

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 6992 of 1994(O&M)
Date of Decision: 15.05.2019

J.C. Chawla

... Petitioner

versus

State of Punjab & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Argued by : Ms. Bhavana Datta, Advocate
for the petitioner.

Mr. Abhaypal Singh Gill, AAG Punjab.

Mr. Sangran S. Saron, Advocate and
Ms. Shubreet Kaur, Advocate
for respondents No.3 and 4.

ARUN MONGA, J.

1. Petitioner herein seeks issuance of a writ in the nature of *mandamus* directing the respondents to pay him arrears of salary along with 18% interest with a further direction to allow the petitioner to join and continue as Lecturer in Chemistry at Guru Nanak College, Ferozepur Cantonment.

2. Succinctly put, the facts of the case are that the petitioner was working with respondents No.3 and 4-College as Lecturer in Chemistry. His services were terminated, leading to filing of an appeal by the petitioner before the Director of Public Instructions (Colleges)(for brevity, DPI(C)). The appeal was allowed on 14.12.1989 and the petitioner was deemed to be in service w.e.f. 15.01.1985 with all consequential benefits. The College was given a liberty to treat the period 03.08.1983 to 14.01.1985 as leave of

the kind due.

3. It is the case of the petitioner that despite specific directions of the DPI(C) and submission of written requests, he was not permitted to join the duties. The complaints made by him against the College were also not adverted to. He left no stone unturned to be permitted to join the duties but to no avail. Hence, the instant writ petition has been filed.

4. The respondents No.1 and 2, in their return, pleaded that the dispute is *interse* petitioner and respondents No.3 and 4 as the latter had to release the salary. It is averred that at no point of time it was brought to their notice that petitioner had infact resumed his duties. There were allegations and counter-allegations between petitioner and respondent Nos. 3 and 4 to this effect and they have nothing to do in the matter.

5. Respondents No.3 and 4 filed their separate return. It is averred that after passing of the orders by the DPI(C), the petitioner never came personally to join his duties despite being asked and it was learnt that he was already working elsewhere. Since the petitioner did not resume the duties, Sh. Satish Kumar Gupta(respondent No.5) was appointed in his place.

6. Vide order dated 05.12.2013, the petitioner was directed to file an affidavit disclosing the source of his livelihood during pendency of the writ petition and further to inform whether he was employed during all this period so that equities can be balanced by this Court, while deciding the issue raised in the petition. Pursuant thereto, the petitioner filed an affidavit dated 15.07.2014, stating that in October, 1976 he had accepted an assignment as an Expert in Indian Technical & Economic Cooperation Program (ITECP) and subsequent thereto he was granted extensions from

time to time, except in the year 1984 when his services were abruptly terminated. The petitioner has further deposed that on his return from Yemen, he has been working from 1985 till 2006 with Apeejay School, Faridabad and other institutions and lastly worked at Dayawati Modi Public School, Modinagar and has given the details of salary drawn from time to time and the total thereof comes to Rs.30,02,600/-.

7. Learned counsel appearing for respondent College submitted that in view of the conceded position deposed in the affidavit, the present writ petition is liable to be dismissed on the short ground that the petitioner himself abandoned his service and, therefore, cannot take advantage of his own wrong to claim arrears of wages without performing any work. Learned counsel specifically relies on letter dated 19.04.1994 (Annexure P-19) issued by the College to the petitioner, wherein it has been stated that owing to his having abandoned the job, the College was compelled to confirm Sh. Satish Gupta as Lecturer in Chemistry w.e.f. 11.08.1979, duly approved by DPI vide letter dated 31.01.1983.

8. Learned counsel for the respondent further submitted that said Sh. Satish Gupta has successfully completed his tenure and has superannuated. He was appointed on the same post, which the petitioner himself abandoned for his own reasons, which are not attributable to the respondent-College.

9. He further contended that even otherwise, qua the claim of the petitioner towards arrears of salary, the writ petition has also been rendered infructuous as the affidavit discloses that he was gainfully employed throughout and is not entitled to any salary. They further rely on principle of 'no pay no work' and submit that the petitioner cannot take advantage of

order dated 14.12.1989 (Annexure P-1) passed by the DPI(Colleges), which was passed on the premise that the services of the petitioner were dispensed with without holding any proper enquiry.

10. Learned counsel for respondents submit that the petitioner had abandoned the job by his own conduct and self volition, therefore, order dated 14.12.1989 passed by DPI(C) could not be implemented as the petitioner did not join duties despite affording of ample opportunities. According to them, the other prayers made in the writ petition have been rendered infructuous.

11. Learned counsel for the respondents placed reliance on a judgment rendered by Hon'ble the Apex Court in **Aligarh Muslim University & Ors. Vs. Mansoor Ali Khan, 2000(7) SCC 529**, the relevant extract whereof reads as under:-

“19. Coming back to the first case of Mr. Mansoor Ali Khan, admittedly, no notice under Rule 5(8)(i) of the 1969 Rules has been given. There is, therefore, violation of principles of natural justice as notice contemplated in Rule 5(8)(i) has not been given. Question as to whether the order deeming that he vacated office is correct or not, will have to be then decided. We shall decide that point under point 5. We decide accordingly against Mr. Murshad Hussain Khan and partly in favour of Mr. Mansoor Ali Khan under point 4.

Point 5:

20. This is the crucial point in this case. As already stated under point 4, in the case of Mr. Mansoor Ali Khan, notice calling for an explanation had not been issued under Rule 5(8)(i) of the 1969 Rules. Question is whether interference is not called for in the special circumstances of the case?

21. As pointed recently in *M.C. Mehta Vs. Union of India* (1999 (6) SCC 237), there can be certain situations in which an order passed in violation of natural justice need not be set aside under [Article 226](#) of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under [Article 226](#) is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in *Gadde Venkateswara Rao vs. Government of Andhra Pradesh* [1966 (2) SCR 172 = AIR 1966 SC 828], it is not necessary to quash the order merely because of violation of principles of natural justice.”

12. Learned counsel for the respondent submit that above judgment is squarely applicable to the present case as in the judgment relied upon by them the delinquent had abandoned his job since he had gone to work in Libia, likewise in the present case, the petitioner had abandoned the job to work in Yemen and on return had started working with other institutions.

13. I am in agreement with the submissions of learned counsel for respondent, as noted above and also the judgment relied on by him. I do not find any ground to interfere in the matter. The writ petition is accordingly dismissed.

No order as to costs.

(ARUN MONGA)
JUDGE

May 15, 2019
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| 1. | Whether speaking/ reasoned: | Yes/ No |
| 2. | Whether reportable: | Yes/ No |