

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.1883 of 2015(O&M)

Date of Decision:-21.09.2016

Anish Batra.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. H.C. Arora, Advocate for Petitioner.

Ms. Monica Chibber Sharma, Deputy Advocate General,
Punjab.

JASWANT SINGH, J.

Through the instant petition, petitioner has prayed for quashing of the order dated 28.01.2015 (P-5) passed by respondent no.3/Govt. (Appellate Authority) whereby the punishment imposed upon the petitioner by the Disciplinary Authority of stoppage of two annual increments with future effect has been enhanced to dismissal from service.

Learned Counsel for the petitioner has argued that the punishment of withholding of two increments with cumulative effect has been wrongly enhanced to dismissal from service without notice and further while enhancing the punishment already imposed upon the petitioner by respondent no.2, conduct of petitioner in regularly remaining present after joining duty on 31.01.2011 till the next three years has been completely

ignored. Thus, the prayer has been made for setting aside the impugned order and directing the respondents to allow the petitioner to resume his duty.

Upon notice, respondent State has filed a detailed reply wherein it has been submitted that after passing of the interim order by this Court on dated 4.2.2015 wherein the impugned order of dismissal was stayed, the petitioner was allowed to resume his duty, however, it has been pointed out that the said interim stay was procured by the petitioner by misleading the Court as the petitioner had filed the petition on 4.2.2015, although he had already been relieved from his duties on 31.01.2015 and this fact was certified by the petitioner himself by mentioning that he had noted the said order. A copy of the Memo No.257 dated 31.01.2015 is also attached as Annexure **R-II**.

Learned Counsel for the respondent-State, apart from pointing out the aforementioned conduct of petitioner, has also argued that petitioner was appointed as Science Mistress vide appointment letter dated 5.12.2006 and he joined the duty on 20.12.2006. Initially, the petitioner was appointed on probation for a period of 02 years which was extendable upto 03 years. In the said appointment letter a specific condition No.9 was mentioned wherein it was categorically stipulated that if the work of the employee is found to be unsatisfactory, the services can be terminated without notice. However, it has been pointed out by the State Counsel that during the course of probation period, petitioner remained absent from duty w.e.f. 07.01.2007 to 30.01.2011 without getting the leave sanctioned from the Competent authority. Consequently, departmental proceedings were initiated against the petitioner under Rule 8 of the Punjab Civil Services

(Punishment and Appeal) Rules, 1970 for imposing a major penalty. After following due procedure, the enquiry officer held the charges to have been proved and a penalty of stoppage of two increments with cumulative effect was imposed upon the petitioner vide order dated 4.9.2014 (P-3) by the competent authority. However, in an appeal preferred by the petitioner, the Appellate Authority enhanced the punishment after following due procedure as prescribed under Rule 19 of the 1970 Rules and considering the grave misconduct on part of the petitioner, his punishment was enhanced to dismissal from service vide impugned order dated 28.01.2015 (P-5). Therefore, prayer was made for dismissal of the petition.

After considering the rival contentions and perusing the paper book, this Court is of the considered view that the present petition is devoid of merit and same deserves to be dismissed.

For necessary reference Rule 19 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 are being reproduced as under:-

“ **19. Consideration of appeal-(1)** *In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of rule 4 and having regards to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.*

(2) *In the case of an appeal against an order imposed any of the penalties specified in Rule 5 or enhancing any penalty imposed under the said Rule, the appellate authority shall consider-*

- a. *Whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice;*
- b. *Whether the finding of the punishing authority are warranted by the evidence on the record; and*
- c. *Whether the penalty or the enhanced penalty imposed is adequate, inadequate or serve;*
and pass orders-
 - (i) *confirming, enhancing, reducing or setting aside the penalty; or*
 - (iii) *remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;*

Provided that-

- (i) *the Commissioner shall be consulted in all cases where such consultation is necessary;*
- (ii) *if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 5 and an inquiry under Rule 8 has not already been held in the case, the appellate authority shall, subject to the provision of rule 13, itself hold such inquiry or direct that such inquiry be held in accordance with the provision of Rule 8 and thereafter, on a consideration of the proceeding of such inquiry make such orders as it may deem fit;*
- (iii) *if the enhanced penalty which the appellate authority propose to impose is one of the penalties specified in*

clauses (v) to (ix) of Rule 5 and an inquiry under Rule 8 has not already been held in the case, the appellate authority shall make such orders as it may deem fit; and

- (iv) *no orders imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity as far as may be in accordance with the provision of Rule 10 of making a representation against such enhanced penalty.*

A perusal of the said Rule 19 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 makes it clear that the Appellate Authority has wide power to enhance any penalty imposed under Rule 5 and at the time of enhancing the said penalty, if it finds that the penalty imposed by the competent authority is inadequate, the Appellate Authority has a power to conduct an inquiry itself under Rule 8 and thereafter on conclusion of such inquiry and after giving a reasonable opportunity to the employee, pass any punishment as envisaged under the Rules. In the present case it is evident from the record that the petitioner was provided an opportunity of personal hearing on 15.01.2015 by respondent no.1 and after taking into account the contentions of the petitioner and going through the official record the Appellate Authority deemed it appropriate to enhance the punishment from stoppage of two increments awarded by respondent no.2 to dismissal from service.

As it is evident from the facts narrated above, the conduct of the petitioner is deplorable and he does not deserve any leniency at all. Undisputedly, the petitioner had remained absent from duty without sanction of leave. If a person, who is on probation remains absent from duty for such an extremely long period, then any indulgence shown to such erring employees would set a bad example for regular employees and would

this court, absence from duty without any sanction of leave itself is the gravest misconduct on part of an employee.

Although this Court is of the opinion that in view of the admitted position, any further inquiry on behalf of the Appellate Authority was a futile exercise, however, the Appellate Authority has rightly followed the Rules and therefore has not misconducted itself while passing the impugned order.

In view of the above, finding no merit in the writ petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

September 21, 2016
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes / No</i>
<i>Whether Reportable</i>	<i>Yes / No</i>