

CWP No. 18006 of 2014 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 18006 of 2014 (O/M)

Date of decision : 3.8.2016

Swaran Kaur Kalia

..... Petitioner (s)

Versus

State of Punjab and another

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vikas Kuthiala, Advocate, for the petitioner.

Mr. R.S. Pathania, Deputy A.G. Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes.
2. To be referred to the Reporter or not. Yes.
3. Whether the judgment should be reported in the digest ? Yes.

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KULDIP SINGH J.

Petitioner-Swaran Kaur Kalia is a retired District Education Officer (Elementary Officer), Sangrur. She was appointed as an S.S. Mistress on adhoc basis on 21.1.1982. Her services were regularized on 1.4.1985. Later on, she was appointed as a Head Mistress on selection by the Punjab Public Service Commission, Punjab, with effect from 20.1.1990. Thereafter, she was promoted as a Principal on 3.7.1997 and ultimately she was appointed as a District Education Officer (Elementary Education) Sangrur, on 2.8.2010. Three separate chargesheets were served upon the petitioner on 11.11.2011, 10.1.2012 and 6.2.2012 i.e. within a span of three months. The petitioner was to retire from service on 30.4.2013. The petitioner was placed under suspension from the post of District Education

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Officer (Elementary Education) Sangrur, with effect from 12.1.2012 and was reinstated in service on 26.3.2013, just before her retirement on 30.4.2013. The petitioner retired from service on 30.4.2013 after rendering more than 31 years of service to the respondent-State of Punjab.

It is stated that after the inquiries, three punishments were awarded. By the first punishment order dated 7.2.2014 (Annexure-P-2), the petitioner was awarded the punishment of a cut of 5% in her pension for one year. By the second punishment order dated 12.2.2014 (Annexure-P-5), the punishment of 5% cut in her pension was imposed. By the third punishment order dated 21.3.2014 (Annexure-P-8), the punishment of 10% cut in her pension was imposed.

At the time of arguments, since the learned counsel for the petitioner has not challenged the inquiries and confined his prayer only to the point of disproportionate punishments and non mentioning of punishment for a stipulated period in the second and third punishment orders and also on the point of late payment of the pensionary benefits, therefore, the other facts need not gone into. The petitioner claims that despite the punishment orders, her pensionary benefits were also paid late.

The State, in the reply, has reiterated that the punishments were correctly awarded. The reference has also been made to the charges levelled against the petitioner, which were duly proved during the inquiries.

I have heard the learned counsel for the petitioner, the learned State counsel and have also carefully gone through the file.

The learned counsel for the petitioner has referred to Rule 2.2 (b) of the Punjab Civil Services Rules (in short 'PCS Rules'). The learned

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counsel for the petitioner contends that under this Rule, a cut in the pension can be imposed permanently or for a specified period. The learned counsel for the petitioner contends that though in the first punishment order, 5% cut in the pension is awarded for one year, however, in the second and third punishment orders, no period has been specified. It is contended that it was mandatory for the authority to mention whether the cut in the pension is permanent or for a specified period.

After considering the submission of the learned counsel for the petitioner, I am of the view that in the second and third punishment orders, the order is of imposition of 5% and 10% cut respectively in the pension of the petitioner. Once the punishment of cut in the pension is not qualified by the period, for which the cut is imposed, it is deemed to be a permanent cut in the pension. It is not mandatory that word 'permanent' must be used. The language of the punishment orders itself is clear to show that the cut is permanent in nature. However, if it is qualified by the period, for which the cut is imposed, it is deemed to be for a particular period. It being so, I do not find any illegality or infirmity in the impugned punishment orders.

The learned counsel for the petitioner has further argued that three punishments, imposing total cut of 20% in the pension of the petitioner, out of which 15% is permanent, are excessive and that this Court can always go into the proportionate nature of the punishment, awarded to the petitioner. In this regard, the learned counsel for the petitioner has placed reliance upon the authority of this Court in Harvinder Singh Versus State of Punjab, 2003 (1) PLR 150. It has been argued that the punishment orders cannot be passed unless a grave mis-conduct is recorded in the inquiry. The reliance has also been placed upon the authorities of the Two

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Division Benches of Delhi High Court in Union of India and others Versus R.P. Sharma (RTD.), 2013 LIC 232 and in P.N. Bhat (Prof.) Versus Union of India and others, 2012 (194) DLT 675.

In this regard, when this Court examined the inquiry reports, it comes out that qua the first punishment order, the proved charge against the petitioner is that in a writ petition (CWP No. 4441 of 2010), filed before the High Court in Karamjit Singh and others Versus Punjab State, she did not file the written statement, despite being given opportunities time and again nor she made any contact with DPI (SE) with regard to the orders of the High Court dated 25.8.2011, which is also a grave neglect.

I am of the view that harming the interest of the department by not filing the written statement, despite repeated opportunities granted by the High Court, is also a grave mis-conduct.

In the second inquiry report, the charge proved against the petitioner is that she did not give support to the work of Election Officer and Deputy Commissioner, Sangrur, during the Vidhan Sabha Elections 2012.

This, in my view, is also a grave mis-conduct.

In the third inquiry report, the charge proved against the petitioner is that she did not issue appointment letter to Shri Ajan Mohd., who was higher in the merit, despite the order dated 20.11.2011, issued by the Director Public Instructions (SE). The defiance of order of the higher authority is also a grave mis-conduct.

In this way, all the three punishments are on account of grave mis-conduct and neglect.

I am of the view that once it is found that the employee is guilty

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of grave mis-conduct and neglect and the punishment from its face is not harsh, this Court, in the exercise of powers under the writ jurisdiction, cannot go into the question of reduction in the punishment of cut in pension awarded to employee. The competent authority considered the charges and passed the punishment orders, which does not warrant any interference by this Court on the quantum. Hence, the prayer of the petitioner for reducing the punishment of cut in pension is declined.

The last contention of the learned counsel for the petitioner is that despite the fact that the petitioner retired on 30.4.2013 and the last punishment order was passed on 21.3.2014, which was conveyed, vide letter dated 25.3.2014, the payment of the pensionary benefits due was made as under :-

“ xxxxxxx xxxxxxx xxxxxxx

Date of GIS payment	:	20.5.2014
Date of GPF payment	:	28.11.2014
Date of Gratuity payment	:	10.1.2015
Date of Leave Encashment payment	:	13.3.2015
Date of Pension Provisional payment	:	19.3.2015

xxxxxxx xxxxxxx xxxxxxx ”

I am of the view that the learned counsel for the petitioner has merit in the contention. First of all, there was no ground to withhold the gratuity, leave encashment, GPF and GIS and further, there was no ground to delay the provisional pension for little less than one year. Accordingly, it is ordered that for the delayed payment of gratuity, leave encashment, GPF and GIS, the petitioner shall be entitled to interest at the rate of 9% per annum, commencing three months from the date of retirement till the

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payment. For late payment of the provisional pension, 9% per annum interest shall be payable, three months from the date of passing of the last punishment order i.e. 21.3.2014 (Annexure-P-8), till the payment.

In view of the above, the present writ petition is partly allowed and partly dismissed.

(KULDIP SINGH)
JUDGE

3.8.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes