

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

Civil Writ Petition No.539 of 2015 (O&M)
Date of Decision: February 15, 2017

Harminder Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Kapil Kakkar, Advocate
for the petitioner.

Mr. Inderpal Goyat, Addl. AG Punjab.

JAISHREE THAKUR, J. (Oral)

The challenge in the instant petition is to the order dated 27.06.2014 passed by respondent No.2-Director Public Instructions (SE), Punjab whereby, the past services of the petitioner have been forfeited.

In brief, the facts are that the petitioner was appointed as Social Study Mistress on *ad hoc* basis on 21.01.1976 and thereafter, the services of the petitioner were regularized w.e.f. 01.10.1980. In the year 1988, she was promoted to the post of Head Mistress. In 1992, the husband of the

petitioner, who was residing at Australia, felt ill and the petitioner applied for ex-India leave for a period of three months from August, 1992 and on getting a No Objection, she left for Australia. She remained in Australia till 1996 and rejoined services vide an order dated 24.12.1996, however, she was permitted to join duty with a rider that her joining will have no effect on the departmental enquiry, which was pending against her. The enquiry was completed and the complaint was disposed of. The petitioner again applied for ex-India leave for a period of three months from 05.04.1997, which was duly sanctioned. The petitioner thereafter applied again for ex-India leave, while in Australia and the same was sanctioned upto 31st August, 1997 under Rule 8.119 and 8.137 of Punjab Civil Services Rules, Vol I, Part 1. The petitioner continued to remain in Australia and rejoin her duty vide order dated 19.04.2004. Thereafter, the petitioner again left for Australia in July, 2004 and came back in the year 2006 and requested the respondents to allow her to rejoin, which was not accepted. She left and came back in 2009 and again submitted an application for rejoining, but no such orders were issued. The petitioner returned in November, 2012 and once again submitted a representation to the respondents to allow her to join and vide order dated 29.01.2013, she was permitted to rejoin the service, under pending enquiry. The petitioner rejoined duty on 31.01.2013 and vide order dated 31.01.2013, she was relieved from duty on superannuation. The Enquiry Officer was appointed on 29.01.2013 to conduct a departmental enquiry, in which, the petitioner participated. The Enquiry Officer noted that the delinquent/petitioner herein applied for ex-India leave from 05.07.2004 to 04.01.2005, which was rejected and despite the rejection, the delinquent employee had gone abroad on 26.07.2004. A copy of the charge-

sheet was sent to the delinquent employee through registered post, but the petitioner herein did not submit reply to the same. The Enquiry Officer also noted that the petitioner herein had accepted that she left without getting her leave sanctioned. It was concluded that the petitioner continuously remained absent from 26.07.2004, without getting her leave sanctioned and she was reinstated on 31.01.2013, pending enquiry and retired on 31.01.2013. On the basis of enquiry report respondent No.2-Director Public Instructions (SE), Punjab, held the petitioner guilty of remaining absent from duty unauthorizedly and ordered for forfeiture of her past services under Rule 3.17 A(vii) of Punjab Civil Services Rules, Vol.II. The petitioner represented to the department for consideration of her case sympathetically by stating that she had completed 20 years of service, but the same was not decided. Aggrieved against the said impugned order, whereby, the period of service has been forfeited, the instant writ petition has been filed.

Mr. Kapil Kakkar, Advocate, appearing on behalf of the petitioner contends that the forfeiture of services under Rule 3.17 A(vii) of Punjab Civil Services Rules, Vol.II would show that if any unauthorized leave of absence occurs in continuation of unauthorized leave of absence and if the post of the absentee has been substantively filled up, in such circumstances the past service of the absentee is forfeited and in the instant case, there is nothing to show that post of the petitioner had been filled up. It is further argued that the principles of natural justice have not been followed, while holding the enquiry, while further submitting that the petitioner had been allowed to rejoin services and retired and once that was permitted, 20 years rendered to the department could not be forfeited.

Per contra, Mr. Inderpal Goyat, Addl. AG Punjab appearing on behalf of the respondents-State submits that out of service tenure of approximately 37 years, the petitioner had remained absent from duty despite the fact that ex-India leave applied for had been rejected. She was issued a charge-sheet to which she did not respond. A regular enquiry was conducted and enquiry officer report was received, wherein, the enquiry officer found her guilty of remaining absent from duty for a period of 09 years from 26.07.2004 to 29.01.2013, thus, period of 09 years which was in addition to the long spell of absence of 04 years from 1992 to 1996 and for a period of 07 years from 1997 to 2004. It was mentioned that the past services of the petitioner have been forfeited by inadvertently mentioned Rule 3.17 A(vii) of Punjab Civil Services Rules, Vol.II instead of mentioning the Rule 3.17 A(2) and it is contended that petitioner would not be entitled to gain any benefit out of inadvertently quoting the rule.

I have heard learned counsel for the parties and with their assistance gone through the record.

The question that needs determination in the instant petition whether the services of the petitioner could have been forfeited, on account of remaining absent from duty and whether the rules of natural justice had been followed while holding the departmental enquiry.

The petitioner was issued a charge-sheet for remaining absent from duty for a period of 09 years and the enquiry officer was duly appointed. The petitioner had applied for ex-India leave w.e.f. 07.04.2004 to 04.01.2005, which was rejected. She was issued a charge-sheet, to which the petitioner did not respond and ultimately, sent her reply on 02.08.2010, which was not found satisfactory. A regular departmental enquiry was

initiated, in which, the enquiry officer found her guilty of remaining absent for a period of 09 years and the enquiry report was sent to her. Thereafter, she was also asked to appear for personal hearing in the office of respondent No.2 on 26.03.2014 and 27.05.2014, but the petitioner did not appear. It is only thereafter that the impugned order dated 27.06.2014 was passed. It has not been argued that the enquiry report was not supplied to the petitioner and as such, the departmental proceedings would stand vitiated. The argument that has been raised is that under Rule 3.17 A(vii) of Punjab Civil Services Rules, Vol.II forfeiture of service only happens in case a person remain absent from duty after availing sanctioned leave and such post if filled up substantively. The petitioner herein is trying to take benefit of an inadvertent clerical error that erect in while typing the Rule. Rule 3.17 A(2) of Punjab Civil Services Rules, Vol.II. reads as under:-

“3.17-A(s) An interruption in the service of a government employee caused by willful absence from duty or un-authorized absence without leave shall entail forfeiture of the past service.”

The above rule in certain term permits the department concern to forfeit services of an employee on account of willful absence from duty or unauthorized absence without leave. There is no manner of doubt that the petitioner remained absent for an inordinate length of time and the proceedings cannot be vitiated on account of an error in typing of the rule. The petitioner had been given copy of the enquiry report and was also given two opportunities to appear for personal hearing, however, failed to do so and thereby invited the impugned orders.

The Hon’ble Supreme Court in '***Government of India and***

another vs. George Philip', (2006) 13 SCC 1, has observed that excellence

cannot be achieved, unless the employee achieve devotion and discipline in duty and that the court should refrain from passing orders, which instead of achieving the object, have the tendency to negate and destroy the same.

In the case of '*State of Punjab vs. Dr. P.L. Singla*', (2008) 8 SCC 469, it has been held by the Hon'ble Supreme Court that the unauthorized absence or overstay leave is an act of indiscipline and that when an employee remained unauthorizedly absent from duty, employer will take recourse to disciplinary action, which may range from a major penalty like dismissal or removal from service to a minor penalty.

In the light of the law laid down by the Hon'ble Supreme Court in the above decisions, this court is of the opinion that no interference is called for under Article 226/227 of the Constitution of India. The petitioner herein out of her total service of so many years, had remained absent for more than 20 years, therefore, cannot be showed any indulgence. The petitioner cannot be permitted to take benefit of a typing error which has erected in the impugned order.

In view of the above, the petition in hand being devoid of any merits stands dismissed.

February 15, 2017

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No