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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-7364-2017 in/and CWP-9476-2017
Date of Decision : 18.05.2017

Aas Mohd.

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Vivek Khatri, Advocate
for the applicant-petitioner.

AJAY TEWARI, J. (Oral)

CM-7364-2017

For the reasons recorded, the application is allowed.

Documents Annexures P-18 to P-20 are taken on record.

CWP-9476-2017

By this petition the petitioner has challenged the order dated 06.04.2017 (Annexure P-17) whereby the respondent No.2 – Director affirming the order of punishment of dismissal from service awarded to him by the respondent No.4- Managing Committee of the School where he was working as a JBT Teacher.

As per the case set up by the petitioner, he was appointed as JBT Teacher in the year 1995. After six years i.e. in the year 2000 the Managing Committee of the School terminated the services of the petitioner alongwith other employees. Thereafter the petitioner alongwith other employees filed a writ petition bearing CWP No.7381 of 2001 challenging that termination order and this Court had stayed the operation of termination order with a direction to file statutory appeal before the competent authority. The statutory appeal was filed by the petitioner and the Director Secondary Education, Haryana had set aside the termination order. During this interregnum a writ petition filed by them for claiming salary bearing CWP No.8034 of 2000 was also allowed by the Division Bench. Just because the petitioner fought for his legal right the respondent No.4 at the instance of the Headmaster had registered a criminal case against him and other co-employees under Sections 294, 341, 506 IPC in FIR No.280 dated 17.10.2002 but they were acquitted by the trial Court. The petitioner alongwith other co-employee had also filed contempt petition as their salary had not been paid. As a result thereof the petitioner was suspended and even subsistence allowance during suspension period was also not been paid to him. Resultantly, they filed another writ petition bearing CWP No.15278 of 2005 and the Division Bench allowed the writ petition with a direction to the respondent No.4 to release the subsistence allowance. Thereafter on 12.11.2005 the petitioner was issued a charge-sheet in which following charges were levelled against him:-

“1. You were written following letters by the Headmaster which were sent to you through office menial staff for service which you refused to receive :-

1. Letter dated 19.8.2002 sent through Lajpat, Peon.
 2. Letter dated 23.9.2002 sent through Nazir Ahmad, Peon. Both copies of the letter snatched and torn into pieces.
 3. Letter dated 28.4.2004 sent through Bannu Ram, Chowkidar.
 4. Letter dated 21.9.2004 sent through Nazir Ahmad, Peon.
 5. Order Book bearing order sent to primary section for noting through Lajpat, Peon which you snatched forcibly and misbehaved with him. Refusal to receive the official letters tantamount to indiscipline, insubordination and misconduct.
2. Your relations with the school staff including Headmaster has not been cordial. You misbehaved with Hakimuddin Headmaster and Mohd. Farooq Headmaster. You took forcibly the attendance register and kept in your custody where you marked your attendance as per your will. The register was returned on interference by the Management. The misbehaviour done with Mohd. Farooq, Headmaster resulted in lodging FIR which was compromised on compulsion. These are the glaring instances of misconduct and misbehave.
3. You misbehaved with Shri Lajpat, Peon you abused him called him cobbler and manhandled him on 28.4.2004 when he went to primary section to get the order of headmaster noted. Your action was violent and condemnable. This is sheer misconduct on your part and calls for strict action against you.
4. You are habitual of coming late to school. The Headmaster put sign of interrogation in attendance register in your column but you put your initials overwriting the sign of interrogation put by headmaster and entered actual school opening timing. Thus you tempered the office record and

tried to conceal your late coming. You tried to create indiscipline and insubordination feeling among teachers.

5. You always violated the rules being in service of this school applied for service without obtaining NOC from the head of the institution or from the management. You left the station of your posting without permission of the head of the institution which is proved from going to Delhi on 15.9.2002, 23.11.2002, 19.7.2005.

6. You left the classes without informing your colleagues or the head of the institution on 3.9.2004 the headmaster checked your classes at 11.30 a.m. you were found absent. Again headmaster sent Nazir Ahmad, Peon at 12.15 noon to verify your presence but you remained absent. Your irresponsible action leads to indiscipline.

7. You remained absent on 20.9.2004 but on 21.9.2004 you marked in the attendance register casual leave. You did not apply for leave nor got it sanctioned till now. You manipulated the office record which is highly objectionable and act of misconduct and indiscipline. You are not sincere to your duties and generally leave your classes and instigate the other teachers to follow you. You criticize the management and the headmaster inside and outside the school which is misconduct.

8. You applied for leave from 18.5.1998 to 23.5.98 for going to Pakistan from 24.5.98 summer vacation started ending on 5.7.98. You did not seek permission for this period and attended the school on 6.7.98 on reopening. Thus you remained either absent or without leave which is a serious irregularity.

9. You did not produce the passport for inspection and reported that the same was lost in Delhi on 15.9.2002 and for which FIR was lodged in Police Post Delhi on 23.11.2002 a Photostat copy of which was given in the office on 20.2.2003. You produced a Photostat copy of pass port visa on 1.8.2005

which proves that pass port was in your custody which you did not want to show.”

The inquiry officer had found him guilty and thereafter the disciplinary authority had dismissed him from service. He challenged that order of termination and ultimately after a protracted legal battle the Supreme Court took a decision on 13.07.2015 by passing the following order:-

“We do not find any reason to interfere with the impugned order, particularly, when the Division Bench, while passing the impugned order gave liberty to the management-respondent No.4 to present its case for approval of the Director-respondent No.2 after furnishing detailed inquiry report to the petitioner before the High Court alongwith intimation to him.

The special leave petition stands dismissed.”

It was pursuant to that the impugned order had been passed.

Learned counsel for the petitioner has argued that the charges against the petitioner have not been proved at all.

A perusal of the inquiry report shows that firstly the petitioner was duly represented by a counsel. The inquiry officer had dealt with each charge and had found the petitioner guilty of all the charges and the respondent No.2-Director has also overseen the entire report and concurred with the report of the inquiry officer. Though it is not the province of this Court to evaluate the factual findings, yet one glaring aspect which has emerged is that even in the objections to the inquiry report which was filed by the petitioner, the findings against charge No.4 have not even been challenged. This charge not only shows tampering of record, it also shows

up his incorrigibility and his tendency to consider himself a law unto himself. Even the arguments raised against other factual findings do not lead me to the conclusion that the findings are either perverse or based on no evidence. In the totality of circumstances, I find no reason to take a different view to that taken by the respondent No.2.

Consequently, the petition is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

May 18, 2017
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No