

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

**CWP-8192-2016 (O&M)
Date of decision : 08.11.2019**

Laxmi Devi

...Petitioner(s)

Versus

The State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Gagneshwar Walia, Advocate,
for the petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab.

JITENDRA CHAUHAN, J.

By way of the instant writ petition, the petitioner has sought quashing of impugned order dated 18.09.2014 (Annexure P-10), passed by respondent No.2, wherein, a punishment of stoppage of two increments with cumulative effect has inflicted upon the petitioner.

It is contended that the petitioner joined the Punjab Education Department as Lecturer in the year 1989. She was promoted as Principal in PES-II, School and Inspection Cadre w.e.f. July, 2001. Respondent No.5 was due to be considered for next promotion in the year 2008. The ACRs of respondent No.5 were recorded by the petitioner, being Principal, below average for the years 2004-05, 2005-06 and 2006-07, on account of her poor conduct and for being a habitual absentee. On account of her unsatisfactory ACRs, respondent No.5 was not found eligible to be promoted to the next

higher post. As a counter-blast, respondent No.5 lodged a false complaint against the petitioner with respondent No.2 alleging that her ACRs had been subsequently changed. In the inquiry conducted by the Circle Education Officer, Circle Jalandhar, the allegations levelled against the petitioner were found to be false vide inquiry report dated 05.06.2010. Respondent No.5 again made a complaint to the Education Minister, Punjab and again an inquiry was marked to Sh. Darshan Singh Dhaliwal, Deputy Director (S.E.) and the petitioner was pressurized the petitioner for changing the ACRs favourably to which the petitioner did not succumb. Consequently, the petitioner was issued charge-sheet dated 30.03.2011 alleging deficiencies in writing the ACRs. The petitioner filed a detailed response to the charge-sheet. Respondent No.6 was appointed as inquiry officer to inquire into the charges and to submit its report. Vide inquiry report dated 27.05.2012 (Annexure P-2), charge nos.1, 4 and 5 were held to be partially proved against the petitioner. Thereafter, show-cause notice dated 03.07.2012 (Annexure P-3) was issued to the petitioner to which the petitioner submitted a detailed reply dated 19.07.2012 (Annexure P-4). Respondent No.2 proposed punishment of stoppage of two increments with cumulative effect but before passing the order, vide letter dated 15.01.2013 (Annexure P-5), he sought concurrence of the Secretary, Punjab Public Service Commission. However, the Secretary, PPSC, vide letter dated 09.05.2013 (Annexure P-6), did not agree with the imposition of the penalty so proposed and desired that further inquiry be got conducted to reach the truth. However, instead of conducting further inquiry, respondent No.2

vide letter dated 04.06.2013 (Annexure P-7) again submitted its observation to the Secretary, PPSC, for imposition of penalty. The PPSC, in turn, again reconsidered the observation and the inquiry report and vide letter dated 30.01.2014 (Annexure P-8) informed respondent No.2 that the Commission still feels that the penalty proposed to be inflicted upon the petitioner is disproportionate. However, without paying any heed to the advice of the PPSC, respondent No.2 put up the case before the Council of Ministers proposing the punishment of stoppage of two increments with cumulative effect, which was accepted and ultimately, impugned order (Annexure P-10), was passed.

Learned counsel contended that the inquiry report dated 27.05.2012 (Annexure P-2) is vitiated inasmuch as the Inquiry Officer himself called for the witnesses which were never cited by any of the parties. This fact shows that the inquiry has been conducted in an unfair and biased manner and that the authorities were bent upon to prove the charges against the petitioner. This fact is further proved from the fact that the recommendations of the PPSC were blatantly ignored. Even otherwise, charge Nos.1, 4 and 5 have been held to be proved partially only to the extent of not following the rules and regulations.

On the other hand, learned State counsel states that the normal convention is that the advice of the Commission should be accepted. However, in cases, where it is proposed to disagree with the advice of the Commission, the department should communicate to the commission the reasons for the course and pass no orders until their observations have been

received and considered by the Council of Minister in accordance with the Rules of Business. In the instant case, the matter was submitted to the Council of Ministers and after considering the charges, approval was given by the Council for inflicting the punishment. Due procedure has been followed in the instant case. The inquiry officer had adopted proper procedure and conducted impartial inquiry to bring out the truth.

Heard.

The most glaring fact in this case is that the Inquiry Officer has conducted himself as a Presenting Officer. A perusal of the inquiry report (Annexure P-2), reveals that the Inquiry Officer himself called for the witnesses which have been described as EW1 to EW4. None of the parties had cites those witnesses. This shows the over zealousness of the Inquiry Officer to indict the petitioner. Admittedly, it is not within the domain of the inquiring authority to call upon the witnesses by himself/herself. The act and conduct of the Inquiry Officer is unheard of. This Court in ***State of Punjab vs. Harbhajan Singh, 2007(4)SCT600***, while dealing with a similar issue, has held as under:-

“5. It is an admitted case of the Punjab State that Inquiry Officer assumed the role of prosecutor when he conducted cross-examination on the respondent when he stepped into the witness box as his own witness in his defence. It is settled law that any inquiry into charges against a delinquent official must necessarily be in conformity with rules of fairplay and the Inquiry Officer holding the inquiry cannot take a different role from that of a person who is to adjudicate on the dispute impartially and without any bias. If he steps into the

*shoes of a Presenting Officer, then, to my mind, he becomes disqualified and it could no longer be said that the result of the Inquiry is fair. The Supreme Court in **Meenglas Tea Estate v. Its Workmen, (1963-2 Lab LJ 392)** held as under:*

" The tribunal held that the enquiry was vitiated because it was not held in accordance with the principles of natural justice. It is contended that this conclusion was erroneous. But we have no doubt about its correctness. The enquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was questioned. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hero the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him. In the present case neither was any witness examined nor was any statement made by any witness tendered in evidence. The enquiry, such as it was, was made by Mr. Marshall or Mr. Nichols who were not only in the position of Judges but also of prosecutors

and witnesses. There was no opportunity to the persons charged to cross-examine them and indeed they drew upon their own knowledge of the incident and instead cross-examined the persons charged. This was such a travesty of the principles of natural justice that the tribunal was justified in rejecting the findings and asking the company to prove the allegation against each workman de novo before it."

*Justice Gajendragadkar in the decision of the Supreme Court in **Associated Cement Companies Ltd. v. Their Workmen**, (1963)2 Lab LJ 396 (SC) said at page 399 thus:*

" it is true that domestic enquiries need not be conducted in accordance with the technical requirements of criminal trials, but they must be fairly conducted and in holding them, considerations of fairplay and natural justice must govern the conduct of the enquiry officer."

I would also like to observe that the role of the accused or the witness and of the Judge cannot be played by one and the same person and it is futile to expect when those roles are combined that the Judge can hold the scales of justice even. I find force in the pleas taken up by the respondent in the written statement filed by him that the inquiry has been conducted in a manner which is against the procedure laid down in the Punjab Civil Services (Punishment and Appeal) Rules, 1970. The object of questioning of delinquent servant by the Inquiry Officer is only to give him an opportunity to explain the incriminating circumstances appearing in the evidence adduced against him. But in the instant case, I find that Inquiry Officer has cross-examined delinquent officer

when he stepped into the witness box as his own witness. This is not permissible under the rules. The Government servant may, if he chooses, examine himself on his side. If he does not choose to examine himself, there is no question of his examination. But in that event, he can only be cross-examined by the Presenting Officer. So the cross-examination of the delinquent respondent by the Inquiry Officer is irregular and that naturally has caused prejudice to his case.

Further, the haste in which the authorities have conducted themselves is writ large in this case. After culmination of the inquiry proceedings, respondent No.2 had proposed a punishment of stoppage of two increments with cumulative effect upon the petitioner. However, the petitioner being a State-cadre employee, vide letter dated 15.01.2013 (Annexure P-5), concurrence of the Secretary, PPSC was sought before inflicting the punishment. The Secretary, PPSC, vide its letter dated 09.05.2013 (Annexure P-6), did not agree to the imposition of the penalty so proposed. Relevant portion of the letter (Annexure P-6) reads thus:-

“I am directed to refer to your letter No.4/87/2010-4E4/635, dated 15.01.2013 on the subject cited above and to say that the Commission has observed the following points:-

1.0 The punishment awarded to the Charge Officer (C.O.) i.e. Smt. Laxmi Devi, Principal GGSSS Nawan Kot, Amritsar is not commensurate with the guilt brought home to her by I.O. (Inquiry Officer). It appears that the C.O. was made a scape goat, just to accord benefit of promotion to Smt. Nirmaljit Kaur, Lecturer in English

whom the C.O. had given below average ACRs.

2.0 Further, it appears that the I.O. has betrayed his bias by exceeding the scope of departmental enquiry, whereby he has to analyze and sift the fact/proof laid before him and write a reasoned report of enquiry giving his pointed findings whether the charges are proved or not proved. He has to desist from giving any suggestion to the Punishing Authority but its violated in the present case.

3.0 It appears that the enquiry was instituted with the very purpose to exonerate Smt. Nirmaljit Kaur by setting her service record straight while make the C.O. a scape goat. To further illustrate this point, the Secretary School Education after perusing the C.O. reply dated 19.07.2012 to the SCN and the Inquiry report and having heard her in person and opined on 28.8.2012 that "Heard, the proposal be sent to the Minister on a separate file". Thereafter the office on 29.8.2012 and SSE on 30.8.12 recommended to the Hon'ble Education Minister to drop the charge sheet.

4.0 Thereafter, the Competent Authority agreed with the I.O. and decided that Smt. Lakshmi Devi (C.O. Principal, GGSSS Nawan Kot) be inflicted punishment of stoppage of two annual increment with cumulative effect.

In view of the above circumstances and facts of the case the Commission has desired the Government to further enquire the matter to reach truth."

Despite a candid advise to conduct further inquiry in the matter, respondent No.2 vide letter dated 04.04.2013 (Annexure P-7) again submitted its observation to the Secretary, PPSC, for imposition of penalty.

The PPSC again, vide letter dated 30.01.2014 (Annexure P-8), informed respondent No.2 that that the Commission still feels that the penalty proposed to be inflicted upon the petitioner is disproportionate and thus, recommended imposition of penalty of stoppage of two increments without cumulative effect. However, instead of acting upon the advice of the PPSC, respondent No.2 proceeded to put up the case before the Council of Ministers proposing the punishment of stoppage of two increments with cumulative effect, which was ultimately accepted.

As regards the work and conduct of respondent No.5, it has been categorically averred by the petitioner that respondent No.5 was a habitual absentee. In the year 2003-04, she remained on leave for 274 days and attended the school only for 31 days. Similarly, in the year 2004-05, she availed leave for 150 days and attended the school for 100 days. In the year 2005-06, she was on leave for 256 days and attended the school only for 40 days. In the year 2006-07, she was on leave for 203 days and attended school for 58 days. In the year 2007-08, she attended the school for 111 days, whereas, availed leave for as many days. For such a short attendance, the petitioner was well within her rights to record adverse remarks in her ACRs.

In the light of the facts and circumstances enumerated above, this Court is in agreement with the observations made by the PPSC to the effect that the entire exercise has been done in order to set the record straight as far as respondent No.5 is concerned and to ensure that she gains promotion to the higher grade. In doing so, the petitioner, who enjoyed

unblemished service record prior thereto, was made scapegoat and made to suffer without any fault.

As a consequence, the impugned order dated 18.09.2014 (Annexure P-10), is hereby quashed. The instant petition is allowed with costs of Rupees fifty thousand to be paid to the petitioner by the respondents, within a period of 45 days from the date of receipt of a certified copy of this judgment.

08.11.2019

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(JITENDRA CHAUHAN)

JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No