

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

CWP No.26925 of 2014 (O&M)

Date of decision: 16.04.2018

Gurmeet Kaur

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. H.S. Sran, Advocate for the petitioner(s).

Mr. Amit Mehta, Sr. DAG, Punjab.

Jitendra Chauhan, J. (Oral)

By way of the present petition, the petitioner seeks issuance of a writ in the nature of certiorari to quash the impugned order dated 30.01.2013 (Annexure P-10) passed by respondent No.2 vide which the petitioner was dismissed from service and further to quash order dated 17.04.2013 (Annexure P-13), whereby the appeal filed by the petitioner was dismissed.

Learned counsel for the petitioner contends that the impugned order dated 30.01.2013 (Annexure P-10) passed by respondent No.2, a day prior to superannuation of the petitioner i.e. 31.01.2013, is arbitrary and illegal in nature. The petitioner joined the respondents on 23.12.1982 as Social Study Mistress and she was dismissed from service on account of absence from duty for the period from 07.05.2006 to 14.10.2011 (Annexure P-8). Learned counsel further submits that the

petitioner was permitted to join her duties subject to the outcome of the enquiry pending against her on account of absence. The petitioner never received any correspondence from the respondents that her leave was not sanctioned, therefore, there is no willful or intentional absence on the part of the petitioner.

In support of his contentions, learned counsel cites **Gurdev Singh Vs. State of Haryana and others**, 2007(1) RSJ 45, **Haryana Vidyut Prasaran Nigam Ltd. (formerly Haryana State Electricity Board) Vs. Saroj Bakshi and others**, 2016(1) SCT 584, **Coal India Limited and another Vs. Mukul Kumar Choudhuri and others**, 2009 (4) RSJ 754, **Lashkar Ram Vs. Union of India and others**, 2009(1) RSJ 35, **Hussaini Vs. The Hon'ble Chief Justice of High Court of Judicature at Allahabad and others**, AIR 1985 SC 75, **Constable Ranbir Singh Vs. State of Haryana and others**, 1999(1) RSJ 527, **Punjab State through the Secretary Vs. Gurmukh Singh and others**, 1999(4) RSJ 187 and **Mehar Singh Vs. State of Punjab and others**, 2003(1) SCT 453.

On the other hand, learned State counsel submits that the services of the petitioner were terminated after following the due procedure; a departmental enquiry was held wherein, the petitioner found guilty, she was dismissed from service on account of absence from duty by invoking the provisions contained in Rule 5(viii) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970

Heard, learned counsel for the parties and perused the record

carefully.

The petitioner joined the respondents' Department as Social Study Mistress at Government High School, Nagoke, District Amritsar in the year 1982. Her services were regularized in the year 1985. The challenge is to the impugned order dated 30.01.2013 (Annexure P-10) whereby her services were terminated on account of long absence from duty for the period from 07.05.2006 to 14.10.2011. As per the record, earlier, the petitioner was on long leave for the period from 25.03.1998 to 24.03.2003. Thereafter, she went abroad after applying leave for self employment for the period from 22.04.2003 to 21.04.2006. The application for leave was not sanctioned and disciplinary proceedings were initiated against her. After returning from abroad, she submitted an application dated 25.11.2005 (Annexure R-1) for joining duties. She was allowed to join her duties in view of the instructions dated 22.04.1992 vide order dated 09.03.2006 subject to the condition that same shall not affect the disciplinary proceedings. Thereafter, the petitioner again applied for leave for the period from 20.04.2007 to 20.04.2009 which was also rejected despite that the petitioner did not turn up for duty. The petitioner was duly informed regarding non sanctioning of leave, however, the communication sent to the petitioner was received back with the remarks that the "addressee is residing abroad". The foreign address was not supplied to the respondents before abroad. The petitioner was given due opportunity of personal hearing, however, no satisfactory explanation came forward in reply for her long absence.

In State of Rajasthan and another Vs. Mohammed Ayub

Naz, 2006(1) SCT 445, Hon'ble the Supreme Court has held as under:-

“9. Absenteeism from office for prolong period of time without prior permission by the Government servants has become a principal cause of indiscipline which have greatly affected various Government Services. In order to mitigate the rampant absenteeism and wilful absence from service without intimation to the Government, the Government of Rajasthan inserted Rule 86(3) in the Rajasthan Service Rules which contemplated that if a Government servant remains wilfully absent for a period exceeding one month and if the charge of wilful absence from duty is proved against him, he may be removed from service. In the instant case, opportunity was given to the respondent to contest the disciplinary proceedings. He also attended the enquiry. After going through the records, the learned Single Judge held that the admitted fact of absence was borne out from the record and that the respondent himself has admitted that he was absent for about 3 years. After holding so, the learned Single Judge committed a grand error that the respondent can be deemed to have retired after seeking of service of 20 years with all retrial benefits which may be available to him. In our opinion, the impugned order of removal from service is the only proper punishment to be awarded to the respondent herein who was wilfully absent for 3 years without intimation to the Government. The facts and circumstances and the admission made by the respondent would clearly go to show that Rule 86(3) of the Rajasthan Service Rules is proved against him and, therefore, he may be removed from service.

12. In this context, we can usefully refer to the case of B.C. Chaturvedi v. Union of India and Ors., AIR (1996) SC 484 (3 Judges) wherein this Court held thus:

"Ramaswamy, J for himself and B.P. Jeevan Reddy, J.- Disciplinary authority and on appeals, appellate authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, -

it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

13. Therefore, we do not propose to issue a direction to the disciplinary/appellate authority to reconsider the penalty imposed. As pointed out by this Court in the above judgment and in order to appropriately mould the relief and to shorten the litigation, we ourselves impose the punishment of removal from service which was imposed by the disciplinary authority in the instant case which, in our view, is the appropriate punishment."

The long absence from duty without any explanation by the petitioner is a grave misconduct. Her act of submitting joining report(s) after long leave was also guided to secure undeserved monetary benefits from the State. Such an act deserved to be deprecated. Even the act of the State to permit such an employee to rejoin the establishment also appears to be passed as an undeserving favour by the concerned authority. Such a person is a burden on the State exchequer, who has made the mockery of the system. It is the duty of the State to look into such matters diligently so that such like persons are not retained in service. The petitioner does not deserve any leniency and her services have been rightly terminated by the competent authority. Finding no merit in the instant petition, the same is hereby dismissed.

16.04.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No