

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15123 of 2005 (O&M)

Date of Decision:-23.05.2017.

Smt. Surinder Kaur

.....Petitioner

Versus

Presiding Officer, Labour Court, Bhatinda and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Sanjay Majithia, Senior Advocate with
Mr. Inderjeet Singh, Advocate for the petitioner.

Mr. Harkesh Manuja, Advocate for respondent No.2.

P.B. BAJANTHRI, J. (Oral)

On 25.5.2016, the above writ petition was allowed. Feeling aggrieved by the order dated 25.5.2016, respondent-Institution filed LPA. LPA No.1355 of 2016 was disposed of on 10.11.2016 while remanding the matter to decide afresh after taking into consideration the impact of the examination of Principal in the disciplinary proceedings in the Inquiry proceedings read with Inquiry Officer's report as well as before the Labour Court.

Learned counsel for the respondent-institution submitted that Principal of the respondent-University was one of the witness who has examined and cross-examined in the inquiry proceedings. To that effect, he has produced Annexure P-16 to contend that insubordination allegation has not been proved as held by the Inquiry Officer. Later on disciplinary authority, while disagreeing with the Inquiry officer's report, proceeded to impose the penalty. Perusal of the disciplinary authority's order, it is

evident that evidence adduced by the Principal has not been taken into

consideration by the disciplinary authority. Perusal of the evidence of Principal, Sh. Harbans Singh Saini, it is evident that it is very vague statement for the reasons that it does not contain dates and events relating to insubordination charge, he had stated as under:-

“2. From the very beginning the behavior of Mrs. Surinder Kaur has not remained good with me. Due to this reason many show cause notices have been issued to her. Especially in the month of December, 1992 when she came to my office and spoke irrelevant words. She even went to the extent to say that I will teach you to do principal-ship. She even does not like to wish the Principal, her behavior with the Vice Principal and other employees has also not remained good and usually they complain to me against her.”

For the purpose of insubordination charge, necessary corroborative evidence is required when the Principal himself has appeared as witness in Evidence is very vague like stating that on many occasions, show cause notices have been issued to the petitioner and in the month of December, 1992, when petitioner went to his office spoke irrelevant words etc. These allegations are all general in nature. In other words, allegations should be very specific to the extent of what has been uttered by the petitioner on what date and time. The alleged incident relates back to the year 1992 and evidence adduced by the Principal is dated 31.5.1998 which is evident that the Principal-witness is not in a position to give appropriate answer/corroborative evidence to support the allegation of insubordination. Therefore, insofar as insubordination allegations which are stated to have been proved by the disciplinary authority while disagreeing with the Inquiry Officer's report is in the absence of any material evidence so also oral

support the evidence of the Principal Harbans Singh Saini. Perusal of the records, it is evident that Principal Harbans Singh Saini is the Presenting Officer. In a disciplinary proceeding, Presenting Officer cannot be a witness. When initiation of inquiry by the disciplinary authority found that 'X' person is witness, in that event, disciplinary authority cannot appoint him as a Presenting Officer for the reasons that he would be prejudiced either in favour of the disciplinary authority or in favour of the delinquent employee. Therefore, Presenting Officer who is a witness, his statement cannot be taken into consideration for proving the charge. Accordingly, whatever the statement made by the Presenting Officer as a witness is required to be discarded. Accordingly, it is discarded, even on this count.

Petition stands allowed in terms of the order dated 25.5.2016. During the intervening period from 25.5.2016 to this day, petitioner is stated to have attained age of superannuation and retired from service in the normal course had she be in service. Therefore, the concerned respondent-institution are hereby directed to settle the petitioner's claim by extending all service benefits including monetary benefits which were due to the petitioner had she be in service including revision of pay. Petitioner is entitled to interest @ 6% per annum on all monetary benefits. The same shall be calculated and disbursed to the petitioner within a period of 3 months from today. If the above direction is not implemented within the stipulated period, petitioner is also entitled to cost of ₹ 25,000/-.

(P.B. BAJANTHRI)
JUDGE

May 23, 2017.

sandeep sethi

Whether speaking/reasoned:-

Whether Reportable:-

Yes / No

Yes / No.