appellate authority is sufficiently empowered in appropriate cases where justice demands to grant stay pending appeal as that is a judicial function or a quasi judicial one. The appellate authority is also the administrative head of the Department and the cadre controlling authority

and while disposing of this petition, a request is made to the appellate authority to consider that when the matter is taken up for August 09, 2016 he would address the stay application, hear the petitioner and pass an appropriate order according to his wisdom and discretion on the penalty imposed and its quantum, needless to say, after hearing the petitioner. It would be open to the appellate authority to dispose of the main appeal on August 09, 2016 by passing a speaking order instead of deciding the application depending on the Officers discretion and workload. Further still, and again needless to say, if the petitioner feels aggrieved by any order passed in appeal, interim or otherwise, he would always be at liberty to seek his further remedies before a proper forum. However, looking to the grave prospect of loss of livelihood after 13 years of continuous service it is suggested that till August 09, 2016 the services of the petitioner will be on standby and he would be treated as one in status quo ante i.e. one day prior to the passing of the order of removal from service. However, the intervening period from today shall not give any permanent or equitable right to the petitioner, monetary or otherwise, other than what is determined in the appeal, in the first instance.

6. With the above observations and request the petition stands disposed of.

(RAJIV NARAIN RAINA)
JUDGE

28.07.2016
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