

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

**CWP No. 22425 of 2012
Date of Decision: 16.02.2017**

Wariyam Singh

...Petitioner

Versus

**Shiromani Gurdwara Prabandakh
Committee & Another**

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ashish Aggarwal, Advocate
for the petitioner.

Mr. S. S. Mattewal, Advocate
for respondent No. 1.

None for respondent No. 2.

JAISHREE THAKUR, J.

The petitioner herein was appointed as *Granthi* on contract basis for a period of one year in the year 2005 and subsequently his services were regularized w.e.f. 18.07.2006.

In May, 2008, a complaint was filed by respondent No. 2 herein with the police authorities alleging that she had paid Rs. 3100/- to the petitioner for conducting *Akhand Paath*, however, no receipt was issued for the same. The matter was eventually settled between the petitioner and respondent No. 2. Thereafter, in June, 2008, a complaint was made against the petitioner by respondent No. 2 alleging sexual harassment. An enquiry was conducted by Sardar Mohinder Singh, Incharge, Flying Squad, SGPC, Amritsar on the allegations of the complaint made and on the basis of the enquiry report dated 18.06.2008, the petitioner was found guilty. Relying

upon the said enquiry report, the services of the petitioner was placed under suspension and charges framed against him, vide chargesheet dated 27.10.2008. The petitioner submitted his reply to the allegations levelled in the chargesheet and was thereafter asked to appear before the Sub-Committee. The Executive Committee dismissed the petitioner from service by order dated 27.7.2009. Since the services were terminated and the petitioner had not been supplied a copy of the dismissal order, he approached this Court by filing **CWP No. 301 of 2010** praying therein for quashing of the impugned order passed. The High Court, after considering the facts of the case, directed the respondents to hand over a copy of the dismissal order and gave liberty to the petitioner to submit his department appeal before the Executive Committee of the Shiromani Gurdwara Prabandhak Committee who was to decide the same in accordance with law. The appeal of the petitioner was decided maintaining the order of dismissal. Aggrieved, the instant writ petition has been filed.

Mr. Ashish Aggarwal, learned counsel appearing on behalf of the petitioner, contends that the impugned order is unsustainable as the order of dismissal could have been passed by the appointing authority which has not been done. Reliance has been placed on Rule 4 of the Sikh Gurdwara Employees' Service Rules in which it is specified that an appeal against the said order would lie with the Executive Committee. It is argued that the petitioner was dismissed by the Executive Committee which is the same committee that had passed the order of termination. Therefore, effectively, there is no remedy of appeal since the same authority has taken the decision. It is also argued that the Executive Committee has not followed the due process insofar as no opportunity of cross-examination of

the complainant was ever afforded to the petitioner. Hence, the proceedings itself are faulty.

Per contra, Mr. S. S. Mattewal, learned counsel appearing on behalf of respondent No. 1, contends that the appointing authority of the petitioner was the Executive Committee itself and, therefore, any order that has been passed would be by the Executive Committee. It is also argued that the petitioner had suffered a statement acknowledging his guilt. However, counsel for respondent No. 1 is fair in his submissions that no opportunity of any cross-examination was given to the petitioner before passing of the impugned order.

I have learned counsel for the parties and while taking note of the arguments raised that it is the Executive Committee who is the appointing authority as specified in the rules, the matter is remanded back to the disciplinary authority to follow the procedure from the stage where the fault in the proceedings was initiated. The termination order was passed by the Executive committee and again the appeal too after the matter was remanded back has been heard by the executive committee which is not sustainable. After reply had been filed, the normal course in enquiry proceedings would have been to have statements of parties concerned recorded and opportunities given to counter the said statements either in cross-examination or otherwise which admittedly has not been followed in the instant case. The order of termination is based upon the alleged statement of the petitioner without even putting the question to him. Therefore the Court has no hesitation in holding that the order of termination was not preceded by following the proper procedure or the rules of natural justice and deserves to be set aside.

It is also well settled law that the Courts should not order reinstatement when the employee is dismissed or removed from service and the inquiry is set aside on account of vitiated enquiry. The Courts must remit the same to the disciplinary authority to follow the procedure in accordance with law from the point that the enquiry was vitiated. Reliance in this regard can be made on settled law in **(2013) 6 SCC 530 in Chairman Life Insurance Corporation of India vs. A. Vasilamani** and **(1993) 4 SCC 727 ECIL vs. B. Karunakar**.

Therefore, the above noted writ petition is partly allowed. The termination order dated 27.7.2009 passed by the executive committee and the order dated 10.4.2012 are hereby set aside. The enquiry is to be completed within a period of six months from the date of receipt of a certified copy of this order.

The writ petition is partly allowed in the aforesaid terms.

February 16, 2017
Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No