

**208 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-14502-2010 (O&M)

Date of Decision: 26.09.2018.

The Managing Committee, Kamla Nehru College for Women,
Phagwara

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Rahul Sharma-I, Advocate,
for the petitioner.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

Mr. R.K. Arora, Advocate,
for respondent No.4.

JITENDRA CHAUHAN.J.

Through the instant civil writ petition, the petitioner seeks setting aside of order dated 21.01.2010 (Annexure P-1) passed by the Punjab Educational Tribunal, Chandigarh (for short “the Tribunal”) vide which the appeal filed by respondent No.4 was allowed and the order dated 22.09.2008 (Annexure P-9) passed by Director of Public Instructions (Colleges), Punjab, Chandigarh (for short “the DPI Colleges”) was set aside.

It has been contended by the learned counsel for the petitioner that respondent No.4 was appointed as Clerk in Kamla Nehru College for Women on 31.07.1995. He absented himself from duty for a considerable long period as he had embezzled the amounts collected

by him from various students. He was issued charge-sheet, an enquiry was held and he was found guilty. Vide order dated 22.09.2008 (Annexure P-9) passed by DPI (Colleges), termination of services of respondent No.4 was ordered. An appeal was filed by respondent No.4 before the Tribunal. The Tribunal allowed the appeal on the sole ground that the management did not send the report of Inquiry Officer to respondent No.4.

It is the further contention of the learned counsel that the order passed by the Tribunal is bad in law inasmuch as the punishment is not to be imposed by the petitioner-management. The punishment is to be imposed by the DPI (Colleges), Punjab which has passed the final order of punishment after hearing respondent No.4. Once respondent No.4 has been heard by DPI (Colleges), Punjab before passing any adverse order, the question of non-supply of inquiry report by the petitioner-management is insignificant. He relies upon Rule 4 of the Punjab Affiliated Colleges (Security of Service) Rules, 1978 (for short “the Rules of 1978”). FIR was registered against respondent No.4 for committing misappropriation and cheating.

On the other hand, learned counsel for respondent No.4 supports the judgment (Annexure P-1) passed by the Tribunal. Respondent No.4 has been acquitted of the charges levelled against him by the learned trial Court vide judgment dated 09.02.2012 (Annexure R-4/1).

Heard.

Rule 4 of the Rules of 1978 reads as under:-

“4. Action on the inquiry report. - (1) The Managing Committee, if it is not itself inquiring authority, may for reasons to be recorded by it in writing remit the case to the inquiring authority for further inquiry and report and the inquiring authority, as far as may be, shall thereupon proceed to hold the further inquiry, according to the provisions of Rule 3.

(2) The Managing Committee, shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for each disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the Managing Committee having regard to its finding on all or any of the articles of charge, is of the opinion that the penalty of dismissal or removal from service or reduction in rank should be imposed on the employee, it shall

- (a) furnish to the employee a copy of the report of the inquiry held by it and its finding on each article of the charge or where the inquiry had been held by the inquiring authority appointed by it, a copy of the report of such authority and a statement of its findings on each article of charge, together with brief reasons for its disagreement, if any, with the findings of the inquiring authority;*
- (b) give the employee a notice stating the penalty proposed to be imposed on him and calling upon him to submit, within a period of thirty days of the receipt of such notice, such representation to the Director as he may wish to make against the proposed penalty;*
- (c) forward to the Director the complete record of inquiry mentioned in sub-rule 21 (ii) of Rule 3, alongwith its own findings on each article of charge, together with brief reason for the disagreement, if any, with the findings of the inquiry; and*
- (d) forward to the Director evidence of receipt of notice by the employee under clause (b).*

Hon'ble the Supreme Court in **Capt. M. Paul**

Anthony vs. Bharat Gold Mines Ltd. (1999) 3 SCC 679 has held as

under:-

“(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

•(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.”

The judgment passed by the Tribunal is based solely on the premise that as copy of the inquiry report has not been supplied to respondent No.4, a prejudice has been caused to him. The Tribunal while setting aside the order of DPI (Colleges) has not taken into consideration the fact that the inquiry officer and the punishing authority are different. Before inflicting punishment of termination, the petitioner was heard by the DPI (Colleges), Punjab, therefore, it cannot be said that any prejudice has been caused to the petitioner.

In view of above, the present civil writ petition is allowed. The impugned judgment (Annexure P-1) passed by the Tribunal is set aside and the order dated 22.09.2008 (Annexure P-9) passed by the DPI (Colleges), Punjab is restored.

26.09.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

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