

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

**CWP No. 27099 of 2015
Date of Decision: 18.01.2018**

Mahender Singh

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Chandra Sekhar, Advocate for
Mr. Umesh Narang, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

RAJIV NARAIN RAINA, J. (Oral)

1. The present petition has been filed under Article 226/227 of the Constitution of India for quashing the impugned orders dated 16.12.1996, charge sheet (Annex P-4), inquiry report dated 16.05.2003 (Annex P-7) and punishment order dated 23.01.2013 (Annex P-16) and for directing the respondents to release the increments withheld with all consequential benefits.

2. Briefly stated, the petitioner without obtaining prior permission of the authorities or the Principal of the school, went off to perform examination duty in Maharishi Agarsen Women's College, Jhajjar for ten days beginning 04.03.1996 on the request of the College by a letter addressed to the Principal of the Government Senior Secondary School Kharak Punia, Hisar where the petitioner was

teaching Mathematics. On 11.03.1996, Principal of the GSSS Kharak Punia, Hisar wrote back to the Centre Superintendent of the Maharishi Agarsen Women's College, Jhajjar that the petitioner is performing examination duty without permission of the school authorities and be relieved from duty and asked to immediately report back to duty. The Principal also ordered that he will not be paid any salary for the period of absence of 10 days.

3. For this misconduct, the petitioner was issued a show-cause notice and disciplinary proceedings were ordered. In the regular enquiry that followed, the charge was proven and the disciplinary authority proposed punishment of stoppage of his two annual increments with cumulative effect. Against which proposal the petitioner filed an appeal was kept pending decision.

4. Seven years went by. Then the petitioner approached this Court in CWP No. 13923 of 2010 praying for a direction to the authorities to decide his representation/appeal dated 14.10.2003. During the pendency of the writ petition the 3rd respondent decide the appeal and imposed the punishment of stoppage of one increment with cumulative effect.

5. The Director Elementary Education, Haryana has imposed major penalty but at the same time had held the petitioner entitled to draw his salary for the period of absence when he unauthorizedly performed examination duty in another institution. This direction

appears only to regularize the period of service of ten days so that it is not treated as dies non. This is to the benefit of the petitioner. It is an independent decision and merely because salary has been paid would not mean that the petitioner is innocent of the charge.

6. The only question which falls for consideration is whether the punishment is proportionate to the charge. There does not appear to be any bad faith involved in acting on the letter of the Principal of Maharishi Agarsen Women's College, Jhajjar officially addressed to the Principal of GSSS Kharak Punia, Hisar for requisitioning services of a teacher and the petitioner proceeding for examination duty for 10 days. The Principal's reaction to the letter dated 04.03.1996 is somewhat delayed, when he wrote back to the Centre Superintendent of the Maharishi Agarsen Women's College, Jhajjar on 11.03.1996, after a week. This period cannot be ignored or for a reasonable man to believe the Principal had no hand in this arrangement waking up after a week.

7. Even after the enquiry proceedings were concluded and the report was made in the year 2003, the show-cause notice proposing punishment was delayed by about a year when the impugned order was passed on 23.01.2013. Looking to the huge delay in action taken and that the order has been passed during the pendency of the writ petition filed by the petitioner apparently to render it quietly infructuous, then I think that major punishment meted out to the petitioner is harsh and oppressive and deserves to be scaled down from major to minor penalty.

8. Besides, there is a serious dispute as to whether petitioner

was offered effective hearing in the making of the punishment order. Learned counsel submits that his client was not called for personal hearing and it has been wrongly stated in the impugned order that he did not availed the opportunities given for personal hearing. Proof of attendance on various dates in the office of the disciplinary authority have been enclosed as annexures which suggests that the petitioner did go for the personal hearing, but, was granted none, before the impugned order was passed.

9. For these reasons mentioned above, I would partly allow the petition and set aside the impugned order dated 23.01.2013 and direct the respondents to consider converting the punishment from major to minor. The order be passed within two months from the date of the receipt of the certified copy of the order. On conversion from major to minor punishment, the petitioner would be entitled to consequential benefits.

(RAJIV NARAIN RAINA)
JUDGE

18.01.2018

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Whether speaking/reasoned : *Yes*

Whether reportable : *No*