

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9989-2015 (O&M)
Date of Decision:-14.12.2018.

Sukhwinder Singh

.....Petitioner

Versus

Shiromani Gurdwara Parbandhak Committee

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mrs. Vanita Sapra Kataria, Advocate for the petitioner.

Brig. B.S. Taunque, Advocate for the respondent.

ARUN MONGA, J. (Oral)

1.) The question involved in the present writ petition is whether an employee/Sewadar of the respondent-SGPC can be dismissed from service without following the Rules framed under Sikh Gurdwara Act, 1925 nomenclatured as Services Rules governing the dismissal of an employee of SGPC.

2.) The petitioner herein was appointed as a Sewadar by the Local Committee of Guru Ka Bagh Gurdwara at Amritsar. By virtue of Notification dated 28.07.2003, the Management of the said Gurdwara along with other Gurdwarara were transferred to SGPC-respondent herein. The petitioner was later on transferred to Gurdwara Sultanpur Lodhi at Kapurthala. It is there that on 25.07.2009, petitioner is alleged to have been delinquent while rendering his services owing to which he was dismissed from service without following the due procedure under Rule 4 of the

Service Rules.

3.) The delinquency attributed to petitioner is that when one Bibi Sukhwinder Kaur (complainant) came to pay obeisance in Gurdwara, she found that stray dogs had got inside the Gurdwara. The dogs were allegedly polluting the *Karah Parshad*. She complained to the one of the Executive Members of the Managing Committee of the Gurdwara. Pursuant thereto, charge-sheet dated 23.11.2009 (Annexure P-4) was issued which was duly responded by the petitioner vide his undated reply (Annexure P-5).

4.) Being dis-satisfied with the response to the charge-sheet a sub-committee was constituted to hold an inquiry into the alleged incident. The sub-committee submitted its report relevant whereof is extracted as below:-

“After complete investigation case, inquiry sub committee has reached to this conclusion that Bhai Sukhwinder Singh under suspension sewadar cum Granthi on account of negligence committed by him during his duty, he should be imposed a fine of Rs.5,000/- and recommendation is being made to reinstate him in service and in future he should be given a duty of the sewadar only.”

5.) Perusal of the above recommendation made by the sub-committee clearly shows that the petitioner was to be reinstated in service. Albeit, in future he was to be given duty of a Sewadar only as against the duties of Granthi which were assigned to him earlier on. However, vide impugned order dated 13.03.2010 (Annexure P/7), the petitioner was dismissed from service.

6.) I have gone through the respective pleadings and records appended thereto of both the parties.

7.) Learned counsel for the petitioner has placed reliance on Rule 4

contemplates, vide Sub-Rule 1 Rule 4 thereof, that an employee before his dismissal has to be issued a charge-sheet of charges levelled against him. Thereafter, if deemed fit, the Executive Committee shall get an inquiry conducted in presence of the employee for each of the items contained in the said charge-sheet which have not been admitted by the delinquent employee.

8.) The said Rule 4 (1), further contemplates that the delinquent employee shall be entitled to cross-examination of the witnesses and in case the Inquiry Committee feels that certain evidence is not necessary, it shall not be permitted to be produced for the reasons to be recorded in writing. Only in such circumstances, action can be taken against the delinquent employee after the charge-sheet is issued.

9.) Learned counsel for the petitioner also places reliance on a judgment rendered by the Supreme Court titled as **Mewa Singh Vs. Shiromani Gurdwara Prabandhak Committee** reported in **1999 AIR (SC) 688** wherein, the Apex Court in para Nos.5, 6 and 7, held that Article 226 of the Constitution of India can be invoked for violation of the provisions of the Rules framed by the SGPC and a *mandamus* can be issued seeking compliance thereof.

10.) She further relies on a judgment rendered by this Court in CWP-7459-2011 wherein employee was dismissed from service by SGPC and this Court interfered under Article 226 and, in view of the illegality thereof, quashed the order of dismissal and directed reinstatement in service with continuity of service and emoluments.

11.) *Per contra* learned counsel for the respondent points out that

P-7) and the present writ petition was filed after a period of almost 5 years on 15.05.2015 impugning the said dismissal.

12.) Learned counsel for the petitioner points out that delay is attributable to the respondent and cannot take advantage of its own wrong. She points out that as stated in para 12 and 13 of the petition, on coming to know of the impugned order of dismissal the petitioner submitted an appeal to the President of SGPC on 04.05.2010 which was received by receipt No.102. She further points out that corresponding para of the written statement on merits unambiguously states that the contents of para 13 of the writ petition are admitted. In fact para 14 of the written statement states that after receipt of the said appeal, the President processed the same and it was filed.

13.) Learned counsel for the petitioner contends that the petitioner was neither intimated about filing of his appeal nor he was granted any opportunity of being heard before filing/rejection of his said appeal which eventually led to causing of a legal notice dated 02.02.2015 (Annexure P-9).

14.) She contends that only after a legal notice was issued that the respondents adverted to the petitioner. Prior to the legal notice, petitioner had been representing to the respondent-SGPC without any success. It was only from the reply Annexure P/10 to the legal notice of the respondent that the petitioner came to know of filing/rejection of his appeal which led to filing of the present writ petition.

15.) I am in agreement with the above submission of learned counsel for the petitioner and the objection of delay raised by learned counsel for the respondent is therefore of no significance and is rejected.

16.) On merits, learned counsel for the respondents states that the

Rule 4 (1) on which heavy reliance has been placed by the petitioner, was in substance complied with, inasmuch as the statements of the witnesses were recorded though concededly the same was done prior to the inquiry conducted by the Sub-Committee appointed for the purpose. Learned counsel for the petitioner states that Rule 4(1) contemplates that it is in course of inquiry that a delinquent employee has to be given opportunity of adducing evidence including recording of the statements of the witnesses and cross-examination thereof. Any pre-inquiry investigation without involving the petitioner does not absolve respondents from their obligation to comply with Rule 4 of Services Rules.

17.) A perusal of the statements of the witnesses appended with the written statement also reflects that statements have been recorded unilaterally without either the presence of the delinquent employee or granting him any opportunity of cross-examining them. In any case the said statements are of no legal significance as the same were admittedly recorded prior to and not in the course of the inquiry.

18.) As regards non-recording of the evidence of the witnesses or their cross-examination, learned counsel for the respondents contends that since there were no witnesses available owing to the early morning time of the alleged incident, therefore, the inquiry sub-Committee could not record statement of any witnesses. The said argument of the learned counsel is totally negated by the pre-inquiry investigation conducted by the respondent. Admittedly, the petitioner was dismissed from service on the complaint of one Bibi Sukhwinder Kaur. There is no reason recorded as to why she was not examined or summoned during the course of inquiry.

relied upon by them vide Annexures R-1, R-2 and R-3 whose statement was admittedly recorded before the inquiry, why the same could not be done by the sub-Committee in course of the enquiry.

19.) On a query posed by the Court that why was the harsh order of dismissal passed qua the petitioner. Especially, when the sub-committee conducting the inquiry had clearly recommended that petitioner be reinstated in service, though he may not be assigned the duties of a Granthi and be only reinstated as a Sewadar. Learned counsel for the respondent states that the recommendation of the sub-committee is not binding and, therefore, the Executive Committee ignored the said recommendation and dismissed the petitioner from service. The said argument of the learned counsel for the respondent is not tenable in view of the fact as already noted that Executive Committee passed the order without following the procedure as prescribed in Rule 4 of the Rules, *ibid*. Concededly the inquiry was conducted without recording any evidence or granting any opportunity to the petitioner to confront and cross-examine either the complainant or any of the witnesses.

20.) In the circumstances, the impugned order dated 13.03.2010 (Annexure P-7) is set aside and the petitioner is held entitled to reinstatement with continuity of service, but without any back wages.

21.) Petition stands allowed in the above terms.

(ARUN MONGA)
JUDGE

December 14, 2018.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.