

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:- 01st May, 2017

CWP No.12638 of 2013(O&M)

Dr. Gurdeep Singh Sekhon.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Rajiv Atma Ram, Senior Advocate assisted by
Mr. Sube Sharma, Advocate for the Petitioner.

Mr. Harkesh Manuja, Additional Advocate General, Punjab.

JASWANT SINGH, J.

1. Petitioner, working as Lecturer with the respondent department is aggrieved against the order dated 29.07.2005 (P-11) as well as impugned orders dated 30.04.2013/07.05.2013 (P-23), whereby the respondent department has initiated proceedings to remove him from service, which was communicated to him vide order dated 17.05.2013 (P-24). The petitioner has also laid challenge to the charge sheet dated 23.09.2005 (P-15) and inquiry report dated 27.06.2006 (P-18).

2. In nutshell, the facts of the case are that the petitioner was appointed by way of direct recruitment through PPSC as Lecturer in Physics in the Department of Technical Education, Punjab on 13.09.1989 (P-1). Thereafter, petitioner was directly recruited as Reader in the

Department of Technical Education in subject of Physics vide order dated 30.01.1990 (P-2). Accordingly, the petitioner was appointed at Government Engineering College Bathinda. Thereafter, the Government Engineering College Bathinda became an autonomous body and therefore notices were served upon the petitioner and other employees for options whether they would like to continue on such posts in the college under the society, failing which, their services would be terminated w.e.f. 1.3.1992. Aggrieved against the same, petitioner and other similarly situated employees were constrained to file CWP No.1629 of 1992 before this court which was allowed by holding that the State must absorb all its permanent government employees who are working on permanent posts and consequently the State Government was directed to consider the case of the petitioner and others and offer them suitable posts in other departments of the state government.

Aggrieved against the said order, State of Punjab filed an SLP No.14550-51 of 1993 which was ultimately disposed of by the Hon'ble Supreme Court by directing the State of Punjab to absorb the petitioner as Lecturer in Physics in any government college, by protecting his last drawn scale of pay in 1992.

Pursuant to the said order, the petitioner was absorbed as a Lecturer in the respondent department vide order dated 09.08.1998 (P-4). As per this order the petitioner was appointed by way of a method of transfer and pay protection was granted to the petitioner in terms of the orders passed by the Hon'ble Supreme Court.

3. Thereafter, petitioner kept on working on the said post and ultimately vide letter dated 24.04.2002 (P-9), an offer was made to the

petitioner by the University of Pennsylvania, USA for Post Doctoral Research Fellowship. The petitioner applied for leave vide application date 4.5.2002 (**P-8**) (Colly) from 29.06.2002 till 28.06.2004, through the Principal of Government College, Mohali whereby the petitioner was working as Lecturer. Despite the fact that the petitioner had applied for leave, 56 days prior to his expected date of departure, no communication was received by the petitioner from the respondent department for refusal of his leave. Accordingly the petitioner proceeded on leave to USA.

4. Thereafter, the petitioner applied for extension of leave from time to time, as he could not complete his research project within a period of two years. No order was passed declining the said extension of leave sought by the petitioner.

Ultimately on 29.07.2005 (**P-11**) respondent-State issued a letter which was received by the petitioner on 09.09.2005, whereby his leave was rejected for the first time. A perusal of the letter reveals that the same was rejected on the ground that he had gone abroad without getting his leave sanctioned. Accordingly, petitioner replied to the said notice and said that he would join back as quickly as possible, vide his letter dated 12.09.2005 (**P-12**) after getting relieved from University of Pennsylvania, USA on 25.11.2005 (**P-12-A**). Petitioner rejoined the respondent department on 02.12.2005 and he was permitted to do so. Thereafter on 6/8.12.2005 (**P-14**) the petitioner was posted in the respondent department.

However, on 08.12.2005 petitioner was served a charge sheet dated 23.09.2005 whereby charge was that petitioner was willfully absent from 29.06.2002. Reply to the said charge sheet was filed on 23.12.2005 (**P-17**). However, the inquiry officer, vide its report dated 27.06.2006 (P-

18) reported that the petitioner has willfully violated the government instructions while going abroad without getting his leave sanctioned. Ultimately vide impugned order dated 30.04.2013 the petitioner was removed from government service and the said order was communicated on 17.05.2013 (P-24).

5. On the strength of the above said facts, learned Counsel for the petitioner has argued that the impugned termination order passed by the Principal Secretary, Department of Education, Punjab in the disciplinary proceedings initiated by them is *nonest* in the eyes of law and against the principles of natural justice, especially when the petitioner had legitimate expectation that his leave was sanctioned because he had applied 56 days prior to his expected date of departure, as well as non decision of his application for extension of leave. He has further argued that similarly situated employees have been granted Ex-India leave (without pay) and thus, the petitioner has been illegally discriminated by the action of the respondents.

On the other hand, learned counsel for the respondents have vehemently argued that the services of the petitioner have been rightly terminated because there was a grave misconduct on part of the petitioner by going on an unsanctioned leave, as it is required for the petitioner to take leave from the department and it is only when the said leave is granted that the petitioner can be permitted to leave India. Further, learned Counsel for the respondents has relied upon the provisions of the Punjab Civil Services Rules to contend that the study leave is ordinarily granted for 12 months, which shall not be exceeded, save for exceptional circumstances.

However, the petitioner has ignored and violated these provisions. Finally,

it was argued that the petitioner cannot be granted any benefit on parity of equal treatment with the other allegedly similarly situated employees because the petitioner was on probation whereas the employees about whom the petitioner has alleged, are regular government employees and were not on probation. Thus prayer has been made for dismissal of the petition.

6. After hearing learned Counsel for both the sides and perusing the paper book carefully, this Court is of the considered view that the present petition deserves to be allowed.

It is not in dispute that the initial appointment of the petitioner was through proper channel and the petitioner was a regular employee of Government Engineering College, Bathinda till the time it was declared as an autonomous body. However, the Hon'ble Supreme Court had directed the State of Punjab to absorb the petitioner as Lecturer in any Government College by protecting his last drawn pay. Consequently, the petitioner was absorbed as a Lecturer in the respondent department as far back as on 09.08.1998 (P-4) and thereafter his pay was fixed by treating his previous past service on 5.6.2003 (P-5). Thus, the petitioner would be deemed to be in regular service with the respondent department since 26.09.1989 and hence cannot be termed to be a probationer at all. The nomenclature used by the respondents in so far as terming the petitioner to be as probationer is not only misconceived but also bordering on Contempt of Court. Once the petitioner has been working for such a long time and has been granted pay protection by the Hon'ble Supreme Court itself, then it does not lie in State's mouth to assert that the petitioner is still on probation at the time when the petitioner was posted with the respondent department.

Thus the contention of the learned Counsel for the respondents that the petitioner was a probationer and, therefore, his case cannot be considered in parity with the other similarly situated employees is wrong, misconceived and liable to be rejected.

As far as violation of any of the Punjab Civil Services Rules is concerned, it is apposite to mention here that in an additional affidavit filed by the respondent-State on 7.9.2016, in pursuance of the directions passed by this Court on 11.07.2016, it has come out that one Sh. Ashok Arora was granted Ex-India Leave (without pay). Similarly Tirlochan Kaur, Lecturer in Punjabi, Govt. Bikram College, Patiala was also given Ex-India Leave (without pay). Hence the petitioner has been conclusively able to show past precedents, wherein, similarly situated employees have been granted Ex-India Leave, however, without pay. It is completely not understandable as to why discrimination is being made against the petitioner, who had also sought Ex-India leave for pursuing his Post Doctorate, in one of the most prestigious Universities like University of Pennsylvania, USA. During the course of previous hearing, the State was extended the opportunity to reconsider the issue and grant same relief as granted to others, however, the respondent department has chosen to stick to its obstinate unreasonable stand. That apart, it is also apparent that no reasonable explanation has come forth for not deciding the application dated 4.5.2002 seeking Ex-India Leave for such a long time (till 29.07.2005 rejecting the same). The petitioner, obviously would be legitimately expected to take such silence on their part as acceptance of his application for grant of leave and thus the action taken by the respondent department after such a long time by issuing a charge sheet in year 2005 is not only arbitrary but suffers from legal

malafide as well.

It was under these circumstances that while issuance of notice of motion on 31.05.2013, operation of the impugned order dated 30.04.2013/07.05.2013 (Annexure **P-23**) was stayed, and since then the petitioner has continued to work on the post in the respondent department

In this view of the matter, the impugned orders dated 29.07.2005 (**P-11**) as well as dated 30.04.2013/07.05.2013 (**P-23**) whereby the respondent department has initiated proceedings to remove the petitioner from service, which was communicated to him vide order dated 17.05.2013 (**P-24**) and charge sheet dated 23.09.2005 (**P-15**) and inquiry report dated 27.06.2006 (**P-18**) are hereby set aside and consequently the respondent State is directed to treat the petitioner as continuing in service with all consequential benefits without any break. However, the petitioner shall not be entitled for any pay for the period of 29.06.2002 to 02.12.2005 when he was on Ex-India Leave.

With aforesaid observations, the present writ petition is allowed. Petitioner is also entitled to costs of Rs.50,000/- to be paid by the Secretary concerned within three months from the date of receipt of certified copy of this order.

(JASWANT SINGH)
JUDGE

May 01st , 2017
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>