

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

CWP No.8147 of 2013

Date of decision : 30.11.2017

Samrat Sachdeva

.....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Gaurav Sharma, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

Mr. Anupam Singla, Advocate for respondent No.2.

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DAYA CHAUDHARY, J. (Oral)

Petitioner has approached this Court by way of filing the present writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned order dated 21.02.2013 (Annexure P-9), whereby his services have been terminated. A writ of mandamus has also been sought to direct the respondents to allow the petitioner to continue in service as the petitioner was on medical leave on the advice of Civil Surgeon and, thereafter, he was not allowed to continue in service.

Briefly, the facts of the case are that the petitioner was appointed under the scheme of Sarv Shiksha Abhiyan against the post advertised in the year 2010 vide order dated 19.11.2010 on the post of English Master. During service, the petitioner applied for medical leave

from 21.11.2012 to 19.12.2012. As per the case of the petitioner, his leave was sanctioned by the respondent-authority and he was also marked to be on leave in the attendance register. He joined his duties on 20.12.2012 but after one month, again the doctor advised him for complete bed rest for a period of two weeks. As per the case of the petitioner, he had again moved an application for leave, which was duly forwarded to the office of the District Education Officer, Mohali but it was returned back on the ground that it was not sent on the prescribed proforma. Petitioner requested for extension of medical leave for further 28 days from 02.02.2013 to 01.03.2013 on medical ground by moving leave application, which was duly forwarded by the Head Master of the School to the District Education Officer. Thereafter, a show cause notice was issued to the petitioner to show cause as to why action should not be taken against him. Said show cause notice was replied by the petitioner but ultimately vide order dated 21.02.2013, the services of the petitioner were terminated and said order of termination dated 21.02.2013 is subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that the petitioner was on leave, which were duly applied and sanctioned and was duly supported by the medical certificate of the CMO. The reasons and circumstances were beyond the control of the petitioner and subsequently, the application was moved for extension of leave.

Learned counsel also submits that it was not a case of unauthorized leave but still the impugned order has been passed without any

application of mind in an illegal and arbitrary manner. Learned counsel for the petitioner further submits that no opportunity of hearing was given and no notice was issued to the petitioner to defend himself and as such the impugned order is violative of principles of natural justice.

At the end, learned counsel for the petitioner argued that other similarly situated persons are still working in the respondent-department and no regular hands have joined the service and posts are still lying vacant.

Learned counsel for the respondents have strongly opposed the submissions made by learned counsel for the petitioner. Learned counsel submits that it was a case of contractual employment and as per the terms and conditions applicable to the case of the petitioner, he was entitled to avail 15 days medical leave in one calendar year and that is also with the approval of the head office. The service conditions of the petitioner were governed by the Rules and Policy Decision dated 24.05.2011. Petitioner availed 41 days medical leave, whereas he was entitled only for 15 days leave. It was a case of absence from duty. He remained absent from the school and no medical leave was approved by the competent authority. The order of termination has been passed by issuing show cause notice and it cannot be said that the order has been passed in violation of principles of natural justice. Learned counsel for the respondents also submits that after appointment of the petitioner as English Master, he was appointed as Block Resource Person at District level on deputation and after cancellation of the deputation, the petitioner started to send leave applications on medical ground, which shows that the petitioner was never interested in joining his

duties in the school. His contract was valid upto 31.03.2013. By considering his conduct and past service record, it was not extended after 31.03.2013. At the end, learned counsel for the respondents submits that the petitioner cannot claim any right over the post when period had already expired.

Heard arguments of learned counsel for the parties and have also perused the impugned order and other documents on the file.

Facts relating to appointment of the petitioner under Sarv Shiksha Abhiyan and thereafter, going on medical leave and subsequent extension of leave which was not approved, are not disputed. When the petitioner remained absent from duty, a show cause notice was issued which was duly responded. After giving adequate opportunity of show cause and considering the reply, the impugned order of termination of services of the petitioner was passed. It has come on record that the petitioner availed 13 casual leave in the year 2012. He has also availed 4 days medical leave from 28.08.2012 to 31.08.2012 and, thereafter, 3 days medical leave from 10.10.2012 to 12.10.2012 and again 5 days medical leave from 01.11.2012 to 05.11.2012 and 29 days medical leave from 21.11.2012 to 19.12.2012. The total period of medical leave was 41 days, whereas his entitlement was only for 15 days. Petitioner remained absent and thereafter, show cause notice was issued. Ultimately, his services were terminated. It is also relevant that the contract of the petitioner was upto 31.03.2013 and, thereafter, it was not extended. It is not the case of replacement of petitioner by another contractual employee. It has clearly been mentioned in the impugned order of termination that the petitioner has remained absent

unauthorizedly and, thereafter, show cause notice was issued and by considering the reply of the petitioner, finding it to be a case of willful absence from duty and the terms and conditions of contract the impugned order was passed. There is no merit in the contentions raised by learned counsel for the petitioner.

The petition is dismissed. However, liberty is granted to the petitioner to apply for the post whenever new advertisement is issued.

30.11.2017

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No