

CWP-13177-2017

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-13177-2017

Date of Decision: 16th March, 2020

Amanpreet Kaur

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Sudeep Mahajan, Advocate,
for the petitioner.

Ms. Ambika Bedi, Asstt. A.G., Punjab.

AUGUSTINE GEORGE MASI, J. (ORAL)

Petitioner has approached this Court challenging the order dated 27.09.2016 (Annexure P-6), vide which the services of the petitioner, who was working on the post of Panchayat Secretary, stand terminated during the probation period without giving any notice or affording her an opportunity of hearing, thus, violative of the principles of natural justice as also Article 311 of the Constitution of India.

2. Petitioner, admittedly, was appointed on the post of Panchayat Secretary on compassionate basis on account of death of her father Karamjit Singh, who died on 16.07.1992 and was working on the post of Panchayat Secretary. She was appointed on temporary basis on 21.11.2011 on attaining the age of maturity and was serving the respondents. It so happened that an FIR was registered on 08.12.2012 under Sections 409,

CWP-13177-2017

420, 467, 468, 471, 201 and 120-B IPC and Section 13 (1) (c) (d) read with Section 13 (2) of Prevention of Corruption Act, 1988, by the Vigilance Bureau at Mohali on the allegations of misappropriation, cheating and forgery against Amarjeet Singh, Gurpreet Singh, Karamjeet Singh, Amrik Singh, Suman, Lekh Raj and Harbilas. After the trial, accused were convicted by the Court. On the basis of the conviction of these persons, services of the petitioner were terminated vide order dated 27.09.2016 (Annexure P-6) by the Director, Rural Development and Panchayat Department, Punjab. It is asserted that the appointment of the petitioner on compassionate basis was based on forged signatures of the then Director, namely, Gurdev Singh Sidhu, IAS.

3. Counsel for the petitioner contends that prior to the passing of the order of termination, petitioner was neither given an opportunity of hearing nor any show cause notice was served upon her. The ground which has been taken by the respondents for such termination without notice that the petitioner was on probation for a period of two years and it is during this probation period, where she had been suspended, her services were terminated on conviction of the accused in the FIR. It is asserted that during the probation period, petitioner was not required to be given notice under the Punjab Civil Services (Punishment and Appeal) Rules, 1970 and therefore, the order as has been passed by the respondents is in accordance with law. This the learned counsel for the petitioner contends is against the latest judgment of the Hon'ble Supreme Court in Dr. Vijayakumaran C.P.V. Versus Central University of Kerala & others (2020 (1) SCT

773), where it has been held that the termination of a probationer, which is stigmatic in nature, cannot be justified merely on the ground that the employee was on probation. It would, therefore, be punitive in nature and thus, the order of such termination is unsustainable being violative of the statutory rules governing the service. His further assertion is that the order of termination of the petitioner has been passed while exercising the powers under Rule 5 (ix) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. According to the said Rules, an order passed under these provisions renders an employee unfit for appointment in future in Government service. He, therefore, contends that not only the order of termination is stigmatic in nature but it also debars the petitioner for appointment in Government service in future. This has been done without even giving a notice to the petitioner and is also violative of Article 311 of the Constitution of India, thus, unsustainable. Prayer has, thus, been made for setting aside the impugned order.

4. On the other hand, learned counsel for the State asserts that the petitioner having been involved in the act of forgery and her appointment is based upon such forged signatures of the then Director of the Department cannot and was not required to be continued in service. Her assertion is that in the FIR which was registered against the employees, who had dealt with the case of the appointment of the petitioner, have been found guilty and there is positive finding given by the Court that the signatures of the Director were forged, which having been established, left no scope for further consideration on the part of the Department. The termination being

based upon the findings recorded by the Criminal Court, the same did not call for any enquiry to be held by the Department and in any case, petitioner was on probation and during probation period, her services could be terminated without giving any notice. Another ground which has been asserted is that the application of the petitioner for appointment on compassionate basis was required to be submitted within a period of one year from the date of death of her father or from the date of her attaining eligibility, whereas she had applied after a period of one year and 10 months after attaining the eligibility for appointment to the post. She, therefore, contends that appointment of the petitioner itself being violative of the instructions issued by the Department, which govern the compassionate appointment, her services have been rightly terminated by the State. The fact that the termination order has been passed without giving any notice or personal hearing stands admitted. Prayer has, thus, been made for dismissal of the writ petition.

5. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the pleadings, the impugned order and the appended annexures.

6. The facts as have been narrated above are not in dispute. It is an admitted position that the petitioner was not an accused in the FIR, which was registered on 08.12.2012. The findings recorded in the criminal case has nothing to do with the petitioner as such because she was neither involved in the criminal case in any manner nor was there any allegation against her. The officials, who were involved in the criminal case, have

been held guilty and have been convicted and sentenced. The termination order when seen is based upon the judgment, which has been passed by the Criminal Court holding the officials guilty of forgery in the signatures of the Director. The termination order being based upon the judgment of the trial Court could not have been used against the petitioner, when she has not been given an opportunity of being heard because no notice was ever served on her. The order is stigmatic in nature as there are certain findings recorded against the petitioner which cannot be attributed to her in the manner which has been so projected in the order of termination. This aspect with regard to the order being stigmatic is further fortified in the light of the said order of termination, dated 27.09.2016 (Annexure P-6), having been passed under Rule 5 (ix) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, which reads as follows:-

“ 5 (ix). Dismissal from service which shall ordinarily be a disqualification for future employment under the Government.”

7. A perusal of the above rule would make it amply clear that the order of termination of services of the petitioner was not a simpliciter order of termination but an order of punishment and punitive in nature as this order was in the form of dismissal order, which would ordinarily disqualify the petitioner from further employment under the Government. The plea, therefore, of the counsel for the State with regard to the order being passed during the period of probation and therefore, did not call for any response or hearing from the part of the petitioner is unacceptable. More so, in the light

of the judgment of Hon'ble Supreme Court in the case of *Dr. Vijayakumaran C.P.V.'s* case (supra), wherein it has been held that the material which amounts to stigma need not be contained in the order of termination of the probationer but might be contained in any document referred in termination order or in its annexures. Such documents could be asked for or called for by any future employer of the petitioner. In such a case, order of termination would stand vitiated on the ground that no regular enquiry was conducted.

8. Present is a case where there is a clear reference of the order of the trial Court, which is in a criminal trial relating to the order, where petitioner is not even an accused, what to say of she being a convict. That apart, use of the provisions of Rule 5 (ix) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 further makes the order stigmatic in nature and it cannot be said that the order of termination was a simpliciter order but it was punitive in nature. If a decision is taken by the employer to penalize an employee, who is on probation, the provisions of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, are required to be complied with especially when the same are being invoked for terminating the services of an employee. The Hon'ble Supreme Court, as per the law which has been settled in the above referred to case, was dealing with situation where there was no mention in the order of termination either with regard to the material which was taken into consideration or where there was a reference of such material in the order of termination itself, however, the Court proceeded to lift the veil and find out the reason behind the

termination order of the probationer and then concluded that an employee has to be given an opportunity of facing regular enquiry in case a punitive order is required to be passed or if the order of termination/discharge is intended to be stigmatic in nature.

9. In view of the above, the order of termination of the services of the petitioner cannot sustain. The impugned order dated 27.09.2016 (Annexure P-6) is hereby set aside. Petitioner is directed to be reinstated in service forthwith and be placed under suspension as it is admitted that at the time of her termination, she was so. In case the respondents intend to proceed with the regular enquiry against her, it would be open to them to do so within a period of four weeks, failing which, the order of suspension shall cease to operate. Petitioner shall be entitled to the consequential benefits.

10. Copy of this order be given **dasti** to the counsel for the State under the signatures of the Bench Secretary of this Court.

(AUGUSTINE GEORGE MASIH)
JUDGE

16th March, 2020

Harish

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