IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 17764 of 2013(O&M)
Decided on: 01.05.2019

Parminderjit Singh

...Petitioner

Versus

Shiromani Gurudwara Prabandhak Committee, Amritsar through its Secretary

...Respondent

with CWP No. 22069 of 2013(O&M)

Sukhjit Singh

...Petitioner

Versus

Shiromani Gurudwara Prabandhak Committee, Amritsar through its Secretary

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. R.S. Bains, Advocate
for the petitioner in CWP No. 17764 of 2013

Mr. K.G. Chaudhary, Advocate
for the petitioner in CWP No. 22069 of 2013.

Mr. P.S. Thiara, Advocate
Mr. A.S. Virk, Advocate and
Mr. S.S. Mattewal, Advocate
for the respondents.

ARUN MONGA, J.

1. Both the above referred writ petitions are being disposed of by this common order as the factual and legal aspects in both the petitions are similar.

2. For brevity, facts taken from CWP No. 17764 of 2013 are that

the petitioner was recruited as *Sewadar* on *ad hoc* basis by the respondent-SGPC in the year 1991. His services were then regularised vide order dated 23.08.2005 (Annexure P-4/T) with effect from 01.04.2005. In the year 2010, a complaint was made against the petitioner alleging that he had caused huge loss to the Gurudwara by embezzling money from the Gurudwara account. A preliminary inquiry was conducted and on the basis of the inquiry report dated 09.07.2011 a charge-sheet dated 30.11.2011 (Annexure P-8/T) was issued against him. Charges framed against the petitioner were that by forging the signatures of one Bhai Rajdeep Singh, Granthi Shri Darbar Sahib, Amritsar, on Voucher No. 190 dated 22.04.2010 he had got released 64,922 meter of Siropa Cloth and had sold the same to outside parties, causing huge loss to the respondent. Startlingly, the charge-sheet itself mentions that punishment of dismissal to be awarded to the petitioner(s).

3. In the meanwhile, the petitioner was suspended on 23.07.2011. The petitioner filed a detailed reply to the charge-sheet refuting the charges. He took a stand that when the voucher no. 190 (Annexure P-5/T) was issued on 22.04.2010, he was working as a mere helper in the Gurudwara and there were various persons who were superior to him in the hierarchy but none of them noticed any loss caused during this time. He questioned the constitution of the inquiry committee itself.

4. However, vide order dated 18.06.2013 (Annexure P-10/T) the services of the petitioner were terminated and recovery of the embezzled amount was ordered to be effected. The order took into consideration the report of the sub-committee inquiring the charge-sheet against the petitioner. The petitioner made representations dated 19.06.2013 and

29.06.2013 (Annexure P-11/T and Annexure P-12/T), to the respondent, to set aside the order of dismissal and to reinstate him but the same were not adverted. Hence the present writ petition.

Similar are the facts of CWP No. 22069 of 2013, wherein petitioner Sukhjit Singh was dismissed from service on the similar allegations, vide the impugned order dated 18.06.2013, which is under challenge in that writ petition. Petitioner Parminderjit Singh was helper and petitioner Sukhjit Singh was Store Keeper at the relevant point of time.

5. In the reply filed by respondent-SGPC, the allegations as contained in the impugned charge-sheet are reiterated. Respondent stated that a preliminary inquiry was conducted and cloth measuring 64,992 meter was found to have been embezzled by Sh. Sukhjit Singh, Store Keeper and the petitioner Parminderjit Singh, Helper. Voucher No. 190 dated 22.04.2010 was issued by the petitioner by forging the signatures of Bhai Rajdeep Singh, Granthi. The same was then entered into the ledger by him. Respondent-SGPC denies that any such legitimate demand for Siropa cloth was made.

6. It is stated that in order to inquire into the allegations against the petitioner(s), a preliminary inquiry was conducted and consequently on the basis of findings of the enquiry Officer, charge-sheets were issued against them. An Enquiry committee was then formed to look into the allegations against the petitioner(s). Having considered all matters on record, by affording proper opportunity to defend, enquiry report dated 05.01.2013 was furnished indicting the petitioner. The Executive committee thereafter terminated the services of the petitioner(s) vide orders dated 18.06.2013 (Annexure P-10/T and Annexure P-3 respectively).

7. By way of replication, the petitioner(s) controverted the stand of the respondent stating that being deputed as a helper, the duty of Parminderjit Singh was only to keep record of the materials and to release the same under the signature of the Store Keeper. As Voucher No. 190 bore the signature of Sh. Sukhjit Singh, Store Keeper, therefore, he(Parminderjit Singh) released the cloth for the Siropas as mentioned therein. He states that the same was only an inadvertence in recording the decimal point. The figure 649.22 meter was stated as 64,922 meter and that no theft has occurred. An error occurred while subtracting the consumer items from the stock. Instead of 659.25 meter of consumption of cloth, the subtraction was done by error of 65,925.00 meter of cloth. This happened on 12.04.2010. Later when the mistake was detected after few days, voucher number 190 dated 22.04.2010 of 64,922.00 meter was added. The total thus became negative as the physical stock was still very much there. Clearly this was an inadvertent error and which was detected when account was checked. Upon detection of event, a note was added in the stock register and the difference of the two entries was added. If the entries are collectively substracted from the stock in hand from 12.04.2010 till 22.04.2010, the difference is only of 00.8. meter which is negligible. The then existing stock in the store was never physically verified/ checked by the Enquiry committee and they simply presumed that cloth was missing and held that petitioner had embezzled the money by bogus bills or by selling out the cloth in the market. It is stated that the discrepancy in the voucher should have been noticed by the superior persons and that the charge-sheet was wrongly issued to frame them.

8. I have heard learned counsel for the parties and have gone

through the rival pleadings of the parties as also the paper-book carefully.

9. A bare reading of the charge-sheet dated 30.11.2011 (Annexure P-8/T) and Annexure P-2(in CWP No. 22069 of 2013) shows the biased attitude of the respondent towards the petitioner(s). It was highly inappropriate that in the charge-sheet itself, the punishment of dismissal disqualifying for future service had been mentioned. The purpose of charge-sheet is only to notify the delinquent officer of the actions which are being questioned by the Punishing Authority and give him an opportunity to show cause why he should not be proceeded against. To mention the specific punishment at this preliminary stage is reflective of prejudiced mind on the part of the respondents as if they proceeded with pre-determined mind to oust the petitioner(s) by arriving at a preconceived decision. The fact that the enquiry report was also not supplied to the petitioner(s) is a pointer to the pre-influenced mind of respondents to achieve their pre-determined goal of dispensing with the services of the petitioner(s).

10. Learned counsel for the respondent has relied upon a judgment of Apex Court in case **Managing Director, ECIL, Hyderabad Vs. B. Karunakar, 1994(1) RSJ 443,** wherein it has been held that merely non-supply of enquiry report is not a sufficient ground to interfere with the orders passed by the Disciplinary Authority unless it is shown that serious prejudice is caused to the delinquent employee. Learned counsel for the respondents stated that there was no need to supply the enquiry report to the petitioners.

11. There is no dispute to the proposition of law, referred to above, but the facts therein are distinguishable from the facts of the cases in hand.

12. In present case, on submission of petitioners' reply denying the allegations in the charge-sheet, an enquiry was held by the Sub-Committee. Its enquiry report dated 05.01.2013 was accepted by the punishing authority and the impugned order of punishment was passed. It is the conceded case of the respondents that copy of enquiry report was not given to the petitioner(s) which formed the basis of passing of the impugned orders vide which the services of the petitioner(s) were dispensed with. The respondents have tried to wriggle out of their responsibility. The enquiry report was pivotal document as the whole genesis of termination order was founded thereupon. In the peculiar facts of the case, in my considered opinion non-supply of enquiry report to the petitioners seriously prejudiced them inasmuch they got no opportunity to represent against the findings therein and defending themselves before the Punishing Authority. They were kept totally in dark about the material relied upon and findings returned by the Enquiry Officer against them. It was incumbent upon the respondents to confront the delinquents with the material which had come on record during the enquiry proceedings and the findings returned by the enquiry officer.

13. I am in agreement with learned counsel for the petitioner(s) that irrespective of the factual allegations in the charge sheet and the petitioners' denial thereof, the basic principles of natural justice were violated while passing the impugned orders as before accepting the inquiry report and on its basis, passing the impugned penal order, neither any notice was issued to the petitioners to show cause against the findings in the enquiry report nor any opportunity of personal hearing was granted to them. It is settled law that no one should be condemned unheard. But there was utter disregard of this settled principle while proceeding against the petitioner(s) which itself

vitiates the entire proceedings.

14. There also seems substance in the contention of learned counsel for the petitioners that excess ledger entry was wrongly made by the Store Keeper while entering the decimal points in the ledger Annexure P-6 maintained by the Store Keeper inasmuch as instead of stating 659.25 meters it was mentioned as 65,925 meters which resulted in the error of shortage of *Siropa* cloth to the extent of 64,922 meters. The said shortage was wrongly shown owing to the error in recording the decimal points as the record reflects that *siropa* cloth was physically there, in view of the fact that after a gap of ten days, 64922 meters *Siropa* cloth was supplied at *Gurudwara* as reflected from Annexure P-5.

15. In view of the reasoning given above, the writ petitions are allowed. The impugned orders dated 18.06.2013, Annexure P-10/T and Annexure P-3 respectively are set aside. Respondent Shiromani Gurudwara Prabandhak Committee is directed to reinstate the petitioners without any back wages. However, they shall be entitled to continuity of service for all intents and purposes.

(ARUN MONGA)
JUDGE

May 01, 2019
Jiten/R

1. Whether speaking/ reasoned: Yes/ No

2. Whether reportable: Yes/ No