

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

CWP No.27449 of 2013 (O&M)
Date of Decision: May 10, 2017

Yash Rani

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rakesh Nagpal, Advocate
for the petitioner.

Mr. L.S. Virk, AAG Punjab.

JAISHREE THAKUR, J.

The petitioner herein seeks to challenge order dated 21.11.2002 (Annexure P-2) of removal from service, as well as prays for setting aside the order dated 27.04.2013 (Annexure P-8) by which the appeal filed has been dismissed, with a prayer to convert the major punishment of removal from service to a lesser punishment being disproportionate, as the petitioner had served for more than 28 years with the Department.

2. In brief, the facts are that the petitioner joined the Punjab Education Department on 27.08.1971 on ad hoc basis and her services were

regularized on 31.03.1977 as a Hindi teacher. On account of family circumstances, she applied for leave without pay from 20.07.1998 to 19.10.1998, which was duly sanctioned by the competent authority. The leave was further extended. Thereafter, she continued on leave, which was duly sanctioned. She again applied for extension of her leave, but by letter dated 30.07.1999, the leave that was applied from 20.07.1999 to 19.01.2000 was rejected and she was asked to join duties. However, as she did not join, she was issued a charge-sheet, wherein, it was mentioned that she was absent w.e.f. 20.07.1999. An enquiry officer was appointed on receipt of his report, it was decided to initiate action against the petitioner under rule 8 of Punjab Civil Services (Punishment and Appeal), Rules 1970 (hereinafter referred to as 'the Rules) and a regular enquiry officer was appointed. The petitioner was proceeded ex parte and as per the enquiry report, on charges being proved she was removed from service and appeal against the same was dismissed. Aggrieved, the instant writ petition has been filed.

3. Mr. Rakesh Nagpal, learned counsel appearing on behalf of the petitioner argues that there is violation of the rules, insofar as, the petitioner was not served with copy of the enquiry report along with show cause notice issued and she was not given any personal hearing. Furthermore, after the impugned order was passed on 21.11.2002, she was not informed about her right of filing an appeal. An appeal was filed on 11.04.2005 along with an application for condonation of delay. Since no information was received/decision taken on the appeal filed, the petitioner filed a Civil Writ Petition No.8022 of 2011 and sought a writ in the nature of certiorari for quashing the impugned order, by which the petitioner has been removed

from service. The writ petition was disposed of giving a direction to the Appellate Authority to consider the pending appeal. Eventually, the Appellate Authority decided the appeal on 27.04.2013, upholding the order of punishment. It is argued that the punishment imposed upon the petitioner is harsh and dis-proportionate to the alleged misconduct, if any. It is contended that the compelling circumstances of the petitioner's family have not been taken into account, while imposing the punishment of removal from service. It is further argued that she has rendered 28 years of unblemished service and in a similar matter in CWP No.12535 of 2007, this court has reverted the punishment of removal from service into compulsory retirement, keeping in view the length of service. Learned counsel for the petitioner urges that the penalty of removal from service is disproportionate and the same should be converted to compulsory retirement.

4. Per contra, Mr. L.S. Virk, learned AAG Punjab appearing on behalf of the respondents-State argues that the petitioner was charge-sheeted under Rule 8 of the Rules on account of being absent from duty. She had got her leave sanctioned, but did not resume duty after the expiry of sanctioned leave. She was directed to resume duties by letter dated 27.07.1999 and 31.08.1999, and on non joining her duties, there was no option but to initiate disciplinary proceedings. The enquiry officer also provided various opportunities to the petitioner to associate in the enquiry proceedings, but by letter dated 04.09.2001, the petitioner informed the enquiry officer that she could not join the enquiry proceedings and therefore, requested that leave may be extended. A public notice was published on 07.04.2002 in Daily Nawan Jamana as well as in the Punjabi

Tribune, giving her last opportunity to appear, but the petitioner did not come forth and therefore, considering all the relevant factors, the petitioner was removed from services vide order dated 21.11.2002. The Appellate Authority too gave an opportunity of hearing to the petitioner, but the petitioner failed to do so and therefore, the order of removal from services had rightly been passed.

5. I have learned counsel for the parties and with their assistance, perused the record of the case.

6. Admittedly, the petitioner proceeded on leave, which was sanctioned up till 19.07.1999. Her further request for extending leave from 20.07.1999 to 19.01.2000 was rejected and she was asked to rejoin duties by letter dated 31.08.1999, followed by another letter dated 06.08.2001, which led to initiation of proceedings under Rule 8 of the Rules. The petitioner did not appear even before the enquiry officer, therefore, the impugned orders came to be passed. In the opinion of the court, there is no lacuna in the procedure that was followed, while holding the departmental enquiry/proceedings. It is expected from a person, who is in Government service, to discharge duties diligently and consciously and once leave is not sanctioned and employee is asked to rejoin duty, such orders should be complied with. The petitioner herein as a teacher has the enormous duty of imparting education and being on non-sanctioned leave, would definitely impede upon the education of her students. Therefore, while finding no infirmity in the orders so passed, the prayer of the counsel for the petitioner to set aside the order is hereby rejected.

7. Learned counsel for the petitioner in the alternative prays that

while imposing the punishment of removal from service, the authorities have not taken note of the fact that the petitioner has an unblemished career from 1971 (on ad hoc basis) and regular service from 31.03.1977 and thereby almost 22 odd years of service to her credit and the punishing authority should have considered that the petitioner had completed her 20 years' qualifying service and would be then entitled to retiral benefits and other pensionary benefits. In this regard, reliance has been placed upon judgment rendered in ***“Lal Chand Aggarwal (dead) through LRs vs. State of Haryana etc.,”*** 2015(4) SCT 319 and especially relied upon para 5, 6, 7 and 8 of the judgment which reads as under:-

“5. Faced with this situation, counsel for the petitioner has raised an alternative argument. He has stated that even on 5.11.1990, when the petitioner originally proceeded on sanctioned leave, he had 32 years of service to his credit, and prior to that his record was satisfactory and while passing the impugned order, the Punishing Authority did not even consider that he was entitled to pensionary benefits from the date of his initial absence. He has relied upon **State of Punjab and others v. Mohinder Singh (2005) 12 Supreme Court Cases 182** and **Ex. HC Rajender Singh v. Union of India and others, 2008(2) All India Services Law Journal 35**. In Mohinder Singh's case (supra), it was held as follows :-

“9. Counsel appearing for the respondent submitted that the order of dismissal may be converted into an order of compulsory retirement from service as the respondent has already put in more than 23 years of service. Counsel appearing for the appellants after taking instructions states that the

case of the respondent would be considered sympathetically by the authorities if he moves an application for converting his order of dismissal into an order of compulsory retirement. Impugned orders are set aside. The authorities however shall be at liberty to pass an appropriate order on the representation, if any, filed by the respondent for converting the order of dismissal into an order of compulsory retirement.”

6. In HC Rajender Singh's case (supra), it was held as follows :-

“..... The fact, however, remained that the petitioner had served for a long period and earned a valuable right to receive pension and other benefits for the rest of his life, which the petitioner would forfeit in case the punishment was, by way of dismissal. The Disciplinary, Appellate or Revisional Authorities do not appear to have kept in mind these aspects while directing dismissal of the petitioner. Dismissal from service of a person, who has not yet earned pension, may not be so harsh as is dismissal of one, who has already earned such a right. What makes the punishment unduly disproportionate and harsh is the forfeiture of rights which the delinquent has acquired by reason of his long service. Cutting short his tenure in the service may be one facet of the order of dismissal but more severe than that is the denial to him and his family sustenance for the rest of their lives. We are, therefore, of the considered opinion that the punishment by way of dismissal from service was, in the instant case, totally disproportionate to the gravity of the offence committed by the petitioner.”

7. Counsel for the respondents has argued that mere length of service can never be determinative in a disciplinary inquiry and just because a person has enough service to earn pension, does not mean that he cannot be dismissed or removed from service.

8. As a proposition of law, no body can have a quarrel with this argument. What counsel for the petitioner has stressed is that this aspect has not even been considered by the Punishing Authority. As regards the issue that the Punishing Authority was

bound to consider this aspect, counsel for the respondents has not been able to cite any contrary judgment. In the circumstances, it has to be held that the order removing the petitioner from service without considering his entitlement for pension is illegal.”

8. The argument as raised by learned counsel for the petitioner has merit. This fact has not been taken into consideration by the punishing authority or the appellate authority that the petitioner has completed 20 years of qualifying service and in any case, if she had submitted her papers for premature retirement, would have been entitled to the same. By removing the petitioner from service, she had been denied of all the retiral benefits.

9. In a catena of cases, the Hon'ble Supreme Court has held that the scope of judicial review in the matter of imposition of penalty, as a result of disciplinary proceedings, is limited. A court can interfere with the punishment only if the same is shockingly disproportionate to the charges found to be true and it is in such eventuality that a court may interfere and remit the matter back to the disciplinary authority for re-consideration of the punishment. In ***“Union of India and another vs S.S.Ahluwalia”***, 2007(7) SCC 257, the Hon'ble Supreme Court held as follows :-

“.... The scope of judicial review in the matter of imposition of penalty, as a result of disciplinary proceedings, is very limited. The Court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case, the Court is to remit the matter to the disciplinary authority for reconsideration of the

punishment. In an appropriate case, in order to avoid delay the court can itself impose lesser penalty.....”

10. Although, the consequence of setting aside of the said orders would have been to remit the matter back to the disciplinary authority for consideration of the matter afresh on merit, but having regard to the fact that the disciplinary proceedings were initiated against the petitioner as far back in 2000, The Hon'ble Supreme Court in a number of judgments has held that to shorten litigation, the Courts or the Tribunal can also impose an appropriate punishment by recording cogent reasons in support thereof. These observations have been made while examining the quantum of punishment imposed by the disciplinary authority or the Appellate Authority in the light of **Wednesbury's Principle in Damoh Panna Sagar Rural Regional Bank vs. Munna Lal Jain, reported as 2005 (1) SLR 599 (SC)**. Since the petitioner has already been put to prolonged litigation, the impugned order itself passed as far back as 2002, and petitioner has also completed her period of qualifying service, this court deems it appropriate to convert the punishment of the petitioner of removal from service to compulsory retirement. Resultantly, the petitioner would be entitled to superannuation benefits.

11. In view of the above, the writ petition is being allowed to the extent that the order of removal from service is hereby converted to an order of compulsory retirement. The respondents herein are directed to release the retiral benefits of the petitioner within a period of four months from the date of receipt of certified copy of this order, along with interest @ 6% per annum, failing which the respondents would be liable to pay the interest @

9% per annum thereafter.

12. The writ petition stands allowed in the aforesaid terms.

May 10, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No