

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

**CWP No.24889 of 2014
Date of decision: 16.09.2016**

Manjit Singh and others

..Petitioners

Versus

**Shiromani Gurdwara Parbandhak Committee
and others**

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Ms. Vanita Sapra Kataria , Advocate
for the petitioners.

Mr. M.S. Virk, Advocate
for respondent No.1.

Mr. S.S. Mattewal, Advocate
for respondents No.2 to 4.

Daya Chaudhary, J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned orders dated 31.10.2014 (Annexure P-12) and 03.03.2015 (Annexure P-13) on the ground that the petitioners have been removed from service without issuing any show cause notices and without affording any opportunity of hearing. A further prayer has also been made for issuance of a writ in the nature of mandamus directing respondents No.2 and 3 to pay salary along with all consequential benefits including revised grade and annual increments to the petitioner w.e.f. April 2014.

Briefly, the facts of the case as made out in the present writ petition are that the petitioners were appointed on various posts by

respondents and subsequently, they were even confirmed. Having grievance

that the petitioners were stopped to mark their presence, they filed CWP No.3401 of 2015 during pendency of the present writ petition. Said petition was withdrawn with liberty to take up all the issues raised in this petition by amending CWP No.24889 of 2014 (the present petition). Thereafter, the petitioners were removed from service and the orders of removal were conveyed to them subsequently. The impugned orders of removal have been challenged in the present writ petition by raising various grounds.

Learned counsel for the petitioners submits that the petitioners were confirmed employees and they were paid annual increments as well. Their salary was stopped and thereafter, they were removed from service. The malafide of the respondents is also clear from the fact that the petitioners were not granted revised salary as well as annual increments. Learned counsel also submits that the petitioners were not allowed to mark their presence in the register. Even during pendency of the present petition, they were not allowed to join duty. The petitioners were removed from service by passing resolution dated 31.10.2015. At the end, learned counsel for the petitioners submits that the impugned orders have been passed in an arbitrary manner and contrary to Service Rules as well as principles of natural justice. No notice was ever issued and the petitioners have been removed from service without conducting any inquiry. Learned counsel has also relied upon judgments rendered by Hon'ble the Supreme Court in *Sudhir Chandra Sarkar vs. Tata Iron and Steel Co. Ltd., and others, 1984 AIR (SC) 1064, A.K. Kraipak and others vs. Union of India and others, 1970 AIR (SC) 150, Cantonment Board, Dinapore and others vs. Taramani Devi, 1992 AIR (SC) 61, Dwarka Nath vs. Income-Tax Officer, Special Circle, D Ward, Kanpur and another, 1966 AIR (SC) 81* as well as

judgment of Madras High Court in *P.R. Rajagopalan vs. Southern Structural Ltd. 1993 (4) SCT 22* in support of her contentions.

Learned counsel for respondents No.2 to 4 submits that the present writ petition is not maintainable. The petitioners remained absent and thereafter, notices were sent to them to join duty but the same were not accepted by them. A public notice was also published in local newspaper but still the petitioners did not join duty. Even during inquiry, the petitioners never joined proceedings and thereafter, resolution No.192 dated 31.10.2015 was passed by the Executive Committee of Gurdwara terminating their services.

Heard arguments of learned counsel for the petitioners as well as learned counsel for respondents No.2 to 4 and have also perused the service record of the petitioners, which has been produced as per directions issued by this Court on 01.09.2016.

As per stand taken in the reply as well as in the arguments raised by learned counsel for respondents No.2 to 4, notices were sent to the petitioners through an employee of the respondents, who made a statement that the petitioners have refused to accept the notices. Subsequently, a publication was also made in the newspaper, which was not circulated in the area, where the petitioners were residing. It is also not disputed that the petitioners also filed CWP No.3401 of 2015 alleging therein that they were not allowed to mark their presence or to join duty whereas the stand of the respondents is that the petitioners were not joining duty in spite of sending notices and publication in the newspaper. It is also not disputed that the aforesaid writ petition was dismissed as withdrawn with liberty to take up

03.03.2015.

The employees of the Gurdwara are governed by the Service Rules framed by S.G.P.C. for its employees. As per Rule 4, an employee can be dismissed by the appointing authority and appeal against said order of dismissal shall lie to the Executive Committee. An employee can be dismissed or degraded for his bad character, dishonesty, drinking or becoming a "Patit" but before passing of any order of dismissal, degradation, the allegations are to be conveyed in the form of written charge sheet along with the statement of allegations. The representation against charges can be given and thereafter, an inquiry is to be conducted but in the present case, neither any charge sheet has been issued nor any inquiry has been conducted.

It has been mentioned in the written statement as well as in the arguments raised by learned counsel for respondents No.2 to 4 that the notices were sent to the petitioners through an employee of the respondents but they refused to accept the same. It cannot be presumed that the petitioners were not interested in joining duty when they have already filed writ petition for their grievance. The respondents could have sent notices by registered post but no efforts were made to serve the petitioners. The stand of learned counsel for the petitioners is that no notice was ever served and even the petitioners were not allowed to join duty. Moreover, the notice was published in the newspaper, which is not circulated in that area, where the petitioners were residing.

On perusal of the record produced in the Court and after hearing arguments of learned counsel for the parties, it appears that the petitioners were not served any notice and no opportunity of hearing was

given to them.

The object of rules of natural justice is to give opportunity to the aggrieved party just to prevent miscarriage of justice. The doctrine of 'audi alteram partem' has three basis essentials. Firstly, the person against whom an order is required to be passed must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by passing reasoned or speaking order.

In the present case, neither any opportunity of hearing was given to the petitioners nor any inquiry was conducted. The giving of reason is one of the fundamental right of good administration. The reason is also an indispensable part of sound judicial system. The affected party has a right to know as to why the decision has been taken against him/her. The requirement of natural justice is to spell out reasons in the order passed. In other words, it can be said that order should be speaking and well reasoned. In case, there is failure on the part of the respondents to give reasons, it amounts to denial of justice.

In the present case, neither the reasons have been mentioned nor those reasons have been conveyed to the petitioners to put up their stand. Simply it has been mentioned that the petitioners remained absent from duty and they did not accept the notices.

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. The impugned orders dated 31.10.2014 (Annexure P-12) and 03.03.2015 (Annexure P-13) are totally non speaking as no reason has been mentioned.

Simply it has been mentioned that the petitioners were directed to be present on duty but neither they come present to join duty nor any letter was submitted by them for remaining absent. Thereafter, they were dismissed from service. Even there is no reference with regard to sending of any notice or giving of any opportunity of hearing.

In view of the facts as mentioned above, the present writ petition is allowed and impugned orders dated 31.10.2014 (Annexure P-12) and 03.03.2015 (Annexure P-13) are quashed. The respondents are directed to re-consider the case of the petitioners by giving opportunity of hearing to them and to conduct inquiry and pass orders in accordance with law. The petitioners be informed to join the proceedings by sending notices by registered post, if required. 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 petitioners are at liberty to avail the appropriate remedy.

16.09.2016
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No