

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

CWP No.26158 of 2017 (O&M)

Date of Decision:04.12.2017

D.A.N. College of Education for Women,
Nawanshahar, (S.B.S.Nagar)

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present:- Mr. Sameer Sachdeva, Advocate,
for the petitioner.

TEJINDER SINGH DHINDSA, J.

D.A.N. College of Education for Women, Nawanshahar (S.B.S. Nagar) (hereinafter to be referred as the petitioner-College) forwarded a proposal to the Director Public Instructions (Colleges) Punjab to terminate the services of Sh. Gulshan Rai Senger, Junior Assistant.

Vide order dated 04.07.2016 passed by the DPI (C) Punjab approval for the proposed termination was declined. Petitioner-College preferred an appeal before the Educational Tribunal, Punjab and the same has been dismissed vide order dated 11.07.2017 and thereby affirming the order dated 04.07.2016 passed by the DPI (C) Punjab. The Educational Tribunal, Punjab in its order dated 11.07.2017 has also issued directions to the petitioner-College to notionally reinstate Sh. Gulshan Rai Senger-respondent No.3 as he already stood retired and to release to him

arrears of salary from the date of his proposed termination up to the date of superannuation along with arrears of salary for the period of suspension. Directions have further been issued for release of all admissible retiral benefits within a period of two months. Liberty, however, has been granted by the Tribunal to the petitioner-College for holding a fresh inquiry against respondent No.3, if permissible in law.

The instant writ petition is directed against the afore-noticed two orders dated 04.07.2016 (Annexure P-11) passed by the DPI (C) Punjab and order dated 11.07.2017 (Annexure P-18) passed by the Educational Tribunal, Punjab.

Mr. Sameer Sachdeva, learned counsel representing the petitioner-College would submit that respondent No.3 is a chronic litigant. It is submitted that respondent No.3 has filed numerous cases before this Court as also more than 50 RTI applications. Further contended that a number of complaints have been filed by respondent No.3 against the petitioner-College before the Vigilance Department, Police Department as also the Education Department. It was stated that respondent No.3 is bent upon harassing and humiliating the college authorities. The sole contention raised by Mr. Sameer Sachdeva is that with an objective to bring to an end the entire dispute and to resolve all pending issues, the petitioner-College is ready and willing to withdraw all disciplinary actions and allegations against respondent No.3 and he would be treated to be honorably retired from service with effect from the date of his attaining the age of superannuation and

would be released full gratuity and even the pending salary/dues etc. after deducting subsistence allowance would be settled subject to the condition i.e. Respondent No.3 would also withdraw all pending litigations/complaints initiated by him against the College Management. In support of such contention, counsel would even advert to an additional affidavit of the President of the petitioner-College dated 06.03.2017 (Annexure P-16) which was stated to have been filed even during the pendency of proceedings before the Educational Tribunal. It is against such solitary submission towards amicably resolving the dispute that intervention of this Court has been sought.

Having heard counsel for the petitioner at length and having perused the pleadings on record, this Court is of the considered view that no basis for interference is made out.

The pendency of other proceedings/complaints/RTI applications would not be relevant to the proceedings at hand. Suffice it to observe that such proceedings would be dealt by the competent authority/Forum in accordance with law. The scope of the instant petition would be confined to examine the validity of the impugned orders passed by the DPI (C) Punjab as also the Educational Tribunal, Punjab at Annexures P-11 and P-18 respectively.

Perusal of the impugned order dated 04.07.2016 passed by the DPI (C) Punjab, (Annexure P-11) would reveal that the approval to the proposed termination of respondent No.3 was declined on the basis that no documentary evidence had been

produced during the course of departmental inquiry and as such the findings recorded by the Inquiry Officer are perverse and accordingly the proposal to terminate the services of respondent No.3 based upon such inquiry findings cannot be accepted.

The appeal preferred by the petitioner-College against the order dated 04.07.2016 passed by the DPI (C) Punjab has not found favour with the Educational Tribunal vide order dated 11.07.2017 (Annexure P-18) on the ground that the petitioner-College had not discharged its obligation to prove the charges levelled against respondent No.3 and as such the view taken by the DPI (C) Punjab was valid.

Brief facts which are not in dispute may be noticed.

Respondent No.3 was working as a Junior Assistant under the petitioner-College and against an aided post. Section 4 of the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 provides that services of an employee working against an aided post would not be terminated without prior approval of the DPI (C).

Respondent No.3 had been placed under suspension on 11.12.2013. The departmental proceedings were initiated against him in terms of serving a charge-sheet dated 07.03.2014. The precise Articles of charge formulated against respondent No.3 by the petitioner-College were in the following terms:-

**“STATEMENT OF ARTICLE OF CHARGES FRAMED
AGAINST SHRI GULSHAN RAI, JUNIOR ASSISTANT
(UNDER SUSPENSION), D.A.N. COLLEGE OF**

EDUCATION FOR WOMEN, NAWANSHAHR.

- 1. That while working as a Junior Assistant in the College on 11.12.2013 you created ruckus in the administrative wing of the college while the management meeting was being convened. You not only used abusive language against the officials of the college but also tried to physically manhandle Sh. Shakti Kumar, Superintendent and created an atmosphere of fear and tension. Immediately, on receiving the message about your unruly behaviour, Sh. Kulwant Rai Sharma was deputed by the management to bring the matter under control and verify the facts and report back to management. However, instead of properly behaving with Sh. Kulwant Rai you deliberately insulted him and tried to physically manhandle him also. you also used unparliamentary language against the superior authorities in the college and tried to threaten and intimidate the staff and the Management. In this way, you have committed an act of grave misconduct and indiscipline in the college premises while on duty.*
- 2. That you are habitual of misbehaviour with the staff, especially female staff which is highly objectionable. One Mrs. Kavita, Assistant Professor of the College gave a written complaint of your acts of sexual harassment to the Principal, whereupon you tendered your apology before the staff. However, as soon as a*

lenient view was taken and the principal recommended that the complaint be cancelled, you starting showing your colours against and resorted to the same acts of sexual harassment on account of which to staff again requested to Management to take action.

- 3. That your acts of insubordination and indiscipline are intolerable by the management whereby you are habitual of going on leave without proper sanction from your competent authority. Not only this, even after suspension you did not bother to mark your presence till date. Your act of indiscipline and insubordination are aggravated from the fact that the Management had to resort to police complaint on 10.01.2014 when you under suspension forced your entry into the college and misbehaved with the staff and threaten them thus creating commotion in the college in spite of various explanation sought from you, you have not only failed to give any satisfactory reply but have indulged in acts of insubordination by challenging the competence of the Managing Committee.*
- 4. Various complaints have been received against you from the lecturers and students of the college wherefrom it is apparent that you are provoking the employees and students against the Management thus committing acts unbecoming of a reliable and faithful employee.*
- 5. That instead of mending your ways and instead*

of appreciating the fact that the Management has on number of occasions treated your act of misconduct with leniency with the hope that you will reform, you are taking undue advantage of this leniency and now even issuing threats to the staff and Management about putting them in bad light and cause physical and mental harm. Such acts on your part speaks volume of your misconduct and character unbecoming of a good employee.

Vinod Bhardwaj

President Managing Committee

D.A.N. College of Education for Women”

Clearly, the charges levelled against respondent No.3

were serious in nature. Charges were of gross indiscipline, dereliction of duty, insubordination as also of misbehaviour with the staff including female staff. Sh. Satish Sharma was appointed as the Inquiry Officer and Sh. Amar Singh was the Presenting Officer.

Apparently, respondent No.3 chose not to respond to the charge-sheet as also did not associate with the inquiry proceedings. The Inquiry Officer furnished an inquiry report (dated nil) holding respondent No.3 guilty of the charges. Copy of the inquiry report has been placed on record and appended as Annexure P-8. The entire reasoning adopted by the Inquiry Officer as also the findings against respondent No.3 are contained in the following extract of the inquiry report:

“On 21.07.2014, the Managing Committee in its wisdom decided to hold an independent enquiry and resolved to appoint an enquiry officer and

accordingly the undersigned was appointed the Enquiry Officer.

The undersigned, on two different dates i.e. 02.08.2014 and 14.08.2014 asked Sh. Gulshan Rai Senger to appear before him in the office of the Principal at 2.30 PM but he failed to appear before him. Instead he wrote two letters to the undersigned which are attached with this report. It so appears that the accused avoids appearing before any competent authority for the reasons best known to him.

As per Punjab Civil Services Rules and Calendar/Ordinances of Guru Nanak Dev University, Amritsar the acts of Sh. Gulshan Rai Senger can best be termed as serious misconduct. He is behaving in an arbitrary manner without caring for the norms set out in CSR and thus causing serious damage to the reputation of the college. Nobody is above law. He was accorded ample opportunities to prove his innocence. Under the circumstances, the Managing Committee, being the appointing/punishing authority may decide the appropriate action it deem fit and seek approval from the D.P.I.Colleges, Punjab.

***Sd/-
S.M.Sharma”***

The short question that rises before this Court is as to whether the departmental/inquiry proceedings conducted against respondent No.3 were in accordance with the procedure established by law.

Perusal of the inquiry report reveals that findings have been recorded against respondent No.3 on the basis that he had not associated with the inquiry proceedings and as such had not set up any defence.

It is by now well settled that mere absence of the delinquent from the inquiry proceedings would not lead to an assumption as regards admission of the charges pressed. Even if a delinquent does not join inquiry proceedings even then the Inquiry Officer is obligated to proceed further by holding ex parte proceedings and by calling upon the Presenting Officer to produce evidence in the shape of documents and witnesses in support of the charges. It is only upon recording satisfaction on the basis of the evidence adduced that the Inquiry Officer would record findings. Reference in this regard may be made to the Division Bench Judgement of this Court in ***Dr. Balwinder Singh Vs. Punjab Agricultural University and others 2007 (3) SCT 334.***

On a previous date of hearing i.e.16.11.2017, counsel for the petitioner-College was directed to produce the original inquiry proceedings that were conducted against respondent No.3 and at the hands of Sh. Satish Sharma, Inquiry Officer.

During the course of resumed hearing on 27.11.2017, the original inquiry file was produced by counsel. The same has been perused. The original inquiry proceedings reveal that not even an iota of evidence was led by the Presenting Officer in support of the charges formulated against the petitioner. Even

Mr. Sameer Sachdeva, Advocate candidly concedes to the same.

Under such circumstances, the proposal of the petitioner-College forwarded to the Director Public Instructions (C) Punjab for terminating the services of respondent No.3 based on inquiry proceedings in which no evidence has been led was rightfully declined in the light of order dated 04.07.2016 (Annexure P-11). Even the order dated 11.07.2017 passed by the Educational Tribunal, Punjab (Annexure P-18) is based on cogent and valid reasoning and by noticing the procedure adopted by the Inquiry Officer and which would not have any sanctity in law.

For the reasons recorded above, no infirmity is found in the impugned orders.

Petition dismissed.

04.12.2017

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned

Yes

Whether Reportable

Yes