

Sr. No.243

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

CWP No.20304 of 2018 (O&M)

Date of Decision: 13.11.2019

Avtar Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. R.K.Arora, Advocate,
for the petitioner.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

ARUN MONGA, J.(ORAL)

Inter alia, issuance of a writ in the nature of certiorari has been sought herein to seek quashing of orders dated 07.05.2015 and 12.02.2018 Annexure P-1 and P-8 respectively to the extent that period of absence of the petitioner from 23.07.2010 to 11.04.2011 has been treated as leave without pay and allowances.

2. In the return filed on behalf of the respondents, petitioner has been resisted on the ground that the impugned order has been rightly passed as for the relevant period, petitioner neither sent any kind of leave application nor otherwise any information was given to the competent authority.

3. It is further stated that the concerned clerk of the department had made a statement before the Inquiry Officer, who

conducted the departmental proceedings that the petitioner had indeed not sent any leave application and yet the Inquiry Officer has exonerated the petitioner and recommended dropping of the charge-sheet against the petitioner.

4. I have heard rival contentions of the learned counsel and gone through the pleadings and record appended thereto.

5. To say the least, the stand taken in the pleadings is diametrically opposite to the impugned orders passed herein. In fact, perusal of the order dated 07.05.2015 (Annexure P-1) passed by the Disciplinary Authority would reflect that same is as non-speaking as it can be and suffers from the vice of being cryptic.

6. While on one hand, the Punishing Authority agreed with findings of the Inquiry Officer and directed that charge-sheet issued against petitioner in view thereof is being dropped and yet, in passing reference, without recording any reasons, stated that for the period, petitioner remained absent, the same shall be treated leave without pay and allowances.

7. The petitioner had earlier also approached this Court by way of CWP No.6732 of 2017 (Annexure P-5), which was disposed of with a direction to the Appellate Authority to decide the appeal of the petitioner within a period of three months, which at the relevant time, was pending before the Appellate Authority. Pursuant to the directions of this Court, the appellate order dated 12.02.2018 (Annexure P-8) has been passed, which is, *inter alia*, assailed herein.

8. In the appellate order, the Appellate Authority has tried

to improve the case of the Punishing Authority by adding that since in the course of personal hearing before the Appellate Authority, the delinquent employee was unable to produce the document in his favour to prove his stand by which he could falsify the charges levelled against him regarding unauthorized absence and unauthorized leave. Therefore, it was held that the competent authority rightly passed the punishment order directing the alleged unauthorized absence as leave without pay and allowances.

9. What intriguing is that there is not a whisper or a murmur with regard to the findings rendered by the Inquiry Officer, which have been accepted not only by the Punishing Authority but also by the Appellate Authority. Merely on the conjectured premise that the petitioner had since failed to produce any document at the time of hearing of the appeal, the order of the punishing authority has been upheld.

10. I may hasten to add here that Appellate Authority lost sight of the fact that the relevant stage to adduce evidence was before the Inquiry Officer. The petitioner was not supposed to produce any additional document or adduce fresh evidence before the Punishing Authority or Appellate Authority.

11. In view of the aforesaid discussion and the reasoning contained therein, impugned orders dated 07.05.2015 (Annexure P-1) and 12.02.2018 (Annexure P-8) of Punishing Authority as well as of Appellate Authority do not stand judicial scrutiny of law and, are, accordingly, set aside to the extent of its challenge.

- 12. Petitioner is entitled to the consequential benefits along with interest @ 7% per annum from the date of entitlement till disbursement.
- 13. Let the needful be done within a period of 3 months from the date of receipt of a certified copy of this order.
- 14. Petition is allowed in the aforesaid terms.

13.11.2019
vandana

(ARUN MONGA)
JUDGE

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