

109

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

CWP-29582-2017

Date of decision-29.01.2018

Balwinder Kaur

...Petitioner

Vs.

State of Punjab and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Vivek Sharma, Advocate for the petitioner.

JITENDRA CHAUHAN, J. (Oral)

This writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of certiorari for quashing the order dated 26.08.2016 (Annexure P-12) passed by respondent No.1 whereby appeal filed by the petitioner had been dismissed and order dated 22.06.2015 (Annexure P-8) whereby the petitioner had been removed from service under Rule 5 (viii) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970.

Learned counsel contends that the impugned order of removal (Annexure P-8) of the petitioner from service is illegal, perverse and arbitrary inasmuch as the same has been passed without serving any notice upon the petitioner before removal from service nor any opportunity was given to her to explain.

I have heard learned counsel for the petitioner and have gone through the case file.

It is the case of the petitioner that she was appointed as SS Mistress in the Government High School, Kasoana, Ferozepur. The petitioner applied under scheme vide which the employees were given option for serving abroad without salary. She was granted Ex-India leave from 01.07.2008 to 30.06.2011 (Annexure P-1). The petitioner while still abroad, applied for extension of leave for another 02 years i.e. from 01.07.2011 to 30.06.2013 (Annexure P-2). Vide letter dated 27.04.2012, the petitioner was informed by the competent authority that her prayer for extension of leave had been rejected and she was directed to join back her duties (Annexure P-3). Thereafter, the petitioner came back to India and on 02.08.2012 approached the respondent-Department to allow her to join duties vide application Annexure P-4. On 13.05.2014 charge-sheet under Section 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 for remaining absent from duties and leaving country without getting permission from the Department was issued to the petitioner and her services were terminated vide order dated 22.06.2015 (Annexure P-8). Aggrieved by the removal from service, the petitioner filed an appeal before respondent No.1 (Annexure P-9) which was dismissed vide order dated 26.08.2016 (Annexure P-12) without being heard. Hence the instant writ petition.

From the perusal of the record it emerges that the petitioner went abroad in terms of order dated 07.11.2008 for three years from 01.07.2008 to 30.06.2011. Her prayer for extension of leave by another two years sought through letter dated 30.03.2011 (Annexure P2) was rejected by the authority and the same was duly conveyed to her. Thus, the petitioner

remained absent from duties for a long period. Due to her absence from duty without sanctioned leave, a charge-sheet was issued to her vide memo No.Info-2/(209345) 2014/5579-81 dated 13/15.05.2014 (Annexure P-6). The inquiry was conducted as per the instructions of the Government of Punjab and the allegations levelled against the petitioner stood proved. Public notices were also published in different newspapers but the petitioner did not respond back. Therefore, the contention of learned counsel for the petitioner that due procedure was not followed before passing the impugned order is unfounded.

Hon'ble the Supreme Court in “*State of Uttar Pradesh and others Vs. J.P.Saraswat*” 2011 (4) SCC 545 has held as under:-

“10. We are completely unable to appreciate the manner in which the High Court proceeded in the matter and, in our view, the High Court grievously erred in assuming the role of the employer. Having come to the finding that the charges against the respondent were duly established, the High Court ought to have simply dismissed the writ petition. Any interference on the question of punishment is permissible in very rare cases where the punishment is so disproportionate to the established charge that it would appear unconscionable and actuated by malice. In the facts of the case, the punishment given to the respondent was quite moderate and there was not even a whisper of any malice, etc. The respondent went to the USA and overstayed his leave for over a year and a half on the first occasion and on the second occasion, he went to the USA without even caring to obtain leave and remained there for over four years. In

those circumstances, the punishment of termination of service that would not debar from future employment was a perfectly reasonable and fair punishment and there was no occasion for the High Court to interfere with that order. The High Court was equally wrong in setting aside the punishment order passed against the respondent on the ground that the State Government had not responded to his applications for extension/grant of leave or that during the long period of his absence the government had not sent him any notice asking to resume duties by a certain date. These could never be the grounds for the High Court to set aside the punishment order passed by the State Government and to replace it by its own set of directions.”

Thus, in view of the discussion and the case law cited above, this Court does not feel any ground to interfere in the impugned order.

Dismissed.

(JITENDRA CHAUHAN)
JUDGE

29.01.2018

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No