

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

CWP No.20684 of 2017

Date of Decision:-30.04.2018

Niranjan Lal Sharma.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. R.K. Arora, Advocate for the Petitioner.

JASWANT SINGH, J.(ORAL)

The petitioner was recruited and appointed as Senior Laboratory attendant on 06.10.1987 in the Department of Secondary Education, Punjab. While posted as Senior Laboratory Attendant in Govt. Senior Secondary School, Ghal Kalan, District Moga an incident was reported by a minor girl regarding sexual harassment/obscene act conducted by the petitioner in the staff room on 03.07.2014, when the student had gone to fetch water for a handicapped teacher. The formal complaint was made by the father of the minor girl on 08.07.2014 resulting into placing the petitioner under suspension and issuance of chargesheet dated 18.09.2014 (P-1). The District Education Officer (EE), Moga was appointed to conduct an inquiry for imposition of major punishment and vide his report dated 4.8.2016(P-4), it was held that the charge was not proved. The conclusion reached by him is as under:-

the concerned employee and the documents produced during enquiry, I come to the conclusion that in the charge-sheet, charge of obscene conduct with the student of 10+2 class on 08.07.2014 had been levelled. On perusal of the copy of the school attendance register, produced by the employee as proof in his defence, it has been found that the employee was on leave on the day of incident mentioned in the charge-sheet and the concerned student has also stated in her statement about her ignorance regarding date of incident. The charges are not proved being the employee on leave on 08.07.2014, the date mentioned in the charge-sheet. The student has not produced any proof, witness or document regarding complaint. The date of incident mentioned in the charge sheet and the date disclosed by the student do not match with each other. As per the complaint received against the concerned employee, the temporary adjustment of the employee was made at GHS Langeana Khurd, Moga in public interest vide this office letter No.E-5/2014/E.P./Complaints/988-91 dated Moga 11.07.2014. Due to the complaint of the said incident, the employee was transferred at G.S.S.S. (G) Zira, Moga by the Director Education Department (SE), Punjab, Ajitgarh vide order No.5/145-140E(2)3946-48 dated 16.03.2015 and office of District Education Officer (S.E.) Moga endorsement No.E-5/Order/2015/824-28 dated 20.03.2015. I come to the conclusion that keeping in view unblemished service of the concerned employee and by giving him one opportunity he maybe warned to remain careful in future. As per above, the charges levelled against the employee in the charge-sheet are not proved. ”

The Disciplinary/Competent Authority realising the mistake, vide order dated 01.09.2016 (P-5) ordered a fresh inquiry by appointing a Committee of the Circle Education Officer Faridkot and District Education Officer, Faridkot in the light of the mandatory provisions of constituting a

(Prevention, Prohibition & Redressal) Act, 2013. The said inquiry exonerated the petitioner in the light of technical grounds that as per the chargesheet the incident had occurred on 8.7.2014 i.e. The date of complaint and the petitioner was found to be on leave on the said date. Since factually the date in the article of charge was incorrectly stated, the department did not accept the report P-6 and passed an order dated 11.05.2017 (P-7) modifying the date of the charge from 08.07.2014 to 03.07.2014 as also passed another order dated 09.08.2017 (P-8) whereby the inquiry committee was ordered to proceed afresh. Hence the present writ petition challenging the impugned orders P-7 & P-8.

During the course of previous hearing realising that the petitioner was to superannuate on attaining the age of 58 years on 30.04.20-19 and in the light of deposition of the minor girl, there is a likelihood of severe consequences being inflicted upon the petitioner, learned Counsel for the petitioner made an oral offer in Court for seeking voluntary retirement w.e.f. 01.05.2018; as also without claiming any salary for the period he was placed under suspension during the inquiry qua the present chargesheet.

Accordingly, Mrs. Lavanya Paul, Assistant Advocate General, Punjab was directed to seek instructions from the respondent-Department.

At the time of resumed hearing today, Learned State Counsel on instructions from Mr. Shashi Gagg, Legal Officer DPI, Punjab states that the department has accepted the oral offer of the petitioner made in Court. It is stated that the required orders have been obtained on the file from the competent authority with regard to the acceptance of the offer of voluntary retirement w.e.f. 01.05.2018 and to drop the chargesheet. Necessary formal orders shall be issued. It is further stated that the department has to recover

a sum of Rs.73,000/- towards the alleged wrong fixation of pay, which this Court directs the department would forego in lieu of the petitioner having foregone his rights towards salary over and above what has already been paid for the period of suspension. i.e. w.e.f 29.10.2014 to 15.03.2015 but the same would be treated as a leave of kind due.

Petitioner who is present in Court has unconditionally accepted the aforesaid terms and stated before this Court that he be considered as Voluntary retired w.e.f 01.05.2018 and given a weeks time to hand over the charge to the competent Authority so as to avail the benefit of timely release of retiral benefits.

In view of the aforesaid extraordinary and agreed circumstances, this Court has treated the offer of the petitioner for voluntary retirement as accepted subject to formal terms and conditions of the Service Rules apart from the above stated terms. The necessary action by both the sides be taken as per Rules and Regulations.

Disposed of in the above terms.

(JASWANT SINGH)
JUDGE

April 30, 2018
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>