

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: August 13, 2019
CWP-16532-2013

Major Singh

... Petitioner

vs.

Shiromani Gurdwara Parbandhak Committee & Anr .. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : None.

ARUN MONGA, J.

1. Petitioner herein, *inter alia*, seeks quashing of an order dated 05.01.2013 (Annexure P-3), vide which services of the petitioner have been terminated and the resolution dated 08.04.2013 vide which his appeal for reinstatement has also been dismissed.

2. Admittedly on 02.12.2010, the petitioner was working as a Tractor Driver in Gurudwara Baba Gandha Singh, Barnala. He was served with a charge-sheet in which the allegation levelled were that at night, he borrowed the tractor of some one in the name of Gurudwara Sahib and after loading the buffalo and cow from the farm of Gurudwara Sahib in the tractor trolleys left for village Rajgarh. Charge-sheet dated 02.12.2010 (Annexure P-1) was issued to the petitioner. His reply dated 14.12.2010 (Annexure P-2) to the charge-sheet refuting the charges/allegations did not find favour and an inquiry was subsequently held. An order dated 05.01.2013 (Annexure P-3), impugned herein, was then passed terminating the petitioner's services. The petitioner filed statutory appeal(Annexure P-4), but no order in writing was communicated to him about the appeal.

Resultantly, the petitioner approached this Court by way of CWP No. 12014 of 2013, which was disposed of with a direction to the respondents to decide the pending appeal of the petitioner within three months. Consequently, vide communication dated 27.06.2013(Annexure P-5) the petitioner was informed about dismissal of his appeal vide resolution No.60 dated 08.04.2013, but no copy of resolution was provided to him.

3. It is the petitioner's case that the actual order for rejection of his appeal has not been communicated to him. He asserts that the allegations against him were false; his reply to charge-sheet was not considered; he was not allowed to cross examine the witnesses during the inquiry; the findings of the inquiry were pre-determined and wrong; the impugned orders for termination of his services dated 05.01.2013(Annexure P-3) and purported rejection of his appeal, vide resolution No.60 dated 08.04.2013 are wrong and illegal.

4. Respondents filed response denying the aforesaid version set up by the petitioner. They pleaded that the petitioner's services had rightly been terminated and his appeal too was correctly rejected.

5. Having gone through and applied my mind to the pleadings of the parties and the accompanying documents, I am of the opinion that the impugned orders for termination of the petitioner's services and rejection of his appeal are not sustainable in law and deserve to be quashed.

6. As noted above, the petitioner had submitted reply dated 14.12.2010 (Annexure P-2) refuting the charges/allegations levelled against him in the charge sheet dated 02.12.2010 (Annexure P-1). His grievance is that without considering his reply, an inquiry was held.

7. In my opinion, it was incumbent upon the respondents to

produce the record showing that the contentions raised by the petitioner in his reply dated 14.12.2010 (Annexure P-2) to the charge sheet were objectively considered by the competent authority before passing an order for holding regular inquiry against the petitioner. No such record nor even the order for instituting a regular inquiry, has been produced by the respondents. It is, therefore, difficult to conclude that petitioner's contentions in the reply dated 14.12.2010 (Annexure P-2) to the charge sheet were considered by the competent authority so as to reject the petitioner's grievance that the same were not considered by the competent authority while passing an order for holding of a regular inquiry against him.

8. The impugned order dated 05.01.2013 (Annexure P-1) for termination of petitioner's services simply says that the petitioner had been charge sheeted for different irregularities; on receipt of his reply, a Sub-Committee had been constituted for conducting inquiry. On the basis of inquiry report wherein charges were held as proved, the President, Shiromani Gurdwara Parbandhak Committee had terminated his services.

9. On the face of it, the impugned order dated 05.01.2013 (Annexure P-1) for termination the petitioner's services is non-speaking and has been passed in a most mechanical manner. The said order does not even mention what were the allegations against the petitioner and what were the findings thereon given by the Inquiry Sub Committee. Thus, it does not, at all, show due application of mind by the competent authority to the facts and circumstances of the case.

10. As stated above, the petitioner has alleged that the actual order for rejection his appeal has not been communicated to him. He has only

learnt of rejection his appeal from the impugned notice/communication dated 27.06.2013 (Annexure P-5). The respondents, in their reply, have produced the copy of resolution No.60 dated 09.04.2013 as Annexure R-3. A perusal thereof makes it evident that the same is totally non-speaking owing to which it cannot be said that the same has been passed with application of mind by the competent authority. No reasons, whatsoever, have been assigned to reject the appeal of the petitioner. Same is the position qua the impugned order dated 05.01.2013(Annexure P-3) passed by the disciplinary authority for termination of petitioner's services.

11. To my mind, it was also incumbent upon the respondents to objectively consider the contentions raised by the petitioner in the reply to the charge-sheet and the appeal, before rejecting the same. But nothing of this sort was done by the concerned authorities while passing both the impugned orders.

12. As a result, the petition is allowed and the impugned order dated 05.01.2013 (Annexure P-1) for termination of the petitioner's services is set aside. Further, order of rejection of the petitioner's appeal vide Resolution No.60 dated 09.04.2013(Annexure R-3) is also set aside with directions to the respondents to reinstate the petitioner into service and grant him all consequential benefits except back wages for the period petitioner was out of service.

15. The petition is, thus, disposed of.

August 13, 2019
Jiten

(ARUN MONGA)
JUDGE

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