

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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LPA-887-2021 (O&M)

Date of Decision: 17.12.2021

JS Virk @ Joga Singh

... Appellant

VS.

Principal Secretary to Government Haryana, Higher Education & Anr.

... Respondents

**Coram: Hon'ble Mr. Justice M.S. Ramachandra Rao
Hon'ble Mr. Justice Jasjit Singh Bedi**

Present: Mr. LK Gollen, Advocate for the appellant

Mr. Sharan Sethi, Addl. AG Haryana

M.S. Ramachandra Rao, J. (Oral)

Notice of motion.

Mr. Sharan Sethi, Addl. AG Haryana, accepts notice on behalf of the respondents/State.

This Letter Patents Appeal is filed under Clause X of the Letters Patent challenging the order dt. 02.08.2021 passed by the learned Single Judge of this Court in CWP-15442-2017.

The appellant herein was working as an Assistant Professor in English in Government College, Tohana, District Fatehabad.

Alleging that he was unauthorisedly absent for 476 days, disciplinary proceedings were initiated against him by serving a charge memo dt.29.1.2013.

In his defence submitted on 21.2.2013, the appellant contended that he was undergoing treatment in the Government Medical

College and Hospital, Sector 32, Chandigarh for severe depression, and that his absence was on account of the said ailment.

In the enquiry report Annexure P4 submitted on 28.1.2013, the Enquiry Officer held that the charge of unauthorized absence made against the appellant is proved.

Thereafter, a show cause notice Annexure P5 dt.3.3.2014/10.3.2014 was served upon the appellant along with the enquiry report whereby the disciplinary authority proposed stoppage of 5 annual increments with cumulative effect.

The appellant gave a reply Annexure P7 on 19.03.2014 taking the same stand as was taken by him before the enquiry officer.

Vide Annexure P7 order passed on 15.12.2014, the disciplinary authority rejected his pleas, and imposed on the appellant punishment of 5 annual increments with cumulative effect.

The Appellant then filed CWP-15442-2017 seeking quashing of the disciplinary proceedings against him.

In the impugned order dt. 02.08.2021 passed in the said Writ Petition, the learned Single Judge recorded a finding that the defence of the appellant to the charge-memo which was issued on 29.01.2013 was that the appellant was suffering from the mental depression and was undergoing treatment, but the disciplinary authority had not considered the reply dt. 19.03.2014 (P6) to the show cause notice dt. 03.03.2014 (P5) issued by the disciplinary authority.

But instead of remanding the matter back to the disciplinary authority by setting aside his order Annexure P-7 dt.15.12.2014 imposing punishment on the appellant, the learned Single Judge went on to consider

the proportionality of punishment of stoppage of 5 annual increments with cumulative effect imposed on the appellant. He held that the same shocks the conscience of the Court, and exercising this Court's extraordinary Writ Powers, he modified the order of punishment by reducing the punishment imposed on the appellant to 3 annual increments with cumulative effect. To grant the said relief to the appellant, the learned Single Judge placed reliance on the decision of the Apex Court in **Delhi Police through Commissioner of Police & Ors. Vs. Sat Narayan Kaushik (2016) 6 SCC 303**. In the said decision, the Supreme Court held that in exercise of the Writ jurisdiction, the High Court has the power to interfere with the quantum of punishment imposed by the disciplinary authority in appropriate cases taking into consideration the totality of the facts and circumstances of the case regarding the nature of charge leveled against the employee *vis-à-vis* the service record and the remaining tenure.

While reducing the quantum of punishment, the learned Single Judge noted that though the matter could be remanded back for passing of the fresh order by the disciplinary authority, since that would cause a delay in deciding the proceedings, he is exercising the extraordinary Writ powers and reducing the quantum of punishment from stoppage of 5 annual increments with cumulative effect to stoppage of 3 annual increments with cumulative effect.

Challenging the said order, this appeal has been filed.

It is the contention of the counsel for the appellant that the learned Single Judge ought to have remitted the matter back to the disciplinary authority having recorded a finding that the reply Annexure

P-6 dt. 19.03.2014 submitted by the appellant to the show cause notice Annexure P-5 dt. 03.08.2014 issued by the disciplinary authority was not considered by the disciplinary authority. Counsel for the appellant contends that had the matter been remitted back to the disciplinary authority for reconsideration, there was every possibility of disciplinary authority exonerating the appellant altogether and the appellant has been deprived of such opportunity.

Shri Sharan Sethi, learned State counsel contends that learned Single Judge had kept in mind the delay which would occur in deciding the proceedings if the matter had been remitted to the disciplinary authority and had rightly exercised the extraordinary Writ powers to modify the order of punishment by reducing the quantum of punishment i.e stoppage of 3 annual increments with cumulative effect. He contended that no case was made out for interfering with the order of the learned Single Judge.

We have noted the contentions of both sides.

It is not the case of the respondents that there was a proper consideration by the disciplinary authority of the reply Annexure P6 dt.19.3.2014 submitted by the appellant to the show cause notice Annexure P5 dt. 03.03.2014 issued by the disciplinary authority, and the finding of the learned Single Judge in that regard is not under challenge by them.

In these facts and circumstances, and having regard to the plea taken by the appellant, we are of the opinion that learned Single Judge ought to have remitted the matter back to the disciplinary authority by setting aside the order Annexure P7 dt. 15.12.2014 passed by the

disciplinary authority with a direction to reconsider the reply Annexure P-6 dt. 19.03.2014 of the appellant and the other material placed on record by the appellant in the disciplinary enquiry. Such a course of action might have enabled the appellant to make out a case for total exoneration before the disciplinary authority which the appellant has been deprived of.

In this view of the matter, the appeal is allowed; the order dt. 02.08.2021 passed by the learned Single Judge is set aside; the order dt. 15.12.2014 (P7) passed by the disciplinary authority imposing the punishment of stoppage of 5 annual increments with cumulative effect on the appellant is set aside; the matter is remitted back to the disciplinary authority (first respondent) to reconsider the reply (P6) of the appellant given to the show cause notice (P5) issued by the first respondent along with the evidence filed by the appellant regarding the treatment for his mental illness, and then a reasoned order shall be passed by the first respondent and communicated to the appellant within 2 months from the date of receipt of certified copy of this order.

No costs.

(M.S. Ramachandra Rao)
Judge

17.12.2021
Vvishal

(Jasjit Singh Bedi)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No