

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.W.P No. 6305 of 2011 (O&M)
DECIDED ON : 05.09.2016

Chander Prabha Verma

...Petitioner

versus

The State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present : Mr. S. B.Kaushik, Advocate,
for the petitioner.

Mr. Ravi Pratap Singh, AAG, Haryana.

Mr. Tara Chand Dhanwal, Advocate,
for respondents No.4 and 5.

TEJINDER SINGH DHINDSA, J.

The petitioner, who was serving as a Science Mistress in the Motilal Nehru School of Sports, Rai, District Sonapat, has filed the instant petition, impugning the order dated 9/10th of September, 2009 (Annexure P-26), whereby she has been dismissed from service. Challenge has also made to the order dated 31.03.2011 (Annexure P-30) passed by the Financial Commissioner and Principal Secretary to Government of Haryana, Sports Department, in terms of which the appeal preferred by the petitioner

has been rejected and the major punishment of dismissal from service has been affirmed. The petitioner even questions the legality of the inquiry proceedings initiated against her and which have finally culminated in the passing of order of dismissal.

Having heard learned counsel for the parties at length, I am of the considered view that the validity of the order of dismissal dated 9/10th of September, 2009 (Annexure P-26) passed by respondent No.3 i.e the Principal and Director, Motilal Nehru School of Sports, Rai, Sonapat, as also the legality of the inquiry proceedings conducted against the petitioner, would not require any examination on merits, at this stage. Such a view is being taken for the reason that the facts of the present case make out a case for remand to respondent No.1 i.e Commissioner and Secretary, Department of Sports and Youth Affairs, Haryana, Chandigarh, for reconsideration.

The admitted position of fact is that the departmental proceedings were initiated against the petitioner by framing following Articles of Charge :-

“Charge (a) : *She levelled false and baseless charges against the school authority that the teachers are called on duties on one pretext or the other on odd hours just to derive some sadistic pleasure out of it and as a result of it, Ms.Payal Arya, Ms. Asha Mittal and Ms.Saroj Kumari had to leave their jobs.*

Charge (b) : *She quoted wrong information regarding working hours. She quoted working hours as 13 hours per day, while these were approx 7.30 hours per day only.*

Charge (c) : *She created hurdles in the smooth functioning of the school by painting wrong picture of working culture in the school and vitiated conducive environment of a residential school.*

Charge (d) : *She disobeyed the orders of the authority by not appearing personally before the Director of Sports, Haryana & the then Ist Appellate Authority on 14.11.2006. Though she was on “Duty Master” duty on that day, but this duty was assigned to Mr. Shailender Nimbekar and he performed the duty in her place.*

Charge (e): *She has gone beyond her jurisdiction to challenge the wisdom of the Commissioner & Secretary, Sports & Youth Affairs, Haryana, by terming the orders passed by him vide order dated 14.02.2007 as “Perverse and Arbitrary”.*

The charges were contained in the charge sheet served upon the petitioner under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (hereinafter referred to as “Punishment and Appeal Rules”). The inquiry report was furnished by the Inquiry Officer on 15.07.2009. The disciplinary authority, upon agreeing with the findings returned by the Inquiry Officer, has passed the impugned order of dismissal dated 9/10th of September, 2009.

The petitioner preferred an appeal dated 03.09.2010 under Rule 9 of the Punishment and Appeal Rules and a copy thereof has been appended and placed on record at Annexure P-27 along with the instant petition. A bare perusal of such statutory appeal preferred by the petitioner,

grounds were raised. Such grounds were that the Inquiry Officer had insisted upon the petitioner/delinquent to make her statement as a defence witness first in point of time without examining any of the witnesses mentioned in the list of prosecution witnesses appended with the charge sheet. In a nut shell, the petitioner had raised a specific plea in the appeal that due process and procedure contemplated under Rule 7 of the Punishment and Appeal Rules had not been adhered to. Yet another substantial issue raised in the appeal was that respondent No.3 i.e Principal and Director, Motilal Nehru School of Sports, Rai, District Sonapat, Haryana, vide memo dated 17.07.2009 (Annexure P-23), had forwarded the inquiry report to the petitioner so as to facilitate the filing of objections against the report, but in the same very memo, the disciplinary authority had expressed a categoric opinion that he had already agreed with the findings furnished by the Inquiry Officer. The vital question, as such, that had been raised in the appeal was as to whether it was open for the disciplinary authority to have formed an opinion on the findings returned by the Inquiry Officer even prior to any objections/representations having been furnished by the delinquent against the report of the Inquiry Officer.

The appeal preferred by the petitioner has been dealt with and rejected by respondent No.1 vide order dated 31.03.2011 (Annexure P-30) and the operative part thereof reads in the following terms :-

“9. Since Smt. Chander Prabha has been afforded reasonable opportunity of being heard to defend herself and the proved nature of the charges which are serious in nature against her, I am of the considered opinion that the punishment which has been inflicted upon her is commensurate

with the seriousness of the acts of omissions and commissions on her part. It is pertinent to point out that the terms of her appointment clearly stipulate that the incumbent can be assigned any other duty pertaining to the welfare and training of the students-academic, sports, outdoor, administrative or others as decided by the school administration. Further Rule 3.10 of chapter 3 of CSR Vol. I Part I clearly lays down “unless in any case it be otherwise distinctly provided, the whole time of a Govt. employee is at the disposal of the Govt. which pays him and he may be employed in any manner required by proper authority, without claim or additional remuneration, whether the services required of him are such as would ordinarily be remunerated from Union or State revenues, or from the revenues of a local fund.

10. Moti Lal Nehru School of Sports, Rai, where the appellant is working, is a residential school of repute and for good student-teacher relations, the teachers are supposed to stay in the campus even take meals along with students. The meals to the teachers are provided free of cost. They are provided free semi-furnished accommodation and in addition 40 units of electricity free of cost is provided and the free education to two children of the school teacher is provided. In lieu of these facilities if the teachers are asked to perform prep duties, game duties or any other duties connected with the welfare of the students/kids, it cannot be called that the school administration gets sadistic pleasure by calling the teachers at odd hours for such duties.

11. In view of the aforesaid discussion, I do not find any merit in the arguments/pleadings put forth by Smt.Chander Prabha during the personal hearing and I do not feel any necessity to interfere with the punishment awarded to

Smt.Chander Prabha.

Appeal is rejected accordingly. However as ordered by Hon'ble High Court, this order shall remain in abeyance for a period of fifteen days.”

Suffice it to observe that the relevant and crucial issues/grounds raised in the appeal preferred by the petitioner and which have been noticed herein above, have not been even adverted to, much less dealt with. As regards non-adherence of the procedure envisaged under Rule 7 of the Punishment and Appeal Rules, the only observation that is discernible from the order passed by the Appellate Authority is to the following effect

“ Her version that she has not been given an opportunity to defend herself does not appear to be tenable.”

This Court would have no hesitation in recording that the order passed by the Appellate Authority dated 31.03.2011 (Annexure P-30) is cryptic and non-speaking. The order by itself may run into five pages but that is totally irrelevant as the issues and grounds raised under the statutory appeal preferred by the petitioner, have not been dealt with.

The question as regards reasons to be assigned by the Appellate Authority even while affirming an order passed by the disciplinary authority came up for consideration before the Hon'ble Supreme Court in **“Chairman, Disciplinary Authority, Rani Lakshi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney and others” 2009 (5) SLR 512** and it

was observed as under :-

“8. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

9. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of “**S.N. Mukherjee v. Union of India**” reported in (1990) 4SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities.

10. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not ? Also, giving of reasons minimize chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

No doubt, in S.N. Mukherjee's case (supra), it has been observed (vide para 36) that :

“The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.”

11. The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one line orders stating that they agree with the view of the lower authority.”

Adverting back to the facts of the present case, even though the Appellate Authority has affirmed the order of dismissal passed by the disciplinary authority, yet the onerous duty and onus of considering and dealing with the grounds and issues raised in the statutory appeal preferred by an employee, has not been discharged. The impugned order passed by the Appellate Authority, as such, cannot sustain.

For the reasons recorded above, the present writ petition is partly allowed and the order dated 31.03.2011 (Annexure P-30) is set-aside. The matter is remanded back to respondent No.1 to pass an order afresh, after taking into consideration all the submissions and contentions raised by the petitioner in the appeal dated 03.09.2010 (Annexure P-27). Let such final order, upon reconsideration, be passed within a period of two months from the date of receipt of certified copy of this order.

The instant petition is disposed of in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

SEPTEMBER 05, 2016
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Whether speaking/reasoned ? **YES/NO**

Whether reportable ? **YES/NO**