

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

**CWP No.23663 of 2014
Reserved on: 31.03.2016
Decided on : 12.04.2016**

Talwinder Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Jai Vir Yadav, Advocate
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

Mr. Anupam Singla, Advocate
for respondent No.2.

G.S. Sandhawalia, J.

The petitioner challenges the order dated 26.07.2011 (Annexure P-1), whereby he was dismissed from service while under probation. The reason for dismissal was that an FIR No.37 dated 06.07.2011 under Sections 376, 506 IPC, Police Station Chaudharian, District Kapurthala was registered against him. On the basis of report sent by the District Education Officer (SE), on account of committing the offence of moral turpitude, the said order was passed by the Director General School Education, Punjab.

The appeal was also dismissed on 24.12.2012 (Annexure P-4) by the same official, though it was recorded that the personal hearing was given by the Secretary School

Education-respondent No.1. The same is also subject matter of challenge.

It is the pleaded case of the petitioner that he was appointed on 13.03.2006 on contract basis by respondent No.1 on the post of Computer Faculty under the ICT Project of the Government. The services were regularized on 29.06.2011 by the respondent No.2 w.e.f. 01.07.2011 as per the notification dated 02.12.2010, as he had all the requisite qualifications. As per the petitioner he was governed under the Punjab Government Conduct Rules, 1966 and Punjab Civil Services (Punishment & Appeal) Rules, 1970.

It is his specific allegation that he was falsely involved in FIR No.37 dated 06.07.2011, on the basis of one complaint made by Pawandeep Kaur daughter of Gurtej Singh, resident of village Hussainpur Dhullowal, on the basis of which he was arrested and placed under suspension on 21.07.2011. On the lodging of the FIR itself his services were dispensed with vide impugned order dated 26.07.2011 (Annexure P-1). The said prosecutrix before the Illaqa Magistrate had not supported her statement recorded under Section 164 Cr.P.C., and he was ordered to be released on bail on 25.08.2011. Thereafter, he was acquitted on 02.01.2012 (Annexure P-3) by the Sessions Judge, Kapurthala, as there was no incriminating evidence against him. He filed an appeal before respondents, but the same has been

dismissed on 24.12.2012. It is, accordingly, been pleaded that even the FSL report did not suggest any signs of commission of the offence and he was victim of the party faction in the village and he was strict in performing his duties as a teacher, which landed him in trouble.

Respondent No.2 in its defence has admitted that services of the petitioner were regularized on 01.07.2011 vide order dated 29.06.2011 and he was on probation for a period of two years. It is the case of the respondents that the petitioner had been misbehaving with the prosecutrix and on 05.07.2011 taken her to the house of his maternal uncle and had committed the offence of rape with her and due to which the FIR was lodged. The complainant had been declared hostile and, therefore, he was not honourably acquitted. The applicability of the rules as pleaded was denied on the ground that the Service Rules of the society are under process and after framing of the Service Rules of the society, the service conditions of all the employees of the society would be governed under the said service rules. The employer had the authority to terminate the service of the probationer if during probation period, the work and conduct of the employee is not satisfactory.

Counsel for the petitioner has, accordingly, argued that the petitioner was dismissed without any inquiry being held and lodging of the FIR in which he was acquitted and he has

accordingly placed reliance upon the judgment of the Division Bench of this Court in '**Shashi Kumar Vs. Uttri Haryana Bijli Vitran Nigam and another**' 2005 (1) SCT 576 to submit that it has been held by the Division Bench that there was no concept of honourable acquittal under the Code of Criminal Procedure. Reference is also made to the judgment to show that it was the prosecutrix who never supported the case as had been set up by the Investigating Agency and it had been observed that there was no iota of evidence against the accused to prove the charge against him.

Similarly, reliance is also placed upon the judgment passed in '**Raj Pal Vs. State of Haryana and others**' 2012 (4) SCT 543 which followed the view of the Division Bench and set aside the order of dismissal on account of the acquittal in favour of the employee, which was only based on the order of conviction. It is accordingly submitted that the petitioner's case is even better as there is no order of conviction as such.

Counsel for the State on the other hand has placed reliance upon the judgment of the Apex Court in '**Deputy Inspector General of Police and another Vs. S. Samuthiram**' 2013 (1) SCC 598 on the ground that there was no honourable acquittal and that it was a case of moral turpitude involving a girl student and stressed that in spite of the acquittal the petitioner was not entitled to be reinstated. It is further submitted that in case of

the setting aside of the termination also he is not entitled for back-wages and reliance is placed upon the judgment of the Apex Court in '**Management of Reserve Bank of India Vs. Bhopal Singh Panchal**' 1994 (1) SCC 541.

The factual aspect having been cleared out in the earlier narration by this Court and keeping in view the said background, this Court is of the opinion that the order of the termination cannot stand.

Admittedly, the order was passed on 26.07.2011 in a quick kneejerk reaction immediately on the lodging of the FIR on 06.07.2011, after placing the petitioner under suspension on 21.07.2011 and while he was in custody, as he was released on bail only on 25.08.2011, which fact is also narrated in the termination order. It is not disputed that the petitioner's services were regularized and he was no longer on contract and therefore services could not be dispensed with as per the terms of the contract. He being on probation, his services could have been dispensed with an innocuous order but the order dispensing his services is stigmatic in nature, on account of the lodging of the FIR and on the ground that he committed an offence of moral turpitude. The report of the District Education Officer had thus been relied upon.

Thus, the order being stigmatic in nature cannot be justified, as the petitioner has been gravely prejudiced and if the

respondents had to pass an order it was necessary for them to held an departmental inquiry. The relevant portion of the said order reads as under:-

“3. On 6.7.2011 a FIR was got registered by a student of the school against Talwinder Singh that the said computer teacher has forcibly committed rape with her and on the basis of the said allegation the police has arrested the above said computer faculty under Section 376/506 on 06.07.2011 and still the above said alleged accused being in police custody, he was placed under suspension vide this office letter No.5/8-ICT-2011/Order/Suspension/8254 dated 21.07.2011.

4. It reveals from the report sent by the District Education Officer (SE) Kapurthala that an allegation of committing offence of moral turpitude has been leveled against Sh. Talwinder Singh, and for that reason the image of the education department has been lowered in the society. The concerned District Education Officer has recommended for awarding severe punishment against Sh. Talwinder Singh under rules.

5. Since the services of Sh. Talwinder Singh were under probation till date and because of his alleged falling down of his work and keeping in view the image of the education department, which has been lowered, the services of Sh. Talwinder Singh are hereby dismissed immediately.”

Reference can be made to the judgment of the Apex Court in **'V.P. Ahuja Vs. State of Punjab and others' (2000) 3 SCC 239**, wherein it has been held that a temporary servant is also entitled to certain protection and his services cannot be terminated in stigmatic manner without holding an inquiry. The relevant part reads as under:-

“5. Learned counsel for the respondents has contended that the appellant, after appointment, was placed on probation and though the period of probation was two years, his services could

be terminated at any time during the period of probation without any notice, as set out in the appointment letter. It is contended that the appellant cannot claim any right on the post on which he was appointed and being on probation, his work and conduct was all along under scrutiny and since his work was not satisfactory, his services were terminated in terms of the conditions set out in the Appointment Order. This plea cannot be accepted.

6. A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated in a punitive manner without complying with the principles of natural justice.

7. The affidavits filed by the parties before the High Court as also in this Court indicate the background in which the order, terminating the services of the appellant, came to be passed. Such an order which, on the face of it, is stigmatic, could not have been passed without holding a regular enquiry and giving an opportunity of hearing to the appellant.

*8. The entire case law with respect to a "probationer" was reviewed by this Court in a recent decision in **Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & others, (1999)3 SCC 60 : AIR 1999 SC 983 : JT 1999(1) SC 396 : 1999(1) SCT 861 (SC)**. This decision fully covers the instant case as well, particularly as in this case, the order impugned is stigmatic on the face of it.*

9. For the reasons stated above, the appeal is allowed, the judgment dated 26.3.1999, passed by the High Court is set aside and the Writ Petition of the appellant is allowed. The order dated 2.12.1998, by which the services of the appellant were terminated, is quashed with the direction that he shall be put back on duty with all consequential benefits. No costs.

Appeal allowed."

Similar, view has been also taken by the Division Bench of this Court in '**Sudhir Sharma Vs. Punjabi University' 2004 (4) RJS 575**, wherein services of an *ad hoc* employee had been dispensed with. The relevant part reads as under:-

"7. The petitioner being an Ad hoc employee undoubtedly had no automatic right to continue on the post indefinitely. Hence his

services were being extended from time to time. His services would have automatically come to an end on the expiry of extended term. During the term his services could have been terminated without any notice. He could have also left the job without any notice, in view of the terms of the appointment order. It is equally well-settled that his services could not be terminated by way of punishment for negligence, misconduct, indiscipline, or embezzlement, without complying with Rules of Natural justice. In other words, if the petitioner's services were to be terminated on account of mis-conduct, it was necessary for the respondents to issue a show cause notice to the petitioner. He had a right to give explanation to the allegations made against him. He also had a right to produce evidence to show that the procedure which was being observed was in accordance with the accepted norms. The respondents could only have passed the order of termination after dealing with all the defences which may be raised by the petitioner. It is also a settled proposition of law that any order which casts a stigma on an employee, even if the employee happened to be an ad hoc employee can only be passed after complying with the rules of natural justice. A perusal of the order passed by the respondents reproduced above, clearly shows that the respondents have reached a conclusion to the effect that the petitioner is not discharging the duties honestly. A conclusion has also been recorded that the petitioner has been causing loss to the University with mala fide intention. A further conclusion has been recorded that the petitioner has been negligent for the purpose of his duties and has indulged in indiscipline. The stigmatic remarks could not have been recorded without giving full opportunity of hearing to the petitioner in accordance with the rules of natural justice."

The appellate order suffers from further wise and an illegality which is apparent on the face of the record. It is not disputed that the petitioner had filed an appeal against the impugned order dated 26.07.2011 which had been passed by the Director General School Education, instead of respondent No.1 deciding the said issue. The reasons have been recorded by the

same official-respondent No.2 again by noting that the personal hearing was given by the worthy Secretary on 28.06.2012 and, therefore, his appeal for reinstatement was being filed. The reasons given again were that the prosecutrix has resiled from her statement and therefore, sanctity of the relation between teacher and disciple had been violated and it would cause adverse affect on the educational atmosphere to keep him in the Education Department. The relevant paragraphs read as under:-

“4. Leveling of an allegation against any teacher by any student, especially by a girl, the allegation of physical exploitation is a serious social matter and the education department may take it very seriously. If under any pressure or any other reason Pawandeep Kaur has resiled from her statement in the Court even than there is no doubt about breach of sanctity of relation between teacher and disciple (Guru-Chela) because this matter was brought by the Panchayat of the village and parents of the girl to the notice of the school authorities. If such a person is taken again in service then girls studying in class and their parents would always be in a doubt and it would cause adverse affect on the educational atmosphere. Therefore, it would not be in public interest to keep Talwinder Singh in education department.

5. Keeping in view of the facts mentioned above and that personal hearing was given by the worthy Secretary, School Education to Sh. Talwinder Singh on 28.06.2012 and according to that while taking action his request was filed vide this office Endst No.5/8/ICT/2011/4124 dated 05.07.2011.

6. The representation filed by Sh. Talwinder Singh on 31.10.2012 for his reinstatement after consideration his appeal is being dismissed and filed.

Sd/-

Director General School Education
Punjab I.C.T., Education Society,
Punjab, Chandigarh.”

The said order apart from confirming the stigmatic

termination has been passed by the same authority, who has passed the termination order and, therefore, cannot be justified. Mere hearing of appeal by the Appellate Authority and giving of the reasons by the same authority who has passed the termination order cannot be justified in any manner. The fresh application of mind had to be made by the Appellate Authority to consider the facts afresh and the issue whether on account of the acquittal, which had been recorded in favour of the petitioner, he was entitled for reinstatement, which was an additional ground also, which had been pleaded before the Appellate Authority, but rejected on totally wrong premises.

In such circumstances, the impugned orders cannot stand judicial scrutiny and are liable to be quashed.

The judgment passed in the case of **S. Samuthiram** (*supra*) does not help the respondents in any manner. In the said case apart from the criminal charge against the employee a departmental inquiry was also completed against the employee, who was a police personnel and the punishment of the dismissal had been passed on that account also. The Apex Court thereafter also examined the aspect that the acquittal in that said case was on account of the serious flaws conducted by the prosecution. The police officials had not been examined, who had taken the accused from the scene of occurrence alongwith the complainant/ husband and wife. The medical record had shown that the accused was

under influence of liquor and had misbehaved on that account. It was in such circumstances, it was held that acquittal was on technical reasons or on account of giving up the witnesses and there was no honourable acquittal and thus the person was not entitled to claim reinstatement.

As noticed in the present case there is no departmental inquiry and the dismissal was only on the basis of the FIR being registered and, therefore, the said judgment will not come to the help of the respondents.

Similarly, the judgment passed in the case of **Bhopal Singh Panchal (supra)** is of no assistance to the respondents and they cannot run away from their liability to pay the arrears of salary for the period the petitioner has been out of service on account of the illegal dismissal order which suffers from the above said allegations. The judgment which has been relied upon by the respondents pertains to the back-wages granted by the Labour Court. The Apex Court had relied upon the regulations of the bank in question which laid down the procedure to be followed when a person is arrested on a criminal charge and how payment is to be made including subsistence allowance etc. In the said case, the bank had passed an order in treating the period of suspension as on ordinary leave and as on extra-ordinary leave. Accordingly, it was held that the Labour Court under Section 33-C (2) of the Act had no jurisdiction to decide the said question in which the

employee had claimed the amounts due. Therefore, the said judgment is not applicable to the facts and circumstances of the present case.

Accordingly, the present writ petition is allowed. The orders dated 26.07.2011 and 24.12.2012 are set aside. The petitioner is entitled for reinstatement and all consequential benefits. It is, however, clarified that it is always open to the respondents to hold an departmental inquiry for the alleged misconduct and to take further action in pursuance of the same, if so desired.

APRIL 12, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE