

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

CWP No.6684 of 2016

Date of decision: 26.2.2019

Jai Pal

...Petitioner

Versus

The State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

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

Ms. Simran Grewal Randhawa, AAG, Punjab.

Mr. Shekhar Verma, Advocate and
Ms. Akansha Yadav, Advocate for respondent no.2.

G.S.SANDHAWALIA, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents no.2 to take a final decision with regard to report of enquiry officer dated 14.8.2012 (Annexure P/9) forwarded to respondent no.2 by respondent no.3 and to reinstate the petitioner in service as per findings of the enquiry officer.

The background of the case and concise controversy is that the petitioner was appointed as an Education Volunteer (Sikhya Karmi) by the Village Development Committee and he had joined as such in the Government Middle School, Mangupur on 8.10.2008 (Annexure P/4). The same was on the basis of the instructions dated 29.11.2004 (Annexure P/3) whereby the Education Volunteers (Sikhiya Karmis) were to be appointed from the same village and if not available in the village, appointment could be made from the nearby villages. The petitioner is stated to be B.Sc. B.Ed.

and therefore, he was entitled for a sum of ₹ 3000/- per month.

It is his case that on account of medical problem, he had taken the medical leave from 6.8.2010 to 25.8.2010 and his request for another 15 days leave was declined keeping in view of the fact that there was no such provision for grant of medical leave to Education Volunteers. He was accordingly relieved vide order dated 13.10.2010 (Annexure P/5). However, it is admitted case of the parties that the petitioner had filed appeal before respondent no.2 and after considering his case he was allowed to join his duties vide letter dated 4.11.2010 and he joined his duties on 23.11.2010. Thereafter, the petitioner again applied medical leave for uncertain period and is stated to have left the school on 7.2.2011. Thereafter, he had requested in the month of August, 2012 to the Head Teacher of the school to allow him to rejoin his duties. The matter was referred to the Enquiry Officer who vide memo dated 7.7.2012(Annexure P/6) called the petitioner to participate in the enquiry proceedings which culminated in favour of the petitioner. The enquiry report dated 13.8.2012 (Annexure P/8) conducted by the Principal, Government Senior Secondary School, Nawanshahr was forwarded to the District Education Officer, Nawanshahr vide letter dated 14.8.2012 (Annexure P/9). On account of the fact that the petitioner was not being reinstated, he had filed representations dated 6.8.2013 and 21.5.2014 (Annexures P/11 and P/12 respectively) for his reinstatement.

The defence taken as such by respondent no.2 is that the decision had taken on 18.7.2011 (Annexure R-2/3) that no fresh appointment were to be made after 29.4.2011 of such category of employee and there was no such provision for grant of leave for such a long period

and therefore, he had rightly been not allowed to join his duties.

Admittedly the enquiry officer has examined the matter in detail and come to the conclusion that the absence was not intentional as the petitioner had remained ill. The conclusion reads as under:-

“Conclusion: Keeping in view the aforementioned position and statement of B.P.E.O. Saroya, I am of the view that the volunteer did not remain absent intentionally. He remained absent due to his illness. The volunteer is not at fault. As per medical report, Sh. Jaipal, Education Volunteer can join his duty. Work and conduct of the volunteer is satisfactory.”

It is the respondents who had appointed the Enquiry Officer and enquiry report had culminated in favour of the petitioner and they cannot now turn around and say report is not acceptable though only defence taken is that there was to be no appointment after 29.4.2011 and on this account he had not been allowed to join his duties.

Mr. Shekhar Verma, counsel for respondent no.2 has further submitted that there is delay as such on account of filing the civil writ petition. But the fact remains that the decision in question was taken on 8.1.2013 (Annexure R-2/4) had remained in the file and never communicated to the petitioner.

Mr. R.K.Arora, counsel for the petitioner submits that the petitioner is willing to forego arrears of pay as such for the intervening period.

Keeping in view the fair stand taken by the petitioner, this Court is of the opinion that the respondents were not justified as such to take stance that it was a fresh appointment of an Education Volunteer on the basis that it was not permissible as per instructions dated 18.7.2011 (Annexure R-2/3). The facts would go on to show that it is an appointment

which was made way back on 8.10.2008. Once the enquiry report had culminated in favour of the petitioner that the absence was not intentional but was rather on account of illness of the petitioner and admittedly the petitioner remained admitted in PGI also and as per report his work and conduct was satisfactory, no plausible reason can be found as to why the petitioner is not being allowed to join on the same position.

Accordingly, the present writ petition is allowed as the action of the respondents keeping the petitioner out of service is not justified and thus the same is set aside. Respondent no.2 is directed to allow the petitioner to join his duties as an Education Volunteer within a period of two weeks from the date of receipt of certified copy of this order. Needless to say that the petitioner will not be entitled to any arrears of pay for the period he remained out of job. However, he will be entitled for all other benefits which have been granted to similarly situated employees who were appointed along with the petitioner.

February 26, 2019
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No