

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

CWP-25523-2013

Date of decision: 23.08.2017

Avinder Kaur

...Petitioner

Versus

Chancellor-cum-Appellate Authority and another

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Kanwaljit Singh , Sr. Advocate, with
Mr. Ajaivir Singh, Advocate,
for the petitioner.

Mr. Amrit Paul, Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. The instant writ petition under Article 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of certiorari for setting aside the inquiry report (Annexure P-11), impugned orders dated 17.07.2012 and 16.08.2013 (Annexure P-7 & P-13) and other reliefs.

2. In brief, the facts as alleged are that the petitioner was appointed as Receptionist-cum-Clerk with the University on 14.07.1999 and thereafter regularized in service on 23.01.2001. She was promoted to the post of Junior Assistant on 09.03.2007 and thereafter to the post of Senior Assistant on 09.07.2008. While employed as a Clerk, she enrolled for Ph.D. Programme as a private candidate in the year 1997 and was assigned an expert, namely, Professor Dr. H.S. Bedi as her Guide. On completion of her thesis, the same was submitted. On receipt of certain complaint against the

Guide Dr. H.S. Bedi on the ground of plagiarism of his D.Litt thesis and the petitioner regarding her Ph.D. thesis, the matter was taken up to the Syndicate which constituted an Expert Committee for review of the cases of Teachers regarding plagiarism. The matter regarding the petitioner was also taken up along with four other cases. It was found that Dr. Balwinder Singh, who was working as Reader Commerce and Business Management, was guilty of plagiarism and was given punishment by withdrawing two increments with cumulative effect and another minor punishment of non-appointment as Head of the Department for next four years. Dr. Balwinder Singh challenged the punishment awarded in CWP No. 995 of 2010, which was disposed of vide judgment dated 20.09.2010 holding that the proceedings conducted by the Inquiry Committee were not sustainable since the entire exercise was carried out without associating the petitioner Dr. Balwinder Singh. The University was directed to treat the inquiry report as a 'preliminary inquiry report' and thereafter proceed against Dr. Balwinder Singh in accordance with law. The Inquiry Committee, while holding that the Guide of the petitioner namely Dr. H.S. Bedi was guilty of plagiarism was let off with a warning. The third case was that of Dr. Kuljit Kaur, Professor, Law Department and after considering her case, the Committee also held that she was guilty of plagiarism, however, no punishment was given to her except stoppage of two increments. The fourth case was that of Mr. Simranjit Singh Bains, Lecturer in Economics and despite the fact that charge of plagiarism was established, no punishment was given. The fifth case was that of the petitioner, who was awarded the punishment of termination of her services while withdrawing the degree of Ph.D. awarded

to her. The Inquiry Committee held petitioner had not divulged her source of information and, therefore, the charge of plagiarism was established. Against the termination order dated 23.12.2009, the petitioner filed an appeal before the Chancellor relying upon the judgment rendered in the case of Dr. Balwinder Singh. Since the appeal was not decided, the petitioner filed a Civil Writ Petition No. 1062 of 2011, which writ petition was disposed of vide order dated 20.1.2011 with a direction to decide the appeal in a time bound manner. The appeal was decided and the matter was remanded to the Syndicate to decide afresh after giving an opportunity of hearing to the petitioner. The Syndicate decided the matter and after considering her reply decided to remove her from service by order dated 17.07.2012. Appeal against order of 17.07.2012 was decided by order dated 06.08.2013, against which the instant writ petition has been filed.

3. Mr. Kanwaljit Singh learned Senior counsel assisted by Mr Ajaivir Singh, on behalf of the petitioner contends that the impugned order suffers from the vice of discrimination and non-application of mind and, thus, not sustainable. It is argued that the petitioner while in service as a Clerk registered for a Ph.D. and an expert by the name of Dr. H.S. Bedi was appointed as her Guide and it was the duty of the Guide to have instructed her as to giving reference as to the source of the material used. It is also submitted that she was working with the University after having been confirmed in a job. She was working on the post of a Clerk at the time when she joined her service in the year 1999 and the appointment had not been offered to her on the strength of the Ph.D. degree obtained in the year 2000, and, therefore, in the alternate it is argued that at best the punishment that

could have been meted out to her ought to have been withdrawal of the Ph.D. Degree on the ground of plagiarism and not terminating her from service. Learned Senior counsel also vehemently stresses that the action of the respondents suffers from the vice of discrimination as Dr. H.S. Bedi, Guide, who was found guilty of plagiarism by the Inquiry held, was let off by giving warning. No punishment was imposed upon Mr. Simranjit Singh Bains and Dr. Kuljit Kaur, the punishment imposed upon Dr. Balwinder Singh was withdrawn and it is only the petitioner herein, whose Ph.D. Degree stands withdrawn and services terminated.

4. Per contra, Mr. Amrit Paul learned counsel appearing on behalf of the University submits that the committee has been formulated to go into the question of plagiarism, noted that the petitioner herein had plagiarised directly from the book of Dr. Madhu Sandhu's Book titled Sahotri Mahila Kahani Kar (Delhi Samaj Parkashan-1984). It is argued that the proper procedure was followed and due opportunity of hearing was given to the petitioner before terminating her services. She was suspended and was ordered to be reinstated as Senior Assistant with immediate effect for the purpose of holding fresh disciplinary proceedings against her in accordance with the principle of natural justice and thereafter she was issued a charge sheet and also thereafter placed under suspension. She was given 15 days to give reply to the charge sheet and on due consideration of her reply, it was decided that a penalty of removal from service should be imposed and the decision of the Syndicate to withdraw the Ph.D. degree was upheld while further deciding that the petitioner would not be entitled to be paid anything for the termination period since 23.12.2009 uptill her reinstatement and

suspension made vide office order dated 16.01.2012 and nothing more shall be paid for her suspension period with effect from 16.01.2012 till her removal from service as per the show cause notice except the amount of subsistence allowance already paid to her. It is also argued that that the offence of plagiarism is grave and it is an academic form of cheating while further submitting that the order of dismissal from service is an administrative order and in judicial review the Courts are not to look into the decision but into the decision making process and in the instant case the proper procedure was followed. Counsel relies upon judgments rendered in ***Apparel Export Promotion Council Versus A.K. Chopra, 1999(1) SCC 759*** and ***Avtar Singh Constable Vs State Of Punjab and Others, 2003(4) SCT 564*** to buttress his arguments.

5. I have heard learned counsel for the parties and have also perused the record of the case.

6. The question that arises before the Court would be whether the impugned action of the University in withdrawing the Ph.D degree conferred upon the petitioner and terminating the services of the petitioner on the ground that the Ph.D. degree has been obtained by plagiarism, is sustainable or not? Also whether the action of the respondents suffers from the vice of discrimination?

7. The petitioner, who was M.A., while working with the University as a Clerk, registered for a Ph.D. programme with the University as a private student. After registration, it was the University who appointed Dr. H.S. Bedi as her Guide to be associated with her Research work and preparation of her thesis. Initially, it was on a complaint received about

plagiarism against work of Dr.H.S. Bedi that a Committee was constituted to look into the Research work of various persons including that of the petitioner, who have already been awarded a Ph.D. degree. The Expert Committee so constituted came to hold that the petitioner herein was guilty of plagiarism on account of the fact that she had copied the material from Dr. Madhu Sandhu's Book titled Sahotri Mahila Kahani Kar (Delhi Samaj Parkashan-1984) without quoting the source of reference. An argument has been raised by learned Senior counsel appearing on behalf of the petitioner that the Research work was done under the guidance of Dr. H.S. Bedi and it was his duty as a Guide to have informed her that reference is to be given, if someone else's material is used or relied upon and, therefore, no fault can be attributed to her. This argument raised would not be sustainable in view of the fact that the petitioner being educated, would be well versed with the concept of plagiarism and it is expected of a research student to put in their own effort or in the alternative acknowledge the material where they are getting their references from. It is not unknown that students lift material from someone else's Research work and project it as their own, which as per the Committee has been done in the instant case. The petitioner was given due hearing and it was admitted that she did not give the source of her material. Therefore, this Court is not inclined to interfere with the decision arrived at by the Syndicate that the petitioner is guilty of plagiarism and that the Ph.D degree has rightly been withdrawn.

8. The second question that would arise for consideration is whether the action of the respondents suffers from the vice of discrimination as argued by learned Senior counsel. Learned counsel for the respondents

herein is not able to rebut the argument raised that the four other cases that were scrutinized for plagiarism have been let off lightly. The Guide i.e. Dr. H.S. Bedi under whom petitioner was working has been let off with a warning nor has his D/Litt been withdrawn, no action taken against two others while two increments have been stopped of Dr. Kuljit Kaur. The petitioner was already working as a Clerk/Sr. Assistant at the time when the Ph.D. degree was given to her. There was no co-relation with her performance of her job and with the Ph.D. degree which she got as a private student. At best, it is the degree that could have been taken back from her on the ground of plagiarism and not be visited with an order of termination as well which in fact amounts to being punished twice over for the same offence.

9. A perusal of the order imposing the punishment, would reflect that the issue regarding discrimination being meted out to her has not been dealt with while terminating her services. Reliance has been placed upon University Regulations, which defines serious misconduct, reads as under :-

“Serious Misconduct

15. Serious misconduct under these Regulations shall include :

- (a) Violation of provisions of any of these Regulations;*
- (b) participation in strike, abetting, instigating or acting in furtherance of the same;*
- (c) disobedience of any orders, non-compliance off a rule, or habitual neglect of work;*
- (d) theft, fraud or dishonesty in connection with University property;*
- (e) wilful damage to the University property;*
- (f) wilful absence from duty after the expiry of leave;*

- (g) *refusal to accept a charge sheet, order or other communication;*
- (h) *conviction in a court of law;*
- (i) *misbehaviour, use of abusive language or insolence;*
- (j) *an act involving “moral turpitude.”*

The expression “moral turpitude” generally implies an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to the accepted and customary rule of right and duty between man and man. It has generally been taken to mean a conduct contrary to justice, honesty, modesty or good morals.”

10. In the opinion of this Court, the misconduct that has to be looked at would be in reference to her work and not on account of the thesis submitted. For the plagiarism of the thesis, it has rightly been held that the Ph.D. degree should be withdrawn but terminating the services of the petitioner on account of plagiarism would amount to a double jeopardy. This is in view of the fact that the work at her workplace could not be faulted at.

11. An argument has also been raised by counsel for the respondent that this High Court should not interfere by way of judicial review of an administrative order imposing punishment if there is no infirmity in the proceedings held. There is no quarrel with this argument, however this court can always look into the question whether a person has been discriminated against or not? Parity has to be maintained by the Court amongst co-delinquents while imposing punishment, while also looking into the proportionality of punishment being imposed amongst them. The doctrine of

equality mandates that all should be treated equal even among persons who are found guilty. In the case of ***Rajendra Yadav Versus State Of Madhya Pradesh And Others (2013) 3 Supreme Court Cases 73*** it has been held as under:

“9. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences.

10. The principle stated above is seen applied in few judgments of this Court. The earliest one is DG of Police v. G. Dasayan [(1998) 2 SCC 407 : 1998 SCC (L&S) 557] wherein one Dasayan, a police constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The disciplinary authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on the Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India. In Shaileshkumar Harshadbhai Shah case [(2006) 6 SCC 548 : 2006 SCC (L&S) 1486] the workman was dismissed from service for proved misconduct. However,

few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.’’

12. Similarly in the case of ***Life Insurance Corporation of India and Others Versus Triveni Sharan Mishra (2014) 10 SCC 346*** it has been held that parity punishment/penalty between co-delinquents should be maintained by the Court.

13. In the case in hand, the petitioner has not been treated as on the same footing as other persons who have been found guilty of plagiarism. Dr. H.S Bedi, Dr. Simarnjeet Kaur, Dr. Balwinder Singh, Dr. Kuljit Kaur were all summoned before the same Inquiry Committee who found that they were guilty of plagiarism, either in the research work or in the submission of their thesis. However, it is only the petitioner whose services have been terminated while also withdrawing the degree of Ph.D. awarded to her. Nothing could be clear to this court that the action of the respondent University in terminating the services of the petitioner smacks of arbitrariness and suffers from the vice of discrimination since no such punishment/penalty has been visited upon the other co-delinquents who have been found guilty of plagiarism by the same Inquiry Committee. It is also to be noted that these persons were holding a post of a higher responsibility being lecturers/ professors, whereas the petitioner was a mere Senior Assistant. It is in these circumstances that this court is interfering in the punishment that has been awarded even though there is no fault in the

procedure that was adopted.

14. Therefore in view of the discussion held hereinabove the writ petition is partly allowed. The court is not inclined to interfere in the order insofar as the decision taken to withdraw the Ph.D. degree awarded to the petitioner on the grounds of plagiarism. However, as far as the punishment awarded to the petitioner regarding termination of the services, it is held that the same suffers from the vice of discrimination and is tantamount to double jeopardy. Admittedly on the record, there is nothing to substantiate that she is guilty of misconduct qua her work and, therefore, the order of termination is hereby set aside. Consequently the petitioner is directed to be taken back in service with all consequential benefits within one month of receipt of certified copy of this order.

23.08.2017*Satyawan***(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.