

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 15367 of 2018

Date of decision : January 8, 2019

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Harpal Singh

.....Petitioner

Versus

State of Haryana and others.

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Narender Singh Kamboj, Advocate for the petitioner.

Mr. Harish Nain, AAG, Haryana.

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RITU BAHRI, J.

The petitioner is seeking quashing of the order dated 27.07.2016 (Annexure P-18) passed by the Deputy Commissioner, Yamunanagar, whereby the petitioner was dismissed from the post of Gram Sachiv under Section 4(X) of Haryana Civil Service (Punishment and appeal) Rules 1987 and order dated 27.4.2018 (Annexure P-20), whereby the appeal filed by the petitioner against the impugned order was dismissed by the Director, Development and Panchayats Department, Haryana and the impugned order was upheld.

During his service as Gram Sachiv at BDPO office, Jagadhri,

the petitioner was directed by respondent no.1 to accompany with Nodal

Officer, Ramesh Kumar for getting printed ballot papers from Delhi vide letter dated 30.12.2015. Petitioner informed respondent no.5 that he was suffering from illness on account of a spinal injury and shown him medical documents regarding his illness. He also informed that he was under the treatment of Kohli Hospital, Jagadhri referred by ECHS Polyclinic, Yamuna Nagar. He further requested respondent no.5 to exempt his duty from bringing ballot papers after getting printed the same from Delhi as Doctor has advised him not to do any jerky/heavy work and long journey etc. Respondent no.5 accepted the request of the petitioner and assured him that he will arrange another employee for the aforesaid work as there are many employees in reserved category and verbally allowed the petitioner to continue his election duty at BDPO office, Jagadhri. The petitioner performed all assigned election duties keeping in view the seriousness of election process. The petitioner received a show cause notice dated 09.01.2016 (Annexure P-11) issued by respondent no.3 for not attending aforesaid duty and also leveled other allegations against the petitioner. The petitioner submitted the reply of show cause notice (Annexure P-12) along with all medical certificates to respondent no.3 and requested not to take any action. Thereafter, the petitioner was suspended vide letter 15.1.2016 (Annexure A-13). It was mentioned in that order that the reply given by the petitioner was not satisfactory. As per letter dated 3.2.2016 (Annexure P-14) of respondent no.3, it was mentioned in the list of allegations levelled against the petitioner that the petitioner was detailed for election duty from 02.01.2016 to 05.01.2016 along with respondent no.8-Ramesh Kumar

Executive Engineer and on 08.01.2016, respondent no.8 has informed in the office that the petitioner was not present on duty to bring the ballot paper i.e after a period of about 9 days. Thereafter, the petitioner was charge sheeted under Rule 7 of Haryana Civil Services Rules, 1987 (Punishment and Appeal) and inquiry was submitted to SDO (Civil) Jagadhri. The enquiry was conducted and as per the enquiry report dated 30.5.2016 (Annexure P-15), the petitioner was found to be guilty. After receiving inquiry report, respondent no.3 issued show cause notice dated 30.6.2016 (Annexure P-16) to the petitioner and the petitioner submitted the reply dated 12.7.2016 (Annexure P-17) to respondent no.3. Thereafter, vide impugned order dated 27.7.2016 (Annexure P-18), the petitioner was dismissed from service. Aggrieved against the order dated 27.7.2016, the petitioner filed appeal before respondent no.2-Director Development and Panchayat Department, Haryana at Chandigarh. The above said appeal was dismissed by the Director, Development and Panchayat Department, Haryana Chandigarh vide order dated 27.4.2018.

Upon notice, written statement has been filed on behalf of respondents no. 1 to 3, in which a stand has been taken that Sahab Singh Gram Sachiv in his personal capacity had got lodged an FIR No. 147 dated 21.3.2015 under Sections 186, 332, 353, 427, 506 IPC against the petitioner and respondents no. 5 & 6 had not instigated him. The petitioner had also filed a criminal complaint bearing no.18 of 2017 under Sections 167, 171-B, 182, 194, 211, 384, 499, 500, 506, 34 of Indian Penal Code in the Court of Sh. Amit Gautam, Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri

on the similar grounds and this complaint was dismissed on 14.6.2018 (as per Annexure R-2 enclosed with the written statement). This fact has not been disclosed by the petitioner. It is further clarified that a complaint was made against the petitioner by Sh. Prem Chand and other residents of Village Kunjal regarding the payment of old age pension, but that complaint was filed due to non-appearance of the complainant. Further, as per an affidavit given by respondent no.3 (Annexure R-3), he never used unparliamentary language against the petitioner. He refused to go to Delhi to get the ballot papers printed from M/s Capital Business System, New Delhi in context of General Election of Panchayati Raj Institutions of 2015, and due to his absence, the whole team had to face problems and caused the delay in checking of ballot paper at that time which was the most important and time bound work relating to the General Election of the Panchayati Raj Institutions, and in this backdrop, he was issued a show cause notice (Annexure P-11). The petitioner was placed under suspension by the then Deputy Commissioner, Yamuna Nagar vide Annexure P-13 of the writ petition and finally charge sheeted vide Annexure P-14 and a regular enquiry was entrusted to the Sub Divisional Officer (Civil) Jagadhri who sent his inquiry report to the office of deputy Commissioner, Yamuna Nagar vide Annexure P-15 wherein the charges levelled against the petitioner had been found fully proved. The petitioner has been dismissed from the government service in accordance with law vide order dated 27.7.2016 (Annexure P-18). An appeal filed against order dated 27.7.2016 before respondent no.2 was also dismissed on 27.4.2018 (Annexure P-20).

Counsel for the petitioner has vehemently argued that the medical certificates given by the petitioner have not been considered by the competent authority while passing the dismissal order (Annexure P-18). Once the request of the petitioner for leave was accepted, the same could not be made a ground for imposing major punishment of dismissal. He has further argued that FIR No.119 dated 20.2.2016 under Section 185 of Haryana Panchayati Raj Act 1994 and under Section 353 IPC 1860 was registered against the petitioner. The petitioner did not assault any public servant and finally cancellation report was given. In this FIR and this evidence was sufficient to return a finding that the petitioner has been falsely implicated in the FIR and even the dismissal order required to be set aside. He has further referred to the judgment in the case of **Hakikat Singh vs. Union of India and others 2013 (3) SCT 231**, wherein appellant was found absent from duty and was found lying under the influence of liquor. During the course of inquiry, statement of the witnesses and cross examine was conducted by the Inquiry Officer. Neither report of blood or urine test was produced in evidence before the Inquiry Officer to prove the charge of being under influence of liquor. It was observed by this Court that mere tendering the report of the doctor that the appellant was under the influence of the liquor hardly proves that he was in such a state at that time. It was held that absence of one day is not such a serious misconduct that such a heavy penalty of dismissal from service could be imposed against the delinquent constable. Appellant had 13 years of long unblemished record. Penalty awarded was held to be awfully disproportionate to the charge

leveled against him. Impugned order was set aside. Appellant was directed to be reinstated with arrears of back wages which were restricted to 38 months prior to the aforesaid judgment. In the present case, the petitioner had only sought exemption from going to Delhi to get the ballot papers for the elections. Keeping in view his medical condition, he had given the medical documents and had been given permission by respondent no.5.

Counsel for the respondent has argued that as per the advice of the Doctor, the petitioner was advised complete bed rest for three weeks w.e.f 7/10 to even then he was present at the office of BDPO Jagadhri. It shows that he did not get the ballot paper and he had procured the economic survey and this would amount to willful disobedience of the order passed by the District Education Officer and impugned order have been passed in accordance with law after giving due opportunity to the petitioner.

After hearing counsel for the parties, a specific query was put to the State as to who accompanied the Nodal Officer to get the ballot paper from Delhi.

Counsel for the State has informed that as the petitioner did not go to Delhi, it caused great inconvenience to the Department and delay in getting of the ballot papers from Delhi. It is not the case of the respondent in the written statement that the ballot papers could not be brought from Delhi. The only case made out is that there was a delay in checking of ballot papers at that time. Since the ballot papers were got from Delhi and the petitioner was on duty on that date, the punishment awarded to him was harsh. It is not the case of the respondents that he had not performed his

duty on the day of the elections and no enquiry was conducted to give a finding that the medical certificates produced by the petitioner were fake or false. The only ground taken was that the petitioner had used the medical certificate as an excuse to not to go to Delhi. Moreover, despite having been advised three weeks medical rest as per the medical certificates, he was on duty. However, when the petitioner was not absent from duty, the punishment of dismissal is harsh. The dismissal of the criminal complaint filed by the petitioner (Annexure R-2) could not be made basis for dismissal from service as the cause of action in the charge sheet was separate.

In view of the judgment in *Hakikat Singh's case (supra)*, present petition is allowed and the impugned order is set aside. The petitioner shall be reinstated with all consequential benefits including arrears of salary.

January 8, 2019
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No