

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

**CWP No.17784 of 2015 (O&M)
Date of decision: 18.10.2016**

Sukhdev Singh

..Petitioner

Versus

Shiromani Gurdwara Parbandhak Committee

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Mohinder Kumar, Advocate
for the petitioner.

Mr. Sukhbir Singh, Advocate
for the respondents.

Daya Chaudhary, J.

CM No.13045-CWP of 2016

This application is for placing on record replication to the written statement filed by the respondent.

Application is allowed and replication to the written statement filed by the respondent is taken on record.

CWP No.17784 of 2015

The prayer in the present writ petition is for issuance of a writ in the nature of certiorari for quashing of impugned order dated 20.08.2007 (Annexure P-7), whereby, the petitioner has been dismissed from service in violation of Service Rules as well as principles of natural justice and without issuing any charge sheet. A further prayer has also been made for issuance of direction to the respondent to reinstate the petitioner in service with all the consequential benefits.

Briefly, the facts of the case as made out in the present writ petition are that the petitioner was initially appointed by granting regular pay scale as Helper on 09.02.1987 by the President of Shiromani Gurudwara Parbandhak Committee(hereinafter called as 'SGPC'). Thereafter, he was posted at Darbar Sahib, Tarn Taran and had completed more than 20 years of service. His salary was also fixed in the pay scale of ₹1600-3510 after including special pay/increment in the grade of ₹2245/-. His services were also regularized w.e.f. 01.04.1991. Subsequently, on being promoted to the post of Clerk w.e.f. 01.11.2002 vide resolution dated 21.10.2002, he was posted as Inspector at Sri Darbar Sahib, Amritsar. Later on, he was posted at Gurudwara Sahib, Faizulpura for counting the collection of Golak. Some allegations were levelled against him and a complaint was made against him. Thereafter, he was placed under suspension vide order dated 06.01.2007. An inquiry was conducted by the Sub Committee constituted by the President, SGPC. Subsequently by imposing fine, he was reinstated in service. Ultimately, vide order dated 20.08.2007 (Annexure P-7), he was dismissed from service.

The grievance of the petitioner is that he was neither supplied the charge sheet nor any show cause notice was issued to him. He was also not associated in any inquiry proceedings, which were conducted at his back.

Learned counsel for the petitioner submits that the major punishment of dismissal from service has been imposed without following the principles of natural justice and his service record of more than 20 years has also not been taken into consideration. Earlier also, a complaint was

made but nothing was found in the enquiry. The petitioner was reinstated in service. Learned counsel further submits that the *malafide* action of the respondent is also clear from the fact that the petitioner earlier filed CWP No.18948 of 2009 before this Court and when the case was at arguments stage, the respondent took the petitioner in confidence and asked him to withdraw the said petition by giving an assurance that he would be reinstated in service. Said petition was dismissed as withdrawn on 16.07.2014 but the petitioner was not reinstated in service. He was given fresh appointment on the post of Clerk and was asked to join duty within a period of fifteen days. Learned counsel also submits that the petitioner has been made a scapegoat whereas his service record was very good and no complaint was made against him. The impugned order of dismissal from service is contrary to the provisions of Sections 64 and 69 of the Sikh Gurudwara Act, 1925. Learned counsel also submits that the impugned order of dismissal from service is liable to be set aside as the same has been passed without following the procedure of law in violation of the principles of natural justice as neither any charge sheet nor show cause notice was issued to the petitioner. The petitioner was not even associated in the inquiry and the copy of the inquiry report was also not supplied to him. Learned counsel also submits that the impugned order has been passed without considering the report of the Sub Committee. The appeal filed by the petitioner was dismissed and the grounds of appeal were not taken into consideration by the Appellate Authority. Even it has not been mentioned as to how the grounds of appeal were considered while deciding the appeal.

Learned counsel for the respondent opposes the submissions

made by learned counsel for the petitioner and submits that the petitioner himself has admitted his guilt and for that reason, inquiry was not required to be conducted. Learned counsel for the respondent further submits that it has been held by the Division Bench of this Court in **CWP No.3067 of 1999** titled as **Lakhbir Singh vs. Shiromani Gurdwara Parbandhak Committee** decided on **13.09.2000** that in case, an employee has admitted his guilt, no further inquiry is required. Learned counsel also submits that the SLP filed against said judgment was also dismissed by Hon'ble the Supreme Court on 12.01.2001. Same issue was there in **CWP No.5655 of 1999** titled as **Dayal Singh vs. SGPC** decided on **13.09.2000** wherein this Court held that in case, the employee has admitted his guilt, there is no need for further inquiry under the Service Rules. Learned counsel has also relied upon judgments of this Court in **CWP No.19081 of 2009** titled as **Sukhdev Singh vs. Shiromani Gurdwara Prabandhak Committee, Sri Amritsar** decided on **14.11.2013**, **LPA No.732 of 2014** titled as **Sukhdev Singh vs. Shiromani Gurdwara Prabandhak Committee** decided on **20.08.2014**, **CWP No.5416 of 2001** titled as **Randhir Singh vs. Shiromani Gurdwara Prabandhak Committee, Sri Amritsar** decided on **14.11.2013**, **CWP No.6345 of 2001** titled as **Kirpal Singh vs. SGPC** decided on **14.11.2013**.

Heard arguments of learned counsel for the petitioner as well as counsel for the respondent and have also perused the impugned order of dismissal from service as well as other documents available on the file including the order passed by the Appellate Authority.

The facts with regard to appointment, promotion and grant of pay scale are not disputed. On the allegations of committing theft, the

petitioner was placed under suspension and thereafter, he was removed/ dismissed from service vide order dated 20.08.2007. Simply it has been mentioned that the interim committee had suspended the services of the petitioner as allegations of theft of money from Golak were levelled against him and he was removed from service. The facts with regard to filing of CWP No.18948 of 2009, withdrawal of the petition on the assurance of reinstatement of petitioner in service as well as fresh appointment have also not been disputed. The appeal filed by the petitioner has also been dismissed.

The issue before this Court is as to whether the major penalty of dismissal from service can be imposed without giving any opportunity of hearing or without issuing any charge sheet i.e., in violation of principles of natural justice.

It is a settled position of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment is to be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercises its discretion and then imposes punishment as provided in the Rules.

Undisputedly, it is a discretion, which is to be exercised by the appointing authority to impose punishment (whether minor or major) and the Courts are slow to interfere in the quantum of punishment but by considering the facts and circumstances of the case, it is to be seen whether

delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the Court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment or may substitute the punishment by itself.

It is also settled position of law that the delinquent employee should know as to what allegations have been levelled against him and whether any fair or reasonable chance has been given to him or he has been given opportunity to cross-examine the witnesses to prove the charges. Meaning thereby, he must also be given a chance to rebut the evidence led against him. A departure from this requirement violates the principles of natural justice. The materials brought on record pointing out the guilt are required to be proved. If the inquiry report is based on merely ipse dixit and conjecture and surmises, it cannot be sustained in law.

Moreover, a person, who is required to answer a charge imposed, has a right to know as to what is against him. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings, which may culminate in punishment being imposed on the employee.

When a departmental inquiry is conducted against an employee, it cannot be treated as a casual exercise. The inquiry proceedings cannot be conducted with a closed mind as it is to be unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice

is to ensure that an employee is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

The right of appeal has also been provided and the petitioner has availed that remedy but the Appellate Authority has not applied its mind and even nowhere it has been mentioned as to how the grounds of appeal have been considered.

Moreover, the authority cannot be permitted to abuse the law or to use it unfairly. A person, who is witness in a case, can neither initiate the disciplinary proceedings nor pass an order of punishment in violation of principles of natural justice. It is apparent that the order of punishment has been passed in violation of principles of natural justice and contrary to statutory rules and as such, it is null and void and cannot be sustained under law.

It is also well settled that no adverse order can be passed without granting any opportunity of hearing in consonance with principles of natural justice and rule of audi alteram partem. No person should be judged without hearing and atleast reasonable and adequate opportunity is required to be given to the delinquent employee.

It is also the part of natural justice that all the relevant documents including copy of the inquiry report should be supplied to the delinquent. Non-supply of documents is denial of principles of natural justice as it is a basic requirement and mandate of provisions of Constitution of India. Moreover, an employee, who is under suspension, cannot collect documents from different branches of the office and he cannot be allowed to

inspect the same. His statutory right cannot be denied in absence of relevant documents. Moreover, failure of delinquent to file his reply in absence of relevant documents is justified. Imposition of major penalty of dismissal/removal from service without furnishing copy of the inquiry report and without affording any opportunity of making statement on that report, is denial of justice.

In the present case, neither the petitioner was associated with the inquiry proceedings nor was given any opportunity to cross-examine the witnesses. Even the copy of inquiry report was not supplied to him and straightway he has been removed from service. Only the order of dismissal from service has been conveyed to him and even nothing has been mentioned as to how this major penalty of removal/dismissal from service has been imposed. The procedure laid down under the Rules has not been complied with and as such, non-compliance of the rules is also violative of principles of natural justice, which can be considered as failure of justice. Not only the order of removal but order passed by the Appellate Authority is also non-speaking as no reasons whatsoever have been mentioned.

In view of the facts as mentioned above, the present petition is allowed and impugned order dated 20.08.2007 (Annexure P-7) as well as order passed by the Appellate Authority are quashed. The petitioner is directed to be reinstated in service. However, the respondents are at liberty to re-consider the case of the petitioner by conducting inquiry and passing orders in accordance with law by following the procedure prescribed by law as well as by giving adequate/sufficient opportunity of hearing to the petitioner. It is also directed that the petitioner be informed to join the

proceedings by sending written notice and not orally. The necessary exercise be done within a period of three months from the date of receipt of certified copy of this order.

In case, any adverse order is passed, the petitioner is at liberty to avail the appropriate remedy.

18.10.2016
neetu

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	√ Yes/No
Whether Reportable	√ Yes/No