

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

CWP 13467 of 2021 (O&M)

Date of Decision: December 23, 2021

Gurjinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Aalok Jagga, Advocate for the petitioner.

Ms.Sunint Kaur, AAG, Punjab for respondents.

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MAHABIR SINGH SINDHU, J.

Present writ petition has been filed, *inter alia*, for issuance of a writ in the nature of Certiorari for quashing the impugned order dated 07.07.2021, passed by respondent no 3.-Principal, MRPD Government College, Talwara, District, Hoshiarpur; whereby, petitioner, who was working as part time lecturer is dismissed from service.

(2) Facts are not in dispute.

(3) Petitioner qualified as M.Sc.(Mathematics), M.Phil. & B.Ed and he was appointed as part-time lecturer (Mathematics) on contract basis at Govt. Guru Nanak College, Kala Afghana District Gurdaspur by the Principal vide Memo. dated 27.11.2001, which reads as under:-

*"From
The Principal
Government College
Kala Afghana (Gurdaspur)*

To

*Shri Gurjinder Singh
Village : BadhuPur*

P.O. & Tehsil Mukerian (Hoshiarpur)

Memo No.S-3 dated 27.11.2001

Subject : Regarding part-time appointment of lecturer.

Appointment of Part-time lecturer Mathematics on contract basis is offered to you. It is clarified that your services can be terminated at any time without issuing any notice and intimation of any reason. This appointment is valid till 31.03.2002 and it is also clarified that if any regular lecturer after completion of his/her leave or through appointment/ transfer joins the duty, then you will be relieved immediately. If you agree to the aforementioned conditions then you are instructed to submit your joining report as per prescribed performa by 29.11.2001 to the undersigned.

*Sd/-
Principal
Government College
Kala Afghana*

Endorsement No.: Date

A copy of this is forwarded to Director Education Department (Colleges) Punjab, Chandigarh for information.

*Sd/-
Principal
Government College
Kala Afghana”*

After some time, due to abolition of the post, petitioner was transferred to another College i.e. Government Arts and Science College, Talwara, District, Hoshiarpur; but later on, with effect from 08.06.2009, shifted to the present College from where he has been dismissed.

(4) On 14.01.2020, at around 5.00 p.m., when petitioner was returning to home, he received a phone-call from one female NCC cadet (ex-student of the college) that she fell down near Satnam Gas Agency and asked for his help. Petitioner immediately reached on the spot and noticed that the student was not well, therefore, she was made to sit on rear seat of his car. When petitioner was taking the girl to hospital, the police arrived and after calling her parents, she was handed over to them. The incident appeared in a local newspaper with the allegation that college professor was found in an inebriated condition after consuming liquor with ex-female NCC student.

(5) On 20.01.2020, the Principal issued a show-cause notice to petitioner on the allegation that he received a phone-call from the Director Public Instructions, Colleges, Punjab; for short "the Director" to the effect that the Education Minister was very much disturbed with the incident and an enquiry is to be conducted in the matter. Consequently, petitioner was asked to explain his position. He submitted written response. An enquiry committee comprising of one Professor, an Assistant Professor and two part-time lecturers submitted their report dated 21.01.2020 and para Nos. 7 & 8 of the same, read as under:-

"7. The enquiry committee has unanimously considered that news published in different newspapers regarding the professor and ex-female student, the name of Government College, Talwara, has been disgraced and the image of Government College, Talwara, and its staff has been maligned in the entire state of Punjab. Not only the educational

atmosphere has been affected; rather this incidence has shed bad effect on the educational atmosphere. For all this, Gurjinder Singh, part time lecturer Mathematics, may be held responsible upto some extent.

8. *The Department of Higher Education Government of Punjab, If keeping in view all these facts, deems fit, then Gurjinder Singh, part time lecturer Mathematics, can be transferred to some college at far off place. This recommendation is humbly made by the enquiry committee to Department of Higher Education Government of Punjab.”*

(6) The petitioner was also holding the additional charge of NCC in the college. In view of newspaper report, the Commanding Officer of 12-Battalion Punjab, NCC, Hoshiarpur, vide communication dated 22.01.2020, conveyed to the Principal regarding the petitioner having been found in an inebriated condition with former NCC cadet; whereas an Associate NCC Officer (for short 'ANO') must bear exemplary character. Thus, the Commanding Officer recommended that commission of the petitioner be withdrawn and new ANO be appointed in his place. As a result thereof, the Principal, on the same very day, withdrew the charge of ANO from petitioner.

On 27.01.2020, petitioner submitted a detailed representation to the Commanding Officer to the effect that he has been exonerated by the Committee and being the NCC in-charge, he could not leave any person stranded on road who was in dire need of help; thus, requested to review the recommendation for withdrawal of the charge. The incident was

enquired by the police also; but, they found that newspaper report was not correctly published.

On 31.05.2021, the Principal again issued a show cause notice to the petitioner with the allegations that each lecturer has to take four classes a day, but he was not doing so; thus his response was sought in this regard. There were other issues also for which petitioner was asked to give his explanation i.e. non-sending of the link in the whatsapp group, total number of classes he taught during the month of May, 2021 and threatening of Bill Clerk on telephone.

On 01.06.2021 petitioner replied to show-cause notice and submitted that due to Covid-19 pandemic, his mother was seriously ill and she suffered heart attack twice. He being the only male member in family, was not able to send link for joining the whatsapp group and apologized for the same. Petitioner also submitted that he was in need of money for treatment of his ailing mother; but, when inquired from the Bill Clerk regarding withholding of his four days' salary for the month of April, 2021, he got agitated.

On 02.06.2021, the petitioner received another letter from the Principal to the effect that he had not taken adequate classes for the month of May, 2021 and asked his explanation so that salary for the effective days could be paid to him.

(7) Thereafter, charge-sheet dated 10.06.2021 was issued to the petitioner and he was asked to submit his reply. A committee of three professors was constituted and they were asked to submit the report as per sub-rules 5-10, Rule 8 of the Punjab Civil Services (Punishment &

Appeal) Rules, 1970 (*for short 'the Rules of 1970'*). On 28.06.2021, petitioner filed reply to the charge-sheet. He *inter alia* submitted that complete information under Right to Information Act, 2005 has not been supplied to him; an appeal is pending before the Punjab State Information Commission for 19.08.2021; therefore, requested for complete record for filing proper reply. In the interregnum, on 22.06.2021, the Principal wrote a letter to the petitioner for handing over the charge of NCC in view of the issuance of charge-sheet against him. Petitioner reiterated his stand that withdrawal of NCC charge was merely on the basis of newspaper report which is unlawful. He also submitted that request has already been made to the Commanding Officer for review of his recommendation, but the same is still pending for consideration.

Again on 03.07.2021, the Principal attributed the petitioner that he is violating the rules while not handing over the charge of NCC. It was also alleged that in the month of May, 2021, petitioner had taken classes only for eight days and that too, one class per day; for two days, he delivered only two lectures per day, instead of four. The Principal wrote another letter dated 23.06.2021 to petitioner alleging that on 22.06.2021, he left the college without any intimation. In response thereto, the petitioner replied that on 22.06.2021 at about 12.00 noon he received a phone-call to the effect that health condition of his mother was deteriorating and she required emergent hospitalization. Thereafter on 23.06.2021, letter was sent by the Principal to petitioner alleging that he should give clarification regarding his act and conduct in the college. Again on 06.07.2021, the Principal wrote a letter to the petitioner that he has not complied with the

orders regarding handing over the charge of NCC to caretaker Sh.Manish Kashyap; but petitioner submitted his reply, that matter be re-considered regarding withdrawal of NCC charge from him.

The Principal while writing a letter dated 06.07.2021 to the Director sought permission to dismiss the petitioner from service. In turn, the Director vide letter dated 07.07.2021, informed that an action against a part-time lecturer is to be taken by the Principal; but, an approval was accorded in this regard.

Ultimately, vide impugned order dated 07.07.2021, the petitioner was dismissed from service.

(8) On the other hand, respondents opposed the writ petition *inter alia* submitting that petitioner did not avail the remedy of appeal. He was only a part-time employee; his conduct involved moral turpitude, indiscipline and insubordination. As a part-time employee, petitioner was not required to be served any show-cause notice or charge-sheet. Still due procedure has been adopted in this case while issuing the charge-sheet followed by regular enquiry before passing the impugned order. Also submitted that petitioner remained as a continuous troublemaker while not taking classes despite various notices sent to him for dereliction of duties. Instead of replying to notices, the petitioner started threatening college authorities on one pretext or the other. The petitioner was in the habit of disobeying the orders of higher authorities and he remained absent from college which amounts to serious misconduct and deserve penal action. It was reported in the local newspaper that Professor of Government College was found in an inebriated condition with an ex-girl student of the college

on 14.01.2020. Such a behavior from the college lecturer was uncalled for and cognizance of the incident was taken by the higher authorities and that resulted into disciplinary action against the petitioner. Preliminary enquiry was conducted by the then Principal of College who submitted his report dated 21.01.2020 to the effect that act of petitioner as well as of an ex-NCC cadet, has tarnished the image of college and reputation of the teaching staff in the whole of Punjab. The college authorities wrote many letters to petitioner for handing over the additional charge of NCC to newly appointed caretaker, but despite that he did not bother and that amounted to disregard of orders of higher authorities. A three-member committee was constituted to conduct regular enquiry regarding charges levelled against petitioner and the Committee submitted its report on 06.07.2021 (R-1) vide which the charges against him were found to be proved.

Also submitted that action has been taken against the petitioner not only on the allegation of being caught with an ex-girl student, but other instances as well; like indiscipline, not taking classes, insubordination, remaining absent from duty and threatening the Principal. In para 32 of the reply, it is submitted that copies of complaints filed by female students were not supplied to the petitioner under RTI Act as these involve the safety of the complainants. Again submitted that charge of NCC was given to the petitioner only as an additional function and that could be withdrawn without assigning any reason. The petitioner was not a regular employee, thus, he cannot claim additional function as a matter of right; rather it is the prerogative of the Principal to give charge of NCC to any suitable person. Still further submitted that additional charge of NCC was withdrawn from

petitioner not only on the basis of report of Commanding Officer, but after considering other circumstances as well; the Commanding Officer had no authority to recommend any person as ANO.

(9) Contentions:

(A) By Petitioner:-

It is contended by learned counsel that the order impugned is stigmatic in nature; thus, even against a part-time employee, the dismissal cannot be imposed without conducting regular departmental enquiry. The impugned order has resulted into civil consequences and as such, before forming any tentative opinion, the respondents were under an obligation to supply the copy of inquiry report to petitioner. Specifically contended that during the so called inquiry, neither any witness has been examined; nor petitioner was granted opportunity of cross-examination; thus, the alleged enquiry report (R-1) is merely an eye-wash. Also contended that before passing the impugned order, no copy of enquiry report was supplied to the petitioner. Again contended that previous allegations which stood closed and attained finality have also been taken into consideration by the Principal while passing the impugned order. In response to charge-sheet, a reply was filed by the petitioner, but it has not been taken into consideration at all; thus, the impugned order is against the principle of natural justice. Legal malice is alleged on the premise that while issuing charge-sheet itself, inquiry committee was directed to make recommendations for disciplinary action against the petitioner; thus, it was pre-decided to punish him by the Principal. Despite repeated requests, the names of complainants were not disclosed to petitioner for the simple reason that

there was no one to support the allegations levelled against him. Lastly contended that charge-sheet, consequent proceedings and the impugned dismissal order are without jurisdiction.

(B) By State:-

On the other hand, learned state counsel contended that petitioner had been working merely on part-time basis; thus, he was not entitled for any regular enquiry before passing the impugned dismissal order; but still, in the interest of justice, the committee of three professors was constituted to inquire into allegations made against him. The committee submitted a detailed report and on the basis thereof, after obtaining prior approval from the Director, the impugned order has been passed by the Principal. She again contended that work & conduct of the petitioner remained chaotic and as such, to restore the image of the college, he has rightly been dismissed from service. However, learned state counsel candidly acknowledged that copy of enquiry report (R-1) was never supplied to petitioner before passing the impugned order.

(10) Heard learned counsel for the parties and perused the paper-book.

(11) The moot point for consideration of this court would be:-

As to whether in view of the facts and circumstances of the present case, the impugned dismissal order is legally sustainable?

(12) There is no dispute that petitioner was appointed as a part-time lecturer on contract basis by the Principal on 27.11.2001 and he continued as such till passing of the impugned dismissal order.

It is quite evident that petitioner was issued charge-sheet dated 10.06.2021 for imposition of major penalty under rules of 1970. It is also matter of record that apart from formulating six charges, at the end of charge-sheet the Principal while constituting an enquiry committee observed as under:-

“To enquire the same a committee comprising three senior professors of the college is constituted:-

- 1. Professor Kashmiri Lal (Convener)*
- 2. Professor Surjit Singh (Member)*
- 3. Professor Seema Jassal (Member)*

*You are hereby instructed that the written clarification of the abovementioned charges should be submitted to the committee within ten working days from the issue of this letter. Committee is also instructed that according to rule 5 to 10 of Punjab Civil Service Rules Book, enquiry should be conducted and **disciplinary action be recommended.***

*Sd/-
Principal
M.R.P.D. Govt. College
Talwara (Hoshiarpur)”*

From perusal of the extracted portion of the memo dated 10.06.2021, it is quite amazing that at the time of issuing charge-sheet against petitioner, the Principal instructed Committee members that “*disciplinary action be recommended*”. Thus, from very beginning, the Principal had determined to punish the petitioner. Still further, while filing reply to charge-sheet, petitioner denied allegations; but when the Principal had already decided to constitute the enquiry Committee and instructed its members to make recommendations, then his reply became only a

formality. Again the Principal without understanding the consequences of incompetency, vide memo No.2362 dated 06.07.2021, sought permission of the Director to dismiss the petitioner from service. In response thereto, the Director did not lag behind and without adverting to rules of 1970, vide letter dated 07.07.2021, granted approval for dismissal of petitioner *inter alia* in the following manner:-

“In connection with the proposal through letter under reference, approval is accorded to dismiss Gurjinder Singh from service as part time lecturer (Mathematics), M.R.P.D. Government College Talwara (Hoshiarpur)”.

Immediately, upon receipt of above communication, the petitioner was dismissed from service by the Principal while passing the impugned order, which reads as under:-

*“Office of Principal M.R.P.D. Government College
Talwara (Hoshiarpur)*

No.2379-2385

Dated 07.07.2021

To

*Shri Gurjinder Singh s/o Shri Gurmit Singh,
part time Lecturer,
Village BudhuPur, Post Office Mukerian
Tehsil Mukerian, District Hoshiarpur*

*Subject: Regarding dismissal of services of part
time lecturer Shri Gurjinder Singh
(Mathematics)*

*Due to news published related to you in
different newspapers, D.P.I. (Colleges) in
compliance with the orders conferred on the
principal for taking disciplinary action. On the
basis of reports received from different enquiry*

committees, complaints submitted by female students of the college and their parents, to keep the future of female students safe, due to your conduct the good name of the college has been disgraced. Indiscipline while handing over the N.C.C., repeatedly disobeying the orders of the undersigned, remaining absent from the college and threatening the undersigned. Due to all these problem arose, Letter No.2362 dated 06.07.2021 written to DPI (Colleges) and in compliance of the instructions issued vide letter No.10/12-Services(5)/2392 dated 07.07.2021 received in reference to the aforementioned letter under Civil Service Rule Appeal and Punishment section 5 sub section 9, your work and conduct not being satisfactory your services are being terminated (sic. dismissed) with effect from today i.e. 07.07.2021 afternoon.

*Sd/-
Principal
M.R.P.D. Government College
Talwara (Hoshiarpur)”*

(13) There is no quarrel that recruitment to the post(s) of lecturer (College Cadre) is regulated by statutory rules namely the Punjab Educational Service (College Cadre) (Class II) Rules, 1976 (for short, 'Rules of 1976'). Rule 5 thereof talks about the appointing authority; and according to which all appointments to the service shall be made by the Government. As per rule 2(c), "Government" means the Punjab Government in the Education Department. Rule 2(e) says that "Service" means the Punjab Educational Service (College Cadre) Class II. Admittedly, the petitioner was appointed as a part-time lecturer on contract

basis by the Principal; thus, under the rules of 1976, he cannot be said to be a member of service.

Rule 14 of 1976 rules talks about discipline, penalties and appeals, which reads as under:-

“14.(1) In matters relating the discipline, penalties and appeals, members of the Service shall be governed by the Punjab Civil Services (Punishment and Appeal) Rules 1970, as amended from time to time.

Provided that the authority competent to impose penalties shall be the Government.”

(14) Undoubtedly, the petitioner had been working on part time basis for the last about 20 years, but there is nothing on record that he was appointed in consonance with the rules of 1976, therefore, in such a scenario, it was not obligatory for the respondents to proceed against the petitioner under rules of 1970. Yet for the reasons best known to them, the respondents issued him charge-sheet and constituted the enquiry committee of three professors who submitted their report received in the office of Principal vide diary No.777 dated 06.07.2021(R-1), concluding as under:-

“Taking into consideration the news published in the eminent newspaper the Hindu and Dainik Jagran, the honourable Higher Education Minister, DPI Colleges and other higher authorities took a serious note and instructed the Principal Govt. College Talwara by telling themselves his name to take appropriate disciplinary action against him. The enquiry committee formed by the then Principal

suggested for transfer of Gurjinder Singh in its report. But being a Part Time Lecturer the disciplinary action against him took a lot of time. Meanwhile in this period he has also been terminated from the post of ANO of N.C.C. almost from one and half years he has not given the charge of N.C.C., ignored the orders of the Principal again and again and it appears that it has become his habit not to co-operate with college authority. The college authority has even formed a committee of senior professor to take the charge. But still before them he gave excuses and did not give the charge of N.C.C. He remained absent without any information instead of applying his leave he threatened the Principal. Thus, such type of indisciplined behavior affects the educational environment of the institution. Therefore, this committee comes to the conclusion that though he being purely temporary Part Time Lecturer. He still ignores the orders of the Principal did not do the assigned work, usually remains absent from the college and also create problems in giving the charge of NCC, then this must be taken into consideration by the Principal and higher authority whether he is fit for the post of lecturer in this college or not. Seeing his work and conduct this committee suggested disciplinary action against under Punjab Civil Services Rules (Rule-5 sub-rule-9.)”

Concededly, the copy of above enquiry report was not supplied to the petitioner before passing the impugned order.

A perusal of the extracted portion of report reveals that petitioner had become a constant trouble for the college authorities, but there is not even a whisper about the consideration of enquiry report dated 06.07.2021 while passing the impugned order.

(15) Once the respondents issued charge-sheet and constituted an enquiry committee, then they ought to have supplied the copy of enquiry report to the petitioner before passing the impugned dismissal order. It seems that the Principal as well as the Director just to teach a lesson to the petitioner preferred to dismiss him from service; but none of them realized that:-

*“An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword. Therefore, I unreservedly join in the Court's main conclusion, that the attempted dismissal of Vitarelli in September 1954 was abortive and of no validity because the procedure under Department of the Interior Order No. 2738 was invoked but not observed.” [Justice Frankfurter in **Vitarelli vs Seaton, 359 US;535 (1959)**]*

The above statement of law has consistently been followed by the Hon'ble Supreme Court and reference in this regard can be made to

the judgment of **Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab & others (1975) 3 SCC 503** and relevant part of para 9 reads as under:-

“It is interesting to notice that in the United States it is now well settled that an executive agency must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. Vide the judgment of Mr. Justice Frankfurter in Vitaralli v. Seton(1) This view is of course not based on the equality clause of the United States Constitution and it is evolved as a rule of administrative law. But the principle is the same, namely, that arbitrariness should be eliminated in State action.”

A bare perusal of the impugned dismissal order clearly reveals that it is not only stigmatic, rather of serious consequences as according to sub-rule 9, rule 5 of 1970 rules, the dismissal from service shall ordinarily be a disqualification for future employment under the Government and which reads as under:-

“Rule 5:-Penalties.

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

A fortiori, reference can also be made to the judgment of Hon'ble Supreme Court in **Mohammad Abdul Salam Khan Versus Sarfaraz Ahmad Khan and others (1975) 1 SCC 669**, to the effect that 'dismissal' is a disqualification for future employment and para 9 of the same reads as under:-

“9. The expressions ‘dismissal’ and ‘removal’ look alike for the laity but in law they have acquired technical meanings sanctified by long usage in Service Rules. In Khem Chand v. Union of India, this Court observed:

...the expressions ‘dismissed’, ‘removed’ and ‘reduced in rank’ are technical words taken from the service rules where they are used to denote the three major categories of punishment.

As has been rightly pointed out in a recent book, the words ‘dismissal’ and ‘removal’ have one distinction, viz., that the former disqualifies from future employment while the latter does not. Likewise, there is reference to this distinction in Shyamlal’s case where it was said :

The position, therefore, is that both under the rules and according to the last mentioned decision of the Judicial Committee (I.M. Lall’s case: AIR 1948 PC 121) there is no distinction between a dismissal and a removal except that the former disqualifies from future employment while the latter does not... and it may safely be taken, for reasons stated above, that.... removal and dismissal stand on the same footing except as to future employment. In this sense removal is but a species of dismissal.”

Rule 49 of the Civil Services (Classification, Control & Appeal) Rules, 1930 provides inter alia:-

Removal is termination of service which does not disqualify from future employment. Dismissal is removal from service which ordinarily disqualifies from future employment.

It follows that 'dismissal' is 'removal with a prohibition super-added'.

In view of the above, there is no hesitation to observe that dismissal of an employee by an authority lacking legitimate power to that effect shall violate Article 16 of the Constitution and that would be negation of the rule of law.

(16) There is no quarrel that the Principal had no power or authority either under the Rules of 1970 or otherwise with the approval of the Director to impose the punishment of dismissal against the petitioner.

Even the Director also did not have any such authority in law to empower the Principal for imposing the punishment of dismissal upon petitioner. Thus, neither the Principal, nor the Director had the legitimate authority to pass the impugned dismissal order; rather both the officers exercised power which was never vested with them under any provision of law. Consequently, the impugned dismissal order passed by the Principal even with the approval of the Director; but being without any legitimacy, is held to be null and void.

(17) Moreover, as already discussed, before passing the impugned dismissal order, the copy of enquiry report dated 06.07.2021 was never supplied to the petitioner; therefore, on that count also, the core principle of natural justice has been violated by the respondents.

(18) In view of the above, this Court is left with no option except to allow the writ petition with costs. Resultantly, the writ petition is allowed; the impugned order dated 07.07.2021 is set aside and the petitioner shall be entitled for all consequential benefits which he was getting on the date

of his dismissal. It is made clear that after seeking written response of the petitioner against enquiry report(R-1), the respondents would be at liberty to pass fresh order in accordance with law.

Having noticed the glaring nullity and in order to curtail the recurrence, the respondents are burdened with costs of Rs.50,000/- (Rupees fifty thousand). Costs be deposited in favour of the Director, PGIMER, Chandigarh within three months from receipt of certified copy of this order and same shall be utilized towards “Poor Patients Welfare Fund”. The State of Punjab would be at liberty to recover the costs from erring officer(s).

December 23, 2021
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(MAHABIR SINGH SINDHU)
JUDGE

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