

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

CWP No.15329 of 2014

Date of decision: 04.07.2017

Kiranjit Kaur

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Sandeep Arora, Advocate
for the petitioner.

Ms. Lavanya Paul, AAG, Punjab
for the respondents.

Daya Chaudhary, J.

As per case of the petitioner, she was appointed as Social Studies Mistress on 89 days basis and thereafter, she was appointed on regular basis on 14.05.1997. She applied for Ex-India Leave for the period from 01.07.2011 to 30.09.2011 to visit Canada to meet her son and to get her daughter admitted in the College/University. Her leave was sanctioned vide order dated 25.05.2011 by the Headmaster, Government High School, Ranbirpura, District Patiala. During her stay, some serious physical complication developed and she was advised complete rest by the Doctor for the period from 01.10.2011 to 30.11.2011. On the basis of sickness certificate issued by the medical centre, the petitioner applied for extension of leave for the period from 01.10.2011 to 30.11.2011. As there was no recovery, she was referred to specialist doctor in Gynecology. As per medical opinion, the disease was diagnosed as “Endometrial Cancer Grade I” and the surgery was suggested. Thereafter, again an application was sent by the petitioner for extension of leave upto 31.01.2012. The medical

certificate was also annexed with the application. The operation was scheduled for 20.01.2012 and she was advised rest from 01.02.2012 to 30.04.2012. On the basis of medical certificate, the petitioner again applied for extension of leave from 01.02.2012 to 30.04.2012. During that period, she remained under treatment of doctor. She was admitted on 20.01.2012 in Brampton Civic Hospital and had undergone surgery of Hysterectomy. She was discharged from the hospital on 22.01.2012 but advised rest from 01.05.2012 to 30.06.2012. Again a request was made for extension of leave from 01.05.2012 to 30.06.2012 and thereafter upto 31.05.2013 as suggested by the doctor.

During her period of treatment in Canada, vide letter dated 17.08.2012, a notice was sent by the Headmaster, Government High School, Ranbirpura (Patiala) asking her to report for duty. Reply to that notice was sent vide letter dated 25.08.2012. Thereafter, a show cause notice was published in English newspaper 'Hindustan Times' dated 01.02.2013 to a number of teachers, who were absent from duty. The name of the petitioner was at Sr. No.139. The petitioner responded to said notice. After issuance of said show cause notice to the petitioner and other teachers, a regular departmental charge-sheet under Section 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 was issued. Reply to the charge-sheet was submitted by the petitioner mentioning that she was suffering from 'Endometrial Cancer and Carpel Tunnel Syndrome' and had applied for extension of leave from time to time. Without conducting any inquiry into the aforesaid charge-sheet, impugned order dated 05.03.2013 was issued by the DGSE-respondent No.2 stating that the petitioner had remained absent

from duty and as such, it appeared that she had abandoned her services and accordingly, her services were dispensed with with immediate effect.

Aggrieved by said order dated 05.03.2013, the petitioner filed an appeal to the Appellate Authority mentioning all the circumstances and her various requests for extension of leave on various occasions. Vide order dated 21.05.2013 issued by the Special Secretary, Education Department, she was asked to appear personally before the Principal Secretary, Education on 13.06.2013. It was also mentioned that in case, she failed to appear on said date, ex-parte proceedings would be initiated against her. Reply to that letter was sent explaining her inability to undertake the journey. Ultimately, the appeal was dismissed by the Appellate Authority vide order dated 01.08.2013.

The petitioner has approached this Court by way of filing the present writ petition to challenge impugned order of dismissal from service dated 05.03.2013 as well as order of rejection of appeal dated 01.08.2013 by raising various grounds.

Notice of motion was issued in the case on 04.08.2014 and in response to notice of motion, reply has been filed by the respondents, which is on record.

Learned counsel for the petitioner submits that the impugned orders are not only illegal, unlawful but discriminatory also as show cause notice was issued to 148 teachers including the petitioner but the action has been taken against the petitioner only. Learned counsel further submits that there were sufficient reasons for making request for extension of leave and the circumstances were beyond her control as she was not in a position to

come back to India. The request for extension of time was sent along with medical documents still those documents were not considered. Learned counsel also submits that no regular inquiry was conducted and the impugned order of dismissal has been passed at the back of the petitioner without giving any opportunity of hearing. Learned counsel also submits that the major punishment of removal from service cannot be imposed without giving any opportunity of hearing and without conducting any regular inquiry. The stand taken in the representations/reply to the notices/letters for extension of leave has not been taken into consideration. At the end, learned counsel for the petitioner submits that the impugned order of dismissal from service as well as the order passed by the Appellate Authority are liable to be set-aside as the same have been passed without following principles of natural justice and without conducting any regular inquiry. At the most, it could be a case of unauthorized absence from duty but the circumstances were beyond the control of the petitioner.

Learned State counsel has strongly opposed the submissions made by learned counsel for the petitioner and submits that the impugned order of removal from service cannot be said to be non-speaking and without giving any opportunity of hearing as not only, show cause notice was issued to the petitioner herself but it was published in the daily newspaper. The petitioner was directed to be present before the respondent-authority but still she failed to report for duty. Learned State counsel also submits that a long absence from duty is deemed to have abandoned the job by the petitioner. A notice was also issued by the Appellate Authority for remaining present but the petitioner did not appear and ultimately, the

appeal was also dismissed.

Heard arguments of learned counsel for the parties and have also perused the impugned order of removal from service as well as the order passed by the Appellate Authority.

Facts relating to Ex-India leave, which was duly sanctioned, extension of leave from time to time and notices issued by the respondent-authority are not disputed. It is also not disputed that only the charge sheet was issued and the petitioner submitted reply to that charge-sheet. It is also not disputed that no regular inquiry was conducted. The impugned order of removal from service was passed at the back of the petitioner.

In the impugned order, it has been mentioned that various teachers remained absent from duty from the School. A public notice was published in the newspaper 'Hindustan Times'. The petitioner was asked to appear to explain her position regarding her absence from duty, to which, reply was submitted but the same was not found to be satisfactory. Thereafter, it was presumed that the petitioner was not interested to continue in Government job and due to her unauthorized absence from duty, the studies of school children suffered and it was considered a case of abandonment of service and for that no notice/inquiry is required. The relevant portion of impugned order dated 05.03.2013 is reproduced as under: -

“That in such a case, long unauthorized absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee, being a case of abandonment of service, no notice/inquiry is required.

From the ruling of the Hon'ble Supreme Court, it is evident that in a case Govt. official continues to be absent without any intimation or without getting any leave sanctioned and continues to be absent for long after the expiry of the sanctioned leave, the same employees the official having abandoned his services and the competent officer is without his rights to proceed against such an officer without any enquiry and dispense with his services. As per orders No.11/08/2011-4Edu.6/5094 dated 3.10.2012 of the State Government issued in case of State Government Education Department Class-III (School Cadre) Rules, 1978 and the powers granted to the undersigned in the aforesaid rules, I Kahn Singh Pannu, IAS, Secretary-cum-Director General School Education, Punjab, Chandigarh hereby dispense with the services of Smt. Kiranjit Kaur, SS Mistress, Govt. High School, Ranbirpura, District Patiala who has abandoned the services w.e.f. 1.10.2011 with immediate effect.”

On perusal of said order, it is apparent that the order is totally non-speaking and the same has been passed without any application of mind. Not only, it is violative of principles of natural justice but major penalty of removal from service has been passed without conducting any inquiry.

In the order passed by the Appellate Authority, no finding whatsoever has been recorded as to how the Appellate Authority has considered the grounds of appeal. The punishing Authority as well as the Appellate Authority have also not applied its mind while recording that the reasons are not necessary to be recorded and no opportunity or regular

inquiry is necessary to be conducted.

The controversy in the present case is squarely covered by the judgment rendered by Hon'ble the Apex Court in ***Rani Lakshmi Bai Kshetriya Gramin Bank vs. Jagdish Sharan Varshney and others, 2009(4) SCC 240***. The relevant portion of said judgment is reproduced as under: -

“5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover case has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.

6. The view we are taking was also taken by this Court in Divl. Forest Officer v. Madhusudhan Rao (vide SCC para 20: JT para 19) and in M.P. Industries Ltd. v. Union of India, Siemens Engg. & Mfg. Co. of India Ltd. v. Union of India (vide SCC para 6 : AIR para 6), etc. 7. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in S.N. Mukherjee v.

Union of India, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

9. No doubt, in *S.N. Mukherjee* case, it has been observed that : (SCC p. 613, para 36)

“36. ... The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.”

The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by online orders stating that they agree with the view of the lower authority.

10. For the same reason, the decision of this Court in *State of Madras v. A.R. Srinivasan* (vide AIR para 15) has also to be understood as explained by us above.

11. Hence, we agree with the High Court that reasons should have been contained in the appellate authority's order.”

It has been held by Hon'ble the Apex Court in ***Rakesh***

Bhatnagar vs. Union of India and others, 2013(2) SCT 731 that the order, which does not contain reasons is no order in the eyes of law and requires to be set-aside and the case was remanded back to the High Court for fresh disposal in accordance with law.

The giving of reasons is one of the fundamentals of good administration and failure to give reasons amounts to denial of justice. The reasons are stated to be live links between the mind of the decision-taker to the controversy in dispute and the decision or conclusion arrived at.

In ***Raj Kishore Jha vs. State of Bihar and others, 2003(4) RCR (Criminal) 935***, it has been held by Hon'ble the Apex Court that the reason is the heartbeat of every conclusion and without the same, it becomes lifeless. It has further been held that right to reason is an indispensable part of a sound judicial system. Reasons are sufficient to indicate an application of mind to the case before the Court and it is one of the salutary requirements of natural justice.

In the present case, neither the punishing Authority nor the Appellate Authority has applied its mind as no finding by considering the averments made in the appeal has been given. Neither any regular inquiry was conducted nor any opportunity of hearing was given to the petitioner. Recording of reasons in the order is one of the fundamentals of good administration and is an indispensable part of a sound judicial system as the affected party has a right to know as to why the decision has been taken against him/her. The salutary requirement of natural justice is to spell out reasons for the order made. In other words, it can be said that order should be speaking and well-reasoned. In case, there is a failure on the part of the

respondents to give reasons, it amounts to denial of justice. The impugned order of removal from service is not only non-speaking but illegal and unlawful also as major penalty from removal/dismissal from service has been imposed without conducting any regular inquiry. The procedure laid down under the rules has not been complied with and as such, non-compliance of rules is also violative of principles of natural justice, which can be considered as failure of justice.

Accordingly, the present writ petition deserves to be allowed and impugned order dated 05.03.2013 of removal from service as well as order dated 01.08.2013 passed by the Appellate Authority rejecting the appeal filed by the petitioner are set-aside. The competent authority i.e., respondent No.2 is directed to re-consider the case of the petitioner afresh and take necessary action in accordance with law by conducting regular inquiry and granting opportunity of hearing to the petitioner. The necessary exercise be done within a period of six months from the date of receipt of certified copy of this order. In case, the punishing Authority takes decision in favour of the petitioner, the petitioner be taken back in service forthwith by granting all consequential benefits. In case, any adverse order is passed against the petitioner, it should be well reasoned and speaking and the petitioner is at liberty to avail the appropriate remedy.

04.07.2017
neetu

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No