

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

Date of decision: 02.12.2016

CWP No.24831 of 2016

Lakhvir Singh

...Petitioner

Vs.

The State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

RAJIV NARAIN RAINA, J. (ORAL)

At the very outset, Mr. R.K. Arora, learned counsel for the petitioner submits that this case is similar to the cases of the petitioners in CWP No.25106 of 2015 titled 'Harinder Kaur Vs. The State of Punjab & others' and CWP No.25182 of 2015 titled 'Sukhdev Singh Vs. The State of Punjab & others' both decided on 28.09.2016 and is covered by the rulings. The petitioner had travelled abroad without permission and while in the foreign land applied for and obtained permanent residency in the United States of America without informing the employer – State of the process and without seeking its prior permission, this situation is alike Harinder Kaur - petitioner in CWP No.25106 of 2015.

Harinder Kaur had sought voluntary retirement, which request was turned down and instead the Government issued a charge-sheet to her for major misconduct against which she approached this Court by way of a writ petition. Mr. R.K. Arora was the counsel for the petitioner in that case too. The ad-interim order dated 22.04.2016 passed in *Harinder Kaur* and *Sukhdev Singh* cases is reproduced below:

“Present: Mr. R.K. Arora, Advocate, for the petitioner.
Dr. Puneet Kaur Sekhon, Addl.A.G., Punjab.

W/s filed in Court. Taken on record. Copy supplied.

After arguing for some time, Dr. Sekhon prays for time to seek instructions from the Secretary Education Department, Punjab, whether Government would be prepared to compulsorily retire the petitioner from service with right to pension and to drop the charge-sheet.

Adjourned to 11.5.2016.

Order dasti.

To be shown in urgents.

A photocopy of this order be placed on the file of the connected case.”

Mr. Arora informs me that as a result of this interim order, the State Government vide instructions dated 24.06.2016 has framed policy guidelines, wherein it has been prescribed that in cases where employee visits foreign countries without permission of the Government and applies for permanent residency in foreign jurisdiction, then disciplinary proceedings for major penalty would be initiated against the delinquent official. The line of thinking in the ad-interim order dated 22.04.2016 was not to take action excessive to the cause although it was a case of punishment for misconduct.

In *Harinder Kaur's* case, the petitioner had served in the Education Department for about 19 years before she travelled abroad obtained PR which gave rise to the dispute. However, in the present case, the petitioner has put in 12 years of service in the same Department as a Teacher. Mr. Arora refers to the final orders passed by this Court in

Harinder Kaur and *Sukhdev Singh* cases vide orders dated 28.09.2016. Both those orders are reproduced below:

Harinder Kaur's case:

“Learned counsel for the respondent-State has filed an additional affidavit of Assistant Director (School Administration-3) on behalf of respondents No.1 to 3 and has also framed the policy guidelines regarding Ex-India Leave (Foreign leave) available to the officers/employees. The same is taken on record. A copy, thereof, has been supplied to learned counsel for the petitioner.

Learned counsel for the petitioner submits that the petitioner is satisfied with the decision taken by the respondent-State in pursuance to said policy, but the retiral benefits have not been released to her.

In view of the submissions made by learned counsel for the parties, the present petition is disposed of with a direction to the respondents to release the necessary benefits to the petitioner, preferably within a period of two months from the date of receipt of certified copy of this order.

The petition is disposed of accordingly.”

Sukhdev Singh's case:

“Learned counsel for the petitioner submits that the petitioner is satisfied with the decision taken by the respondent-State in pursuance to policy framed in CWP No.25106 of 2015 but the retiral benefits have not been released to him.

In view of the submissions made by learned counsel for the parties, the present petition is disposed of with a direction to the respondents to release the necessary benefits to the petitioner, preferably within a period of two months from the date of receipt of certified copy of this order.

The petition is disposed of accordingly.”

In the wake of the orders passed in *Harinder Kaur* and *Sukhdev Singh* cases, the punishing authority issued orders dated 26.09.2016 awarding penalty of compulsory retirement with right to pension. A copy of the order passed in *Sukhdev Singh*'s case is attached as Annex P-11. Similar order has been passed in the case of *Harinder Kaur*.

The petitioner approached the authorities armed with the decisions taken by the Court and by the Administrative Department in the cases of *Harinder Kaur* and *Sukhdev Singh* through a representation dated 08.11.2016 (Annex P-9).

Mr. Arora further submits that the reason for approaching this Court without waiting for reasonable time is that the petitioner pleads guilty and, therefore, no domestic trial is necessary, as initiated by the impugned charge-sheet dated 26.04.2016 (Annex P-6) served on the petitioner and not much hope can be pinned on the representation. He pleads for similar treatment in similar circumstances even in the matter of award of punishment or conversion to lesser than dismissal.

Therefore, agreeing with Mr. Arora, the Court interferes to the extent that a direction should go to the disciplinary authority – respondent No.2 to reconsider the case of the petitioner in the light of two orders in *Harinder Kaur* and *Sukhdev Singh* cases, who both were punished with dismissal converted to one of compulsory retirement from service, but were not left without pension. Besides, the charge-sheet in this case is prior to issuance of the policy guidelines framed as a result of the writ proceedings in *Harinder Kaur* and *Sukhdev Singh* cases, which instructions have been issued by the Punjab Government vide letter dated 24.06.2016.

As a result of the above discussion and without expressing any final opinion on the rights of the petitioner in the facts of his case, which

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have been briefly noticed in this order, a direction is issued to the respondents to consider and decide the representation dated 08.11.2016 (Annex P-9) by passing a speaking order keeping in view the dispensations in *Harinder Kaur* and *Sukhdev Singh* cases. Let the exercise be completed within eight weeks from the date of receipt of certified copy of this order. Till such time a final decision is not taken, the petitioner would not be called upon to appear in the enquiry in case an Enquiry Officer has been appointed. If the disciplinary authority finds it necessary or the petitioner requests for hearing, it shall be granted.

With the above observations and directions, the instant petition stands disposed of.

02.12.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*