

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-18983-2015

Date of decision: 04.02.2020

Jagjiwan

...Petitioner(s)

V/s.

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. N.K.Malhotra, Advocate
for the petitioner.

Mr. Randhir Singh, Advocate
for State of Haryana.

RITU BAHRI, J. (Oral).

By this petition, the petitioner is seeking quashing of orders dated 21.08.2010 (Annexure P-7), 10.05.2013 (Annexure P-13) and 09.05.2015 (Annexure P-15).

The petitioner was initially appointed as Water Carrier on 29.02.1992. He was confirmed on 01.01.1994 on the above said post. His appointment letter is Annexure P-1 and his confirmation letter is Annexure P-2. The petitioner was served with chargesheet on 11.05.2009 wherein total 8 charges were levelled against the petitioner. The petitioner filed a detailed reply to the chargesheet on 25.05.2009 (Annexure P-4). Thereafter vide order dated 14.07.2009 Enquiry Officer was appointed and regular inquiry was conducted by enquiry committee consisting three teachers, one lab attendant and respondent No. 3-District Education Officer, Jhajjar. The enquiry report dated 03.06.2010 is Annexure P-4/A. Thereafter show cause

notice was issued on 28.07.2010 (Annexure P-5) with an opinion that penalty of removal from service should be imposed upon the petitioner and he was given 15 days time to give his reply in writing. The petitioner gave his reply dated 05.08.2010 (Annexure P-6) and thereafter impugned order dated 21.08.2010 (Annexure P-7) was passed whereby his services were terminated.

Learned counsel for the petitioner refers to the charges framed on 08.04.2009 (Annexure P-3) and contends that out of 8 charges, only charge No. 1 was proved which was as under:-

“1. That Jagjeewan & Water carrier who is working in this school misbehaved on 23.10.2008 in staff meeting by you disgraced principal honour.”

This charge was with respect to misbehaviour of the petitioner on 23.10.2008. He had disgraced the Principal honour in staff meeting which was held on 23.10.2008. Rest of the charges as per the inquiry report was not proved.

Learned counsel for the petitioner has referred to judgment of Delhi High Court passed in ***K.L. Bhasin V/s. Punjab National Bank and another 2017(2) CLR 454*** on the proposition that major penalty of dismissal from service disqualifies an employee from future employment. Further if a person has served for 22 years and he has qualifying service for pension, dismissal order should be quashed being harsh since the compulsory retirement from service would serve purpose of employer.

He has further referred to Division Bench judgment of Gujarat High Court passed in ***R.K.Divyeshwar V/s. State of Gujarat and another 2015(5) SLR 345***. In this case, one Judicial Officer had been dismissed from service on the ground that he had misbehaved with the complainant

who was female colleague. The complainant had suspected Judicial Officer to be intoxicated and apprehended that he would misbehave with her. The Officer had visited her house late at night since he was feeling unwell and there was no other house which was close by. The Division Bench held that conduct of Judicial Officer was misconduct in technical sense but it was not such a grave to attract punishment from dismissal of service.

Learned counsel for the State has referred to the order dated 09.05.2015 (Annexure P-15) whereby appeal of the petitioner was also dismissed by a detailed order wherein it was stated that his ACRs of years 2000-2001, 2001-2002, 2005-2006 and 2008-2009 contained adverse remarks recorded by the then three Principals. He had misbehaved many times with the Principal as well as Panchayat Members. Further he was medically examined but was not found suffering from any gross symptoms suggestive of any mental disorder. In this order, it was further observed that he was habitual complainant and had approached National Commission for Scheduled Caste and Scheduled Tribe many times. The Commission in decision of complaint No. 2610/2009 dated 27.11.2009 had observed that he was a regular RTI seeker only to harass school authorities and in one case, Rs.2000/- was given to him as compensation in RTI case No. 161/2007. In decision of complaint No. 321/2011 dated 01.10.2012, the Hon'ble Lokayukta also reflected his habit and purpose of fake complaints. He finally argued that keeping in view his behaviour, termination order dated 21.08.2010 (Annexure P-7) is not liable to be set aside.

Heard learned counsel for the parties.

The short question for consideration is that only with respect to charge No. 1, can the petitioner be terminated from service?

A perusal of inquiry report (Annexure P-4/A) shows that with respect to charge No. 1 statement of other members was recorded and it was found that his behaviour was not good with the Principal and other staff members. His behaviour with the earlier Principals was also not good and they had given adverse remarks in his ACRs. On 22.10.2008, petitioner had misbehaved with the Principal and other members of Gram Panchayat Gochhi. With respect to other charges, inquiry report was in favour of the petitioner.

The petitioner had been serving the Department as a Water Carrier from 29.02.1992 till the date of termination i.e. 21.08.2010 for a period of almost 18 and $\frac{1}{2}$ years service. Apart from his misbehaviour, there is no complaint with respect to honesty. The petitioner was a Water Carrier and dismissal from service would be harsh punishment keeping in view aforesaid judgments.

Writ petition is allowed and the orders dated 21.08.2010 (Annexure P-7), 10.05.2013 (Annexure P-13) and 09.05.2015 (Annexure P-15) are quashed with direction to the respondents to compulsorily retire the petitioner alongwith all consequential benefits with 6% interest and pass appropriate order within a period of three months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

04.02.2020

Divyanshi

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No