

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

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CWP No.4145 of 2021
DATE OF DECISION : 22nd FEBRUARY, 2021

Bhupinder Singh

.... **Petitioner**

Versus

District and Sessions Judge, Sangrur & another

.... **Respondents**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court
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Present: Mr. Jagtar Singh Sidhu, Advocate for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for quashing the order dated 03.06.2020 (Annexure P-7) vide which the respondent No.1 has terminated the services of the petitioner without conducting any departmental inquiry, along with certain other prayers.

The petitioner was appointed as Peon in the office of the District and Sessions Judge, Sangrur vide appointment letter dated 05.08.2019. As per the clause (2) of the appointment letter and as per the applicable Rules the probation period specified for the petitioner was of two years. It was further mentioned in the terms of the appointment that if the work and conduct of the petitioner is not found satisfactory then his service shall be terminated without any notice. The petitioner was found absent from the duties repeatedly. In the first instance, the Civil Judge (Senior Division), Sunam reported vide letter dated 09.10.2019 that

during checking the petitioner was found absent from duty on 05.10.2019. The District and Sessions Judge, Sangrur directed the Civil Judge (Senior Division) to get explanation from the petitioner as to why he was absent from duty. The petitioner tried to explain the situation; however, his explanation could not justify his absence. Thereafter, a discreet inquiry was ordered by the Additional Sessions Judge, Sunam, to find out whether the petitioner was involved in some other matter. In the meantime, another Judicial Magistrate of Sunam intimated vide letter dated 14.11.2019 that the petitioner was found absent from duty on 09.11.2019 and 10.11.2019. Once again Additional Civil Judge, Sunam vide letter dated 14.11.2019 intimated that the petitioner was found absent from duty on 11.11.2019 also. In this respect also an explanation was obtained from the petitioner and a discreet inquiry was conducted. During the inquiry it came out that against the petitioner a criminal case bearing CC No. 768 of 2019 under Sections 145, 146, 147 & 174 of the Railway Act was registered on 06.10.2019 on DD No.03 at RPF Chowki, Sunam. All these reports, as well as, the report regarding absence of the petitioner were duly sent to the District and Sessions Judge, Sangrur. The Sessions Judge again asked the Additional Civil Judge (Senior Division), Sunam for detailed report regarding absence of the petitioner. During this inquiry it was found that petitioner was involved in another FIR No.96 dated 04.11.2019 registered under Sections 354-A, 506 & 509 IPC at Police Station Joga, District Mansa. On still further inquiry into the absence of the petitioner, it was found that the petitioner was also involved in another FIR No.19 dated 29.03.2000 registered under Sections 325, 323 & 34 IPC at Police Station Joga, District Mansa and

this FIR was also never disclosed by the petitioner to the office concerned.

When the petitioner was asked to furnish explanation, the petitioner has not even denied the factum of absence as such, although, he tried to give justification for his absence. Even the factum regarding the registration of the criminal cases, has not been denied by the petitioner. In view of the above factual aspect, since the petitioner was still on probation, therefore, the District and Sessions Judge did not deem it appropriate to initiate the disciplinary proceedings against the petitioner, rather, he simpliciter terminated the services of the petitioner with immediate effect.

While arguing the case the counsel for the petitioner has submitted that since the impugned order passed by the District and Sessions Judge, whereby the services of the petitioner has been terminated, have caused stigma upon the character of the petitioner, therefore, the order stands vitiated due to non-holding of the departmental inquiry. The counsel has relied upon the judgment of the Hon'ble Supreme Court rendered in ***Dr. Vijaya Kumaran C.P.V. Vs. Central University of Kerala and others*** decided on 28.01.2020 and ***Indra Pal Gupta Vs. Managing Committee, Model Inter College, Thara, (1984) 3 SCC 384*** and ***Deepti Prakesh Banergee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others (1999) 3 SCC 60***. Accordingly, it is submitted by the counsel for the petitioner that whatever be the reason for discharge or termination of the services of the person during probation, the departmental inquiry has to be held; in case the order passed by the authority is stigmatic in nature.

Having heard the counsel for the petitioner and having perused the case file, this court does not find any substance in the argument of the counsel for the petitioner. Undisputedly, the petitioner has remained absent from duty on several occasions. The petitioner was granted an opportunity by the concerned officer to furnish his explanation. Even in his explanation, the petitioner has not denied the factum of absence as such. Although, the petitioner has tried to give some explanation, however, it was within the domain of the competent authority to make the assessment qua such alleged justification furnished by petitioner. The competent authority has not found the same to be satisfactory. It is not even the case of the petitioner that the authority has not considered the explanation submitted by him. Therefore, the petitioner has been duly afforded an opportunity of hearing before passing the impugned order. In the given set of facts; this court does not find it mandatory to carry out the exercise of a regular departmental inquiry. The petitioner was still on probation. He would have become member of the services entitled to all statutory benefits and protections only after he successfully completed his probation. The full-fledged status as a member of the cadre, which could have brought him under protection umbrella under the Rules had not even been attained by the petitioner. Hence, the regular inquiry into the conduct of the petitioner qua absence from the service is not mandatory for taking action against him. The petitioner has failed to bring to the notice of the court any provision or any rule applicable to the service under which the competent authority might be under obligation to hold a regular departmental

enquiry against an employee who is still on probation, for discharging him from service.

The other reason for discharging the petitioner from the service is regarding registration of the criminal cases against him. The factum of the registration of criminal cases against the petitioner has not even been disputed by him. The record shows that he was involved in two criminal cases at the moment and one case was even before his entry to the service. Ignoring that case which the petitioner faced before joining services, the fact remains that the petitioner got himself involved in two criminal cases while being an employee of the Court establishment. There could not have been a worse example of the stigmatic conduct of a Court employee. Hence, the petitioner cannot be heard to say that any stigma has been attached to him by mentioning of the criminal case in the impugned order. The factum of the criminal cases being faced by the petitioner has to be mentioned by the competent authority in the order because it is a fact which is received by the competent authority from another statutory authority which was dealing with those criminal cases against the petitioner. Except mentioning the same in the order, the competent authority has not added anything against the petitioner from its own side. Whatever the stigma was to attach to the character of the petitioner on account of these criminal cases, already stood attached somewhere else because of the fact of the petitioner facing these cases and the petitioner having remained in jail for long duration on account of these criminal cases. The impugned order passed by the competent authority does not attach any additional quantum of stigma to the antecedents of the petitioner. Needless to say that had the competent

disciplinary authority not mentioned these facts in the impugned order then it would have been a non-speaking order, and it would have been non-sustainable for this reason alone. Being a statutory competent authority, the disciplinary authority was under duty to give reasons for passing the order. Only that much has been done by the authority. Hence, no fault can be found with the order as such. At the cost of repetition, it deserves mention that petitioner was duly granted opportunity of hearing on all the aspect mentioned in the impugned order.

Although, the counsel for the petitioner has relied upon the judgments of Hon'ble the Supreme Court rendered in ***Dr. Vijaya Kumaran C.P.V.; Indra Pal Gupta*** and ***Deepti Prakesh Banergee (supra)***, however, the facts involved in those cases are totally distinguishable as compared to the present case. In none of those cases the employee was facing criminal cases, including an FIR suggestive of depravity of the character of the employee. Moreover, the facts, which have been relied upon by the competent authority in the present case have either been admitted by the petitioner or have been verified and confirmed by another statutory authority which was conducting criminal proceedings against the petitioner. Hence, the judgments, relied upon by the counsel for the petitioner, are of no help to the case of the petitioner.

A bare perusal of the impugned order shows that the order passed by the competent authority is giving reasons only to comply with the requirement of natural justice; of hearing the side of the petitioner and recording some reason for its decision. The petitioner is interpreting the same to be stigma upon his character. However, neither the order specifically says that this shall be taken as stigma against the character of

the petitioner, nor does the order contains any stipulation to disqualify the petitioner from future employment as per his eligibility and suitability, as such. The order is simpliciter terminating the services of the petitioner. The order is in the nature of his discharge from the service. Disciplinary authority was fully competent to discharge the petitioner from his services during probation, if his work and conduct was found to be not satisfactory. Even the terms of appointment of the petitioner so provided. Hence, if the competent authority has acted as per the rules and as per the terms of the appointment of the petitioner then no fault could be found with the same, simply because the petitioner has perceived the order to be stigmatic one. Needless to say that perception of the petitioner could not substitute the legal propositions which authorize the competent authority to discharge an employee on probation, if his/her work and conduct is not found to be satisfactory by that authority.

In view of the above, finding no merit in the present petition the same is dismissed.

22nd FEBRUARY, 2021
‘raj’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>