

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23711 of 2014(O&M)
Decided on : 25.02.2016

Babita Ahuja

... Petitioner

Versus

State of Punjab & others

... Respondents

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

Present : Mr.R.K.Arora, Advocate, for the petitioner.

Mr.A.P.S.Mann, Addl.A.G., Punjab.

Mr.Joginder Sharma, Advocate, for respondent No.3.

G.S. Sandhawalia , J. (Oral)

CM-2294-2016

Application for placing on record replication to the written statement, filed on behalf of respondents No.1 & 2, is allowed. Same is taken on record, subject to just exceptions. Office to tag the same at appropriate place.

Main case

Petitioner seeks quashing of the order dated 01.04.2014 (Annexure P11) whereby she was ordered to be removed from service, with immediate effect and the appellate order dated 21.08.2014 (Annexure P13), whereby the appeal of the petitioner was dismissed.

Petitioner was appointed as a Hindi Mistress in the Punjab Education Department and the appointment letter dated 09.06.2011 (Annexure P2) was issued to her. As per Clause 4 of the appointment order, she had to give an affidavit that she had

never been punished for an offence of moral turpitude and she had not been terminated from any State Government, Central Government or Public Sector Undertaking. The affidavit dated 15.07.2011 (Annexure P3), which was given, however, also mentioned the fact that the petitioner did not have any criminal case going on in any Court of India, nor pending in any Court, apart from the fact that no conviction had been recorded. Relevant clause of the affidavit given by the petitioner reads as under:

“9. That against me there is neither any criminal case which is going on in any court of India nor pending in any court. No court has given me any punishment/penalty.”

It is not disputed that an FIR dated 19.02.2007 (Annexure P1) under Sections 323, 341, 34 IPC, was also lodged against the petitioner and the first portion of the affidavit was incorrect. It is also not disputed that the petitioner along with her husband was acquitted on 24.03.2012 as the offence was compounded on account of the compromise with the complainant. Thus, the petitioner was charge-sheeted on account of the fact that the affidavit given was incorrect, which mentioned the fact that there was no criminal case pending against her. Thus, there was deliberate violations of the Government rules and instructions. Accordingly, an enquiry was held in which the petitioner took the plea that at the time of preparing the affidavit, she was standing in line before the typist along with other newly appointed teachers and he had already filled the format of the affidavit and accordingly,

that condition had been incorporated but there was no intention, as such, on the part of the petitioner, to give an incorrect affidavit.

The Enquiry Officer came to the conclusion that though the affidavit had been given but the employee had not benefitted, as such and the wrong statement was not helpful in getting her the job.

However, respondent No.2, vide the impugned order, came to the conclusion that the petitioner was being appointed to the post of Teacher and was expected to sign the affidavit and the side of the police case was hidden from the Department and thus, at the time of accepting the proposal of appointment, the case was under-trial. The appeal was also dismissed by respondent No.1 that no new fact or record had been presented and therefore, the order dated 01.04.2014 (Annexure P11) is liable to be upheld.

Counsel for the petitioner has argued that the punishment of removal from service is an extreme order and the petitioner had given a valid explanation, which was liable to be accepted and therefore, the impugned order is not justified.

Counsel for the State, on the other hand, has submitted that once a wrong affidavit has been given, the petitioner was rightly dismissed from service.

The facts have already been noticed in detail above. It is not disputed that the disqualification, as such, or the requirement, as per Clause 4 of the appointment letter, was that

the petitioner had to disclose the factum of conviction. Relevant portion of Clause 4 reads as under:

“4. Candidate will give affidavit to the effect that she has never been punished for offence of moral turpitude and she should not have been terminated from any State Government, Central Government or any Public Sector Undertaking.”

At the time of submission of the affidavit, the said fact that the petitioner had not been convicted, an additional aspect was incorporated that there was no criminal case which was going on or pending in any Court. The same was not the requirement of the terms and conditions of Clause 4.

The argument of the State Counsel that Clause 11 would also come into play against the petitioner, is without any basis, since Clause 11 pertains to giving a wrong experience certificate or a degree or a fake document. Same reads as under:

“11. In any circumstances if any certificate/degree or any other document or experience certificates etc. are not found correct or fake then her services will be termed illegal and accordingly services will be terminated without giving any notice and criminal case will be registered against her and entire salary and emoluments will be taken back from the candidate.”

In such circumstances, the judgments which have been relied upon by counsel for the petitioner, go long way to help him. A Division Bench of this Court in **Dinesh Kumar Vs. State of Haryana & others 2006 (4) SCT 429** held that mere registration of criminal case is not a ground for disqualifying a candidate and the

non-mentioning of the fact did not amount to concealment of any such fact. In the said case, the petitioner had concealed the factum of being released on bail before the Selection Committee and did not furnish the information in the requisite column. After selection, at the time of verification, it was found that there was a criminal case pending against him and accordingly, he was not given the appointment letter. Resultantly, the writ petition was filed and it was held that once a person is not convicted, then the non-disclosure of said fact does not amount to concealment of fact, especially since he had never been taken into custody. Resultantly, the respondents were directed to issue the appointment letter to the petitioner. It was further noticed that the offences of Sections 323, 34 IPC were of petty nature and they were not serious offences.

The view of the Division Bench was followed in **Amandeep Singh Vs. State of Punjab & another 2016 (1) SCT 491.**

The Division Bench judgment squarely covers the case in favour of the petitioner, who already stands acquitted on the basis of a compromise of a minor offence which was between the landlord and the tenant and had been compounded by the Court. In such circumstances, the explanation which was given by the petitioner that the affidavit was prepared in a haste and as per the format given by the typist, was not even examined by the punishing

authority. The order of removal from service, in such circumstances, is an extreme step, which shocks the conscious of this Court.

Accordingly, this Court is of the opinion that the said order is not justified, which has wrongly been upheld in appeal, by not recording any reasons. However, the petitioner shall not be entitled for any financial benefits for the period she remained out of service on account of the principle of 'no work no pay' and on account of her own fault. But the period in question in which the petitioner remained out of service shall be counted as continuous service, for all other purposes.

Resultantly, the present writ petition is allowed, the impugned orders dated 01.04.2014 (Annexure P11) and 21.08.2014 (Annexure P13) are hereby set aside.

FEBRUARY 25, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE