

228-1

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

**CWP-19461-2021 (O&M)
Date of decision : 29.11.2021**

Yogesh Kumar

.....Petitioner

Versus

State of Punjab & Others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Ranjit Singh Kalra, Advocate for the petitioner.

Ms. Ambika Bedi, AAG Punjab for respondent No.1.

Mr. H.S. Batth, Advocate for respondent Nos.2 to 4.

ALKA SARIN, J. (ORAL)

Heard in physical mode.

The present Civil Writ Petition under Article 226 of the Constitution of India has been filed for quashing the letter dated 14.09.2021 (Annexure P-4) whereby the services of the petitioner have been terminated for having been found to have been involved in commission of cheating, forgery, dishonesty, embezzlement of money, misappropriation of funds and fraud.

Brief facts relevant to the present *lis* are that the petitioner was appointed as Clerk with the respondent-University on contract basis vide order dated 17.09.2012 (Annexure P-1) through proper channel upon the recommendation of the Selection Committee with the approval of the Vice Chancellor. The term of the petitioner continued with the respondent-University from time to time and his services were continued on ad hoc

basis. The last extension on ad hoc basis was from 24.05.2021 to 23.11.2021. Vide impugned order dated 14.09.2021(Annexure P-4) the services of the petitioner were terminated. The said order reads as under:

“Keeping in view the recommendations made by the Committee constituted by the Vice-Chancellor to investigate the case of misappropriation of money with fake salary/fellowship bills in the University, as per the orders of the Vice-Chancellor, Sh. Yogesh Kumar, Clerk (Ad-hoc), R.T.I. Cell, was found to have been involved in commission of cheating, forgery, dishonesty, embezzlement of money, misappropriation of funds and fraud with the University by got depositing the money into his account through an improper transaction from the University’s account and as such, his services are terminated as per the terms of the letter of appointment issued to him.”

Learned counsel for the petitioner would contend that the services of the petitioner have been terminated by a stigmatic and non-speaking order. It is further the contention of learned counsel for the petitioner that recommendations of the Committee relied upon in the impugned order (Annexure P-4) have not seen the light of the day. It is further contended by learned counsel for the petitioner that the petitioner was neither called upon nor any enquiry was ever conducted with regard to his role before passing the impugned order of termination.

It is further the contention of learned counsel for the petitioner that in it’s written statement the respondent-University has relied upon a FIR

No.0155 dated 01.08.2021 under Sections 406, 409, 381, 419, 420, 465, 467, 468, 471, 201, 120B of the Indian Penal Code, 1860 registered at Police Station Urban Estate, District Patiala. However, it has also clearly been stated in the same written statement that the role of the petitioner in the said scam, forgery, embezzlement, fraud and cheating is being probed by the Police. According to counsel for the petitioner, at the time of termination of services of the petitioner and at the time of filing the writ petition, the petitioner was not named in the FIR.

Learned counsel for the petitioner has further pointed out that though in para 4 of the preliminary submissions in the written statement it has been mentioned that the petitioner had appeared before the Inquiry Committee and admitted in writing regarding his participation in the alleged scam, cheating, embezzlement and fraud, however, the fact is that he never appeared before any Inquiry Committee and in fact no Inquiry Committee was ever constituted. It has further been pointed out by learned counsel for the petitioner that even with the written statement no report of the Inquiry Committee has been appended. The reliance of the respondent-University on the alleged admission made by the petitioner i.e. Annexure R-2/2 is also neither here nor there inasmuch as it is specifically stated by the petitioner in the said statement that he had never received a single rupee at any point of time and that the matter may be got inquired into and his role be probed.

Learned counsel for the respondent-University has contended that the petitioner has now been nominated in the FIR. He is, however, not in a position to deny the fact that the petitioner has been nominated in the FIR only after the passing of the interim order dated 24.09.2021 by this Court. It has further been contended by learned counsel for the respondent-University

that there is a clear admission by the petitioner in his statement Annexure R-2/2 regarding his role. However, learned counsel for the respondent-University has not produced before this Court the alleged recommendations of the Committee referred to in the impugned termination order (Annexure P-4) nor any Inquiry Report nor any order passed by the Vice Chancellor. Learned counsel for the respondent-University has further contended that after the passing of the interim order dated 24.09.2021 by this Court the petitioner was asked to join the duties, however, he did not join the service and, in fact, has not done so till date.

In response to the arguments raised by learned counsel for the respondent-University, Mr. Kalra, learned counsel for the petitioner, has stated that after the passing of order dated 24.09.2021 by this Court a complaint was made by the respondent-University and the petitioner was nominated in the FIR and his application for anticipatory bail is pending and that is the reason why he could not join his services.

Heard.

In the present case the admitted facts are that vide impugned order dated 14.09.2021 (Annexure P-4) the services of the petitioner have been terminated. The said order is a stigmatic and non-speaking order inasmuch as it is stated therein that *“Sh. Yogesh Kumar, Clerk (Ad-hoc), R.T.I. Cell, was found to have been involved in commission of cheating, forgery, dishonesty, embezzlement of money, misappropriation of funds and fraud ...”*. The respondent-University has not placed on the record any Inquiry Report to which reference has been made in the written statement which could justify the stigmatic wording of the impugned termination order (Annexure P-4). The written statement is also silent about even the date of

the Inquiry Report or the member(s) of the Inquiry Committee. Further, while in the impugned order (Annexure P-4) it is stated that *“Keeping in view the recommendations made by the Committee constituted by the Vice-Chancellor to investigate the case of misappropriation of money with fake salary/fellowship bills in the University, as per the orders of the Vice-Chancellor ...”* no order passed by the Vice Chancellor has been brought on record. If there was a report by the Inquiry Committee and an order passed by the Vice Chancellor, the respondent-University ought to have placed the same on the record. The non-production of these material documents by the respondent-University casts a cloud on the stand taken by it. Further, the statement of the petitioner (Annexure R-2/2) relied upon by the respondent-University is dated 26.07.2021 while the FIR (Annexure R-2/1) lodged regarding the incident is dated 01.08.2021. There is no mention of this statement (Annexure R-2/2) in the FIR or the petitioner being named in the said FIR. The counsel for the respondent-University could not explain why the so-called admission statement by the petitioner was not mentioned in the FIR and why the petitioner was not named therein. Further, the so-called admission statement (Annexure R-2/2) also does not bear the signatures of any of the members of the Committee and is signed by the petitioner alone.

It is well settled that if a termination order is punitive and stigmatic in nature, even if the employee concerned is a temporary employee or holding the post on probation, his dismissal or removal would warrant a regular inquiry and full-fledged compliance of natural justice. Even during probation, termination of services by a stigmatic and non-speaking order cannot be sustained.

Learned counsel for the petitioner has relied upon the judgment of Hon'ble the Supreme Court in **“V.P. Ahuja Vs. State of Punjab”** [2000(3) SCC 239] wherein it has inter-alia been held as under:

“6. A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated in a punitive manner without complying with the principles of natural justice.

7. The affidavits filed by the parties before the High Court as also in this Court indicate the background in which the order, terminating the services of the appellant, came to be passed. Such an order which, on the face of it, is stigmatic, could not have been passed without holding a regular enquiry and giving an opportunity of hearing to the appellant.

8. The entire case law with respect to a "probationer" was reviewed by this Court in a recent decision in Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & others, (1999)3 SCC 60 : AIR 1999 Supreme Court 983 : JT 1999(1) SC 396 : 1999(1) SCT 861 (SC). This decision fully covers the instant case as well, particularly as in this case, the order impugned is stigmatic on the face of it”

Further, reliance has been placed upon the judgment of Hon'ble Supreme Court in **“Nehru Yuva Kendra Sangathan Vs. Mehbub Alam Laskar”** [2008(2) SCC 479] wherein it has been held as under:-

“11. Respondent was appointed on a temporary basis. He was put on probation. Indisputably, the period of probation was required to be completed upon rendition of satisfactory service. Only in the event of unsatisfactory performance by the employee, the termination of probation would have been held to be justified. It is, however, well-known that when the foundation for such an order is not the unsatisfactory performance on the part of the employee but overt acts amounting to misconduct, an opportunity of hearing to the concerned employee is imperative. In other words, if the employee is found to have committed a misconduct, although an order terminating probation would appear to be innocuous on its face, the same would be vitiated, if in effect and substance it is found to be stigmatic in nature.”

Learned counsel for the petitioner has also relied upon the judgment of this Court in **“Sunita Rani Vs. State of Haryana and others” [2011(1) SCT 525]** wherein it has been held as under:

“This Court cannot ignore the fact that it was due to the publication of report in the newspaper that a preliminary enquiry was initiated against the petitioner and thereafter, on the basis of that enquiry, her services were dispensed with. Therefore, the services of the petitioner have not been dispensed with because of unsatisfactory performance on her part but due to the

overt acts, which amounted to misconduct. If that is so, it was imperative for the employer to grant an opportunity of hearing to the petitioner. Therefore, the order of termination of services of the petitioner (Annexure P-10) may look innoxious, but the same, for its effect and substance, is stigmatic in nature. The order (Annexure P-10) was passed in compliance of the order (Annexure P-9). Thus, an opportunity ought to have been granted to the petitioner to show cause as to whether she had inflicted the alleged punishment upon the student or not.”

Further, reliance has been placed upon the judgment of this Court in **“Sukhdev Singh Vs. Shiromani Gurdwara Parbandhak Committee” [2017(1) SCT 476]** wherein it has been held as under:

“16. It is also well settled that no adverse order can be passed without granting any opportunity of hearing in consonance with principles of natural justice and rule of audi alteram partem. No person should be judged without hearing and atleast reasonable and adequate opportunity is required to be given to the delinquent employee.”

In view of the facts of the present case and the law laid down, this Court has no hesitation in holding that the impugned order of termination dated 14.09.2021 (Annexure P-4) is a stigmatic order and could not have been passed without following the principles of natural justice.

Though much has been said about the so called recommendations of the

Committee and the Inquiry Report, neither of them have been produced till date before this Court. Even today the learned counsel for the respondent-University was not in a position to make a statement regarding the existence of any such Committee recommendations or Inquiry Report qua the petitioner. From the record produced before this Court and the attendant circumstances of the present case it is clear that the real foundation for the order of termination of the petitioner was the alleged act of misconduct and therefore the impugned termination order would amount to termination of service by way of punishment and in absence of any enquiry the same is liable to be struck down.

Accordingly, the present writ petition is allowed and the impugned termination order dated 14.09.2021 (Annexure P-4) is hereby quashed. Consequential benefits, if found due, shall be released to the petitioner in accordance with law.

Needless to say that the respondent-University would always be at liberty to pass a fresh order, in accordance with law, after complying with the principles of natural justice. Nothing stated in this order shall have any bearing on the criminal investigations being conducted in FIR No.0155 dated 01.08.2021.

Since the main case has been disposed off, the pending Civil Miscellaneous Application(s), if any, also stand disposed off.

29.11.2021
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO