

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

CWP No.19823 of 2019 (O&M)

Date of Decision.14.10.2019

Satish Kumar

...Petitioner

Vs

State of Haryana and others

...Respondents

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The stand in the present petition is to the impugned order dated 17.05.2019/31.05.2019 (Annexure P-6) whereby despite the petitioner's conduct having found to be innocent by the Enquiry Officer i.e. District Welfare Officer, Jind vide enquiry report (Annexure P-5), Director, Welfare of Scheduled Castes and Backward Classes Department, Haryana ordered to repatriate petitioner to HARTRON.

Mr. R.K. Malik, learned Senior Counsel assisted by Mr. Sandeep Dhull, learned counsel appearing on behalf of the petitioner submitted that the written statement is bereft of any reasoning on dissatisfaction of the punishing authority, which is not sustainable in the eyes of law. Even contemplation of taking enquiry into complaint dated 19.03.2019 is also stated to be initiated, which cannot be sustained in the eyes of law as services of the petitioner had already been dispensed with vide order dated 17.05.2019/31.05.2019, thus, urges this Court for quashing of the same.

Per contra, Mr. Nain, AAG, Haryana submits that conduct of the petitioner has been so hostile that earlier noticing the allegation against him vide letter dated 30.11.2018 (Annexure P-3), District Welfare Officer, Jind was directed to repatriate the petitioner to HARTRON. The aforementioned order was recalled by order of even date. Many complaints have been received and the matter was enquired into. The competent authority did not find enquiry report satisfactory as no witness was called to enquire into the allegations.

I have heard learned counsel for the parties and appraised the paper book. It would be in the fitness of things to extract the relevant portion of the enquiry report (Annexure P-5) and the impugned order:-

“Conclusion:-

After perusing the record, it is concluded that in this matter Mr. Satish Kumar Data Entry Operator is innocent. Apart from aforesaid facts Data Entry Operator has been received appreciation letters from District Welfare Officer and Deputy Commissioner from time to time (attachments 10-11). So, sympathetically observing the above facts by filing the allegations made upon employee, the appointment of the employee may be kept as it is.

Impugned Order:-

In view of complaints received against Sh. Satish Kumar, Data Entry Operator, District Welfare Officer, Jind and filling up of all posts of Clerks in District Jind, Sh. Satish Kumar, Data Entry Operator is hereby sent back to Hartron with immediate effect.”

The written statement, much less, the impugned order (Annexure P-6) are bereft of recording dis-satisfaction. However, from the perusal of averments made in para 10 of the written statement, which is extracted herein below, it is evident that competent authority did not agree with the report of the enquiry officer giving reasons therein but the law of service jurisprudence requires reasons to be recorded for not agreeing with the report of the enquiry officer:-

“10. That the competent authority did not find the above inquiry report satisfactory and differed with the comments of the District Welfare Officer, Jind without explanation of the petitioner, detailed enquiry proceedings and statements of witnesses and further because the complaints against the petitioner were still receiving by the answering department and the inquiry was not conducted in a fair and proper manner. A bare perusal of the inquiry report reveals that the inquiry officer has not called any person to inquire into the charges levelled against the petitioner and commented on his own on behalf of the petitioner. The District Welfare Officer, Jind has stated in his report that taking a lenient view, the complaint be filed and the petitioner be kept in service which is beyond his jurisdiction. The inquiry officer had only to prove the charges leveled against the petitioner and that too with the explanation of the petitioner, relevant record, statements of witnesses but he has ignored all these things. On the one hand, the District Welfare Officer is proving the petitioner as innocent and on the other hand, he had requested

again and again that taking a lenient view, the complaints be filed and the petitioner be kept in service which clearly shows that there were complaints against the petitioner. As such, the inquiry was not conducted in a fair and proper manner as per rules and the inquiry report was not on facts.”

In the absence of the same, the order under challenge cannot be sustained, as right of livelihood had been taken away. The impugned order is quashed and the writ petition is allowed.

I cannot remain ignorant of the fact that the Department is also considering to make recovery against the petitioner on receipt of complaint dated 19.03.2019. Be that as it may, since the order under challenge is not in consonance with the law of service jurisprudence, the same is not sustainable in view of finding rendered by this Court. However, this will not prevent the Department for taking action against the petitioner in accordance with law. Since there is no order of termination, respondents are directed to take the petitioner back in service and grant all consequential benefits admissible to him.

(AMIT RAWAL)
JUDGE

October 14, 2019

Pankaj*

Whether speaking/reasoned Yes

Whether reportable No