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

**Civil Misc. No.12422 of 2018 in/and
Civil Writ Petition No.9083 of 2018
Date of decision: 27.08.2018**

Didar Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Puneet Jindal, Senior Advocate with
Mr. Nitin Jain, Advocate for the petitioner.
Mr. Shivendra Swaroop, Assistant Advocate General, Haryana
Mr. G.S.Attariwala, Advocate for respondent no.2.

G.S.SANDHAWALIA, J. (Oral)

Civil Misc. No.12422 of 2018

Prayer made in the present Civil Misc. Application is for placing on record replication to the written statement filed by respondent no.2.

Prayer made in the application is allowed.

Replication is taken on record.

Office to tag the same at appropriate place in the file.

The Civil Misc. Application stands disposed of accordingly.

Civil Writ Petition No.9083 of 2018

The petitioner challenges the order dated 31.3.2018 (Annexure P/17) passed by the District and Sessions Judge, Kurukshetra whereby he has been dismissed from service. The ancillary orders namely the enquiry report dated 13.9.2012 (Annexure P/4) and order of dissent dated 20.11.2017 (Annexure P/13) have also been challenged in the present writ

petition filed under Article 226 of the Constitution of India.

The petitioner has been fair enough to aver in paragraph no.27 of the writ petition that Rule 9 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 provides for filing appeal against the order of dismissal. The same reads as under:-

9. Right to Appeal : (1) Every person to whom these rules apply, shall be entitled to appeal, as hereinafter provided, to such superior authority as may be prescribed by Government in the rules regulating his conditions of services against an order, not being an order of Government.

(a) imposing upon him any of the penalties specified in rule 4.”

The petitioner was working as Driver with the District and Sessions Judge, Kurukshetra and therefore, he is also governed by the Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997(hereinafter referred to as “the 1997 Rules”). Under Rule 14 of the 1997 Rules appeal lies to the High Court against order of a District and Sessions Judge imposing any penalty. Rule 14 reads as under:-

14. Appeal : Appellate Authority – (1) An appeal shall lie to the High Court against order of a District and Sessions Judge imposing any penalty and such appeal may be disposed of by the Chief Justice or a Judge nominated by him in this behalf.

(2) An appeal shall lie to a Division Bench of the High court against an order of the Chief Justice or of a Judge imposing any of the penalties on members of Class II service.”

Senior counsel has vehemently argued that the petitioner had approached this Court on two occasions earlier on account of dissent note issued which had been set aside vide order dated 18.2.2016 (Annexure P/9)

issuing another dissent note had again been challenged and liberty had been granted by this Court vide order dated 4.12.2017(Annexure P/15) passed in CWP No.27596 of 2017 to raise the issues before the disciplinary authority. The said order reads as under:-

“After arguing for some time, learned counsel for the petitioner seeks permission to withdraw the instant petition.

Dismissed as withdrawn.

Dismissal of this petition would not come in the way if the petitioner submits necessary representation/explanation to the show cause notice issued by the disciplinary authority, in that event, each of the contention raised by the petitioner be considered while passing the final order in the disciplinary proceedings.”

Rules 12(2)(ix) of the 1997 Rules provides penalty of dismissal from service which reads as under:-

“12. Discipline and punishment: (1) General order regarding discipline etc: Whenever any official/officer is personally interested in a case to be heard by the Court of which he is attached, we must bring this fact to the notice of the Presiding Officer.

(2) Punishment : (1) The following penalties may for good and sufficient reasons be imposed upon members of the service working in the sessions Division, by the authority as specified in Rules 14.

- | | | | |
|-------|----|----|----|
| (i) | xx | xx | xx |
| (ii) | xx | xx | xx |
| (iii) | xx | xx | xx |
| (iv) | xx | xx | xx |

- (v) xx xx xx
- (vi) xx xx xx
- (vii) xx xx xx
- (viii) xx xx xx

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government.”

A perusal of Rule 14-E of the 1997 Rules would go on to show that the Appellate Authority as such would take into account as to whether the facts on which the order was based had been established and whether the facts established afford sufficient ground for taking action etc. Rules 14-E of the 1997 Rules reads as under:-

E. While disposing of an appeal against order under this rule or any penalty specified in rule 12, the High Court shall consider:-

- (i) Whether the facts on which the order was based have been established;
- (ii) whether the facts established afford sufficient ground for taking action; and
- (iii) whether the penalty is excessive, adequate or inadequate and after consideration shall pass such order as it thinks proper:

Provided that no penalty shall be increased unless opportunity is given to the person concerned to show-cause why such penalty should not be increased.”

The Appellate Authority thus can fully examine the aspect as to whether the procedure prescribed had been followed by the Punishing Authority or not in view of the above provisions.

Once an alternative remedy is provided, then the writ Court

would not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India as held by the Apex Court in **Union of India Vs. Satyawati Tandon and others** 2010(8) SCC 110. The relevant observation reads as under:

“44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. 45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.”

Accordingly, the present writ petition is dismissed with liberty to the petitioner to avail his alternative remedy of filing an appeal provided under the statutory provisions.

It is always open to the petitioner to raise all grounds before the Appellate Authority including violation of directions issued by this Court in the earlier round of litigation and whether the procedure prescribed has not been followed. Needless to say that since the petitioner has approached this

Court for redressal of his grievances, the delay, if any, would be liable to be condoned on filing an appropriate application in this regard and the matter would be heard on merits.

August 27, 2018
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No