

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

**CWP-22650-2016 (O&M)
Date of decision:24.10.2017**

Vikas Sharma

... Petitioner

Vs.

State of Punjab & another

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Ms. Sushma Sharma Aggarwal, Advocate for the petitioner.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

...

TEJINDER SINGH DHINDSA, J.

Petitioner has invoked the extraordinary writ jurisdiction of this Court by filing the instant petition under Article 226 of the Constitution of India impugning the order dated 26.11.2014 (Annexure P-15) passed by the Joint Secretary, Revenue, State of Punjab, Financial Commissioner's Secretariat by terming it as a dismissal order. Further challenge is to the order dated 02.06.2016 (Annexure P-18) passed by the Financial Commissioner, Revenue, Punjab, whereby the appeal preferred by the petitioner stands declined.

Counsel submits that the petitioner is a dam oustee on account of construction of Ranjit Sagar Dam, District Pathankot and it was towards grant of benefit under the Rehabilitation and Resettlement Scheme that the petitioner was appointed and issued appointment letter vide Memo dated 09.09.2013 (Annexure P-5). The appointment was on a Class IV post (Group 'D') in the Financial Commissionerate Secretariat in the pay scale of

Rs.10680-1650 (Grade Pay) plus other admissible allowances. Counsel contends that the petitioner was not paid salary for a period of 7 months and as such, was constrained to leave the office on 28.04.2014 as he could not manage his expenses. Having returned home, petitioner developed a health ailment and went into depression on account of adverse family circumstances. Counsel submits that the petitioner, as such, was not in a condition to submit the medical reports to the department as also to timely respond to the letters issued by the department for him to join service. It is, however, urged that various leave applications had been submitted to the department and the petitioner being a Class IV employee was under the impression that the leave had been duly sanctioned. Subsequently, petitioner became aware that his services had been dispensed with and upon having recovered from his illness, an appeal was preferred but the same has been declined only on the ground of delay holding the same to be time barred. It is argued that the respondent/authorities have acted arbitrarily and have failed to appreciate the factual position that petitioner was forced to leave the place of duty as he had not been paid salary for 7 months. Thereafter, it was on account of his health ailment and having been advised bed rest that he could not join duty. Case set up on behalf of the petitioner is that absence from duty was not willful. Counsel further contends that the Appellate Authority ought not to have dismissed the appeal on a mere technicality being time barred but should have adopted a sympathetic attitude in view of the fact that the petitioner was a dam oustee and his employment on a Class IV post was the sole means of sustenance.

Per contra, learned State counsel states that services of the

petitioner were terminated on the ground of unsatisfactory work and conduct during the period of probation and as such, there would be no justifiable basis warranting interference by this Court. Further contended that the petitioner left office on 28.04.2014 without getting leave sanctioned and in spite of repeated opportunities having been granted, the petitioner failed to join duty. Further the petitioner had been directed to get himself medically examined at the Government Hospital, Sector-16, Chandigarh and submit a medical certificate in support of his alleged illness and which certificate had also not been submitted. Passing of the order passed by the Appellate Authority is also justified by submitting that there was an inordinate delay of 1 year and 5 months in having preferred the appeal and for which no explanation was forthcoming. State counsel, accordingly, prays for dismissal of the writ petition.

Counsel for the parties have been heard at length and the pleadings on record have been perused.

As regards the petitioner having not been released salary over a certain period of time, a categorical stand and explanation has been offered in the written statement and to the following effect:

“That the contents of Para no.12 of the petition are wrong and denied. However, it is submitted that the salary of the petitioner for seven months as alleged was not released to the petitioner because the Permanent Retirement Account Number was not issued to the petitioner by Central Record Keeping Agency under New Pension Scheme. As per Government instructions the salary of the employee could not be released till the Permanent Retirement Account Number is given in the pay Bill. The petitioner along with his co-appointee were asked personally to submit the requisite signed

form for the issuance of the PRAN Number.

In this view of the matter the petitioner could not get his salary. This could be proved by the fact that the petitioner applied for his Permanent Retirement Account Number on dated 28.02.2014 which is after five and half months from the date of joining i.e. 12.09.2013. After verification from Drawing and Disbursing Officer his forms were forwarded to Treasury Office on 19.03.2014 for issuing PRAN. Treasury Office returned his forms with some objections on 17.04.2014. After getting the objections removed, the form of the petitioner was again sent to Treasury Office on dated 08.05.2014 with the request to issue Permanent Retirement Account Number. It is, further submitted that PRAN kit issued by the Chief Audit Office (NPS) was received through Treasury Office on 26.06.2014 there after the salary of the petitioner was released on 30.07.2014.”

Such factual assertion made in the written statement has not met with any rebuttal by the petitioner.

The letter of appointment dated 09.09.2013 issued by the Punjab Government, Department of Revenue and Rehabilitation, Financial Commissioner's Secretariat is placed on record and appended at Annexure P-5. Condition No.1 would be relevant to the controversy at hand and reads as follows:

“Condition No.1:

Your services will remain on probation for a period of two years. In case your act and conduct is found unsatisfactory during probation period, your services will be terminated without any further notice.”

It has gone uncontroverted that the petitioner absented from duty w.e.f. 28.04.2014. The department issued letters dated 09.05.2014, 28.05.2014, 23.06.2014 as also 02.09.2014 calling upon the petitioner to join

duty as also to get his medical examination conducted from Government Hospital, Sector-16, Chandigarh and to submit the medical report. No such medical certificate was produced by the petitioner. Leave of the petitioner was not sanctioned at any point of time. Memo dated 23.06.2014 (Annexure P-12) and the contents of which are not disputed by the petitioner reveal that apart from calling upon him to join duties and to get medical examination done from Government Hospital, Sector-16, Chandigarh, 15 days notice was served upon him and failing which the contemplated action of termination of service was also indicated. Despite this, petitioner did not join duty.

Perusal of the impugned order (Annexure P-15) dated 26.11.2014 would clearly indicate that it is not an order of dismissal but rather an order of termination simpliciter of an employee, who was under probation and whose work and conduct has not been found to be satisfactory. Such action is clearly in terms of condition No.1 of the appointment letter reproduced herein above.

Even though, the appeal preferred by the petitioner has been dismissed vide order dated 02.06.2016 holding the same to be time barred having been filed after a delay of 1 year and 5 months but a perusal of such order would reveal that the Appellate Authority was alive to the factual premise of the petitioner having remained absent from duty over a prolonged period of time and having not resumed duties inspite of repeated opportunities having been granted.

In **Vijay S. Sathaye Vs. Indian Airlines Limited and others,** **2014 (1) SCT 659**, the Apex Court had observed that absence from duty in the initial period may be a misconduct but when absence is for a prolonged

period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without even requiring any order to be passed by the employer.

In the present case, the petitioner having remained absent from duty w.e.f. 28.04.2014 and upto the date of passing of the order of termination had virtually abandoned service. In spite thereof, the respondent/department has adhered to the principles of natural justice and granted numerous opportunities to the petitioner to resume duties. Directions of the employer for the petitioner to get himself examined from a Government Hospital and to submit a medical certificate in support of his illness were also not complied with.

In an overview of the matter and for the reasons recorded above, no infirmity is found in the action of the respondent/department in having terminated the services of the petitioner.

There is no merit in the petition and the same is, accordingly, dismissed.

24.10.2017*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

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| (i) Whether speaking/reasoned? | Yes |
| (ii) Whether Reportable? | No |