

Sr. No.229

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

**CWP No.928 of 2015 (O&M)
Date of Decision: 06.05.2019**

Krishna Kumari

... Petitioner

Versus

National Hydroelectric Power Corporation Limited

... Respondent

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Suman Jain, Advocate with
Ms. Mriganki Nagpal, Advocate,
for the petitioner.

Ms. Reeta Kohli, Senior Advocate with
Ms. Chahat Aggarwal, Advocate,
for the respondent-NHPC.

ARUN MONGA, J.(ORAL)

Impugned herein, inter alia, is an appellate order dated 14.11.2008 (Annexure P-18) and the revisional order dated 21.07.2009 (Annexure P-22), confirming the punishment order dated 11.08.2008 (Annexure P-16) whereby, the petitioner was removed from service without disqualification on future employment with the Government.

2. The delinquency attributed to the petitioner is that she claimed reimbursement of medical expenses, travelling allowance and Leave Travel Concession (LTC) in respect of her parents to which she was otherwise not entitled to.

3. At the very outset, learned Senior counsel appearing

for the respondent-NHPC submits that the writ petition is not maintainable on two counts:

a) *The punishment/removal order has not been challenged and it is only the appellate and revisional orders assailed herein.*

b) *Revision of order is dated 21.07.2009 and the writ petition has been filed in the year, 2015 after an inordinate delay of 6 years.*

4. Having heard the learned Senior counsel for the respondent and after going through the respective pleadings, I am of the view that both the preliminary objections are not sustainable.

5. Learned counsel for the petitioner has drawn my attention to the averments contained in paras 21 to 23, wherein delay has been explained on account of pendency of litigation before this Court vide CWP No.17109 of 2007 wherein the legality of the charge-sheet was under challenge. Subsequently, judgment dated 06.11.2007 of this Court rendered in those proceedings was challenged before the Hon'ble Supreme Court and the same was upheld vide order dated 30.10.2014 (Annexure P-24) whereby, the charge-sheets issued to the petitioner were sustained.

6. Since the matter of quashing of charges was directly related to the consequential departmental proceedings, which led to the passing of the appellate/revisional orders impugned herein, I am of the view that the petitioner was justified to wait for the outcome of the challenge to the charge-sheet. After the challenge

to the charge-sheet attained finality, the writ petition was filed without any delay. The delay in impugning the appellate/revisional orders herein has, therefore, been bona fide and for justified reasons.

7. As regards, the objection to the non-impugning of the punishment order, learned counsel for the petitioner fairly concedes that same is due to an oversight and an inadvertence. Even though the punishment order was appended with the writ petition but in the prayer clause its mention got omitted. He submits that since a prayer qua quashing of the appellate order was made, the same would necessarily mean that the punishment order, as a consequence thereof, would also be under challenge. He, however, regrets the technical mistake on his part. In view thereof, I do not find any substance qua the said objection as well.

8. On merits, the claim of the petitioner has been vehemently opposed by the learned Senior counsel relying on judgment passed by the Hon'ble Supreme Court in case titled as ***Apparel Export Promotion Council Vs. A.K.Chopra, 1999 (1) SCC 759***, wherein it has been held that it is settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts. The High Court, in writ jurisdiction, may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/legally untenable.

9. Reliance has also been placed in case titled as

U.P.State Transport Corporation Vs. Vinod Kumar, 2008(1) SCT 159 SC, wherein it has been held that the Courts ought not to interfere with the orders of punishment, especially where the employer has lost confidence or faith against an employee/delinquent officer and that punishment of dismissal/removal is sustainable, in respect of such an employee. Further it was also held that there is no place for generosity or misplaced sympathy by the judicial forums and interfering with the quantum of punishment in such like situations.

10. She also relies on the judgment of the Apex Court in case titled as ***Divisional Collector NEKRTC Vs. H. Amresh, 2006 (3) SCT 582 SC*** and ***Employers Management West Bokaro Colliery of TISCO Limited Vs. Concerned Workman, Ram Pravesh Singh, 2008 (1) SCT 778***.

11. She further contends that in judicial review, Court cannot go into the evidence adduced during the departmental proceedings and the procedure adopted, in course thereof, unless there is material irregularity or a procedural impropriety or malafide is alleged.

12. Learned Senior counsel contends that none of these grounds have been made out in the present case and, therefore, this Court cannot go into the legality of the punishment order, which has been passed on cogent findings rendered in course thereof, as is borne out from the punishment order which details out the reasons for passing of the same.

13. While, I am in agreement with the principle enunciated in the judgments relied upon by the learned Senior counsel but that is where my agreement ends.

14. Learned counsel for the petitioner has drawn my attention to the definition of the word 'Family' as contained in the 'Service Manual', which, for ready reference is reproduced hereinbelow:-

1.0 *“'Family' means the workmen's wife or husband, as the case may be, two surviving children (step children including legally adopted children) up to the age of 25 years wholly dependent upon him/her and parents wholly dependent upon him/her and residing with him/her.*

XXXXX

1.3 *The parents will be considered as wholly dependent on the Workmen only if the monthly income from all sources including income from pension etc. of either of the parents or their combined income, does not exceed Rs.3000/-.”*

15. A perusal of the above shows that the word used qua dependency is the total income being less than Rs.3000/-, at the relevant time, i.e. in the year 2004, when the petitioner had sought reimbursement qua the medical expenses incurred, in course of the treatment of her mother, who was admittedly suffering from cancer and later on died owing to the said ailment.

16. I am in agreement with the argument of the learned counsel for the petitioner that the dependency has to be seen in totality of the circumstance. In the present case, given the fact that mother was suffering from cancer and also coupled with the fact

that the family had suffered financial loss of agricultural income, even though I am not going into the veracity of the same, but the petitioner may well have been under a bona-fide impression based on the inputs given by her parents that their total income including the pension was less than Rs.3000/-. She was, therefore, bonafide driven to seek reimbursement of the medical expenses for her mother in the peculiar circumstances.

17. Even otherwise, as regards the proportionality of the punishment, I am of the view that the respondents ought to have taken a sympathetic view of the matter. Awarding of punishment of removal from service is akin to economic death penalty of an employee. Not only an employee loses livelihood but the entire family is driven to penury and suffers the consequences for rest of their life.

18. I have also gone through the vernacular of the Rule which defines 'dependency' and the same does not include the pension and simply says income (आय). The said vernacular appended by the the petitioner has not been controverted by the respondent in the counter-affidavit.

19. Without commenting much the merits of the impugned punishment order as upheld by the Appellate Authority, I am of the view that the punishment awarded to the petitioner is highly disproportionate to the alleged delinquency, assuming the same to be absolutely gospel, as held in the departmental proceedings.

20. For the reasons recorded hereinabove, the punishment

order dated 11.08.2008 as upheld vide impugned appellate order dated 14.11.2008 (Annexure P-18) and as a consequence thereof, the revisional order dated 21.07.2009 passed by the Reviewing Authority (Annexure P-24) are set aside. The respondents are at liberty to pass appropriate fresh orders.

21. The respondents are directed to reinstate the petitioner with benefit of continuity of service. It is, however, made clear that petitioner would not be entitled to any back-wages for the period she remained out of service.

22. Writ petition is allowed in the aforesaid terms.

06.05.2019

vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No