

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

201

CWP No.15442 of 2017

Decided on : 02.08.2021

J.S. Virk @ Joga Singh

... Petitioner

Versus

Principal Secretary to Government Haryana, Higher Education Department
and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Deepak Kumar Gollen, Advocate for the petitioner.

Mr. Harish Kumar Nain, AAG, Haryana.

(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

The petitioner in the present writ petition filed under Articles 226/227 of the Constitution of India seeks quashing of the disciplinary proceedings initiated against him and which ultimately led to an inquiry being conducted against him on account of absence from duty while working as a Assistant Professor in English in Government College, Tohana, District Fatehabad. The period of absence for 476 days pertains from the year 2005 to 2011.

The defence before the Inquiry Officer by the petitioner and as per the reply dated 21.02.2013 was that he was undergoing treatment in the Medical College & Hospital, Sector-32, Chandigarh, on account of severe depression. The statement as such was also recorded by the Inquiry Officer, since the petitioner himself had admitted his absence on account of the said ailment. Thus, the charges levelled have been held proved on 28.10.2013 (Annexure P-4). The show cause notice as such was served upon the petitioner alongwith inquiry report whereby the punishing authority proposed the stoppage of five annual increments with cumulative effect on 03.03.2014 (Annexure P-5).

Reply was filed on 19.03.2014 (Annexure P-6) wherein the same stand was taken and the reason given was that he was under medical treatment as the petitioner was suffering from depression. The relevant part of the order dated 15.12.2014 (Annexure P-7) passed by the punishing authority reads as under:-

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“After careful consideration of the inquiry report and facts of the case, a show cause notice dated 03.03.2014/10.03.2014 was issued to the delinquent in which it was proposed that why a penalty of stoppage of five annual increments with cumulative effect should not be imposed on him. His reply 19.03.2014 has no material facts and he also requested for a personal hearing which was duly granted to him on 24.06.2014. At the time of personal hearing, he reiterated his reply dated 19.03.2014. His reply has been duly considered by me and after going through his reply alongwith the relevant record, I am of the opinion that it will meet the ends of justice if penalty of stoppage of five annual increments with cumulative effect is imposed upon him. Haryana Public Service Commission has also consented to the proposed punishment vide Memo No.DIS/25/2014/9192 dated 29.09.2014.

I order accordingly.”

It is apparent that the punishing authority has not even considered the reply as such submitted by the petitioner. Counsel has also pointed out from the paper-book that information received under the Right to Information Act, 2005 showed that the petitioner was under treatment from 04.02.2005 to 12.12.2011 and was stated to be suffering from nervous illness and was also taking treatment from the Department of Psychiatry, GMCH, Sector-32, Chandigarh, and last follow up was on 12.12.2011.

The only defence which has been raised by the State in its written statement is that the petitioner is making a bad precedent for the other staff members and no material has been placed on record that he is suffering from said illness. It is further submitted that a Memorial was also presented to the Governor of Haryana on 01.12.2016 which had been rejected on 15.06.2017 (Annexure R-6) being time-barred. It is further the case that no evidence had been placed on record that he was suffering from mental depression.

The said defence is without any basis. The Enquiry Officer himself, while examining the applications for leave which had been written by the petitioner, in the departmental proceedings, came to the conclusion that the certificate of illness from the GMCH had also been presented before him and that was the defence of the petitioner and had held that the charges are proved.

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Relevant portion of the report reads as under:

“Sh.J.S.Virk in his statement and his reply dated 21.02.2013 has himself admitted that he remained absent for a long period due to which the studies of the students also suffered. The reason forwarded by Sh. J.S.Virk for his absence were his family problems mental problem. He presented the certificate of his illness from Govt.Medical College and Hospital, Sector-32. The attendance register was also perused which clarifies that the delinquent employee remained absent on various dates which are depicted in the statement of charges. He has also admitted his absence in his cross examination and he told the reason of the same was his mental illness.”

The defence to the initial charge-sheet which was issued on 29.01.2013 (Annexure P-2) was also replied on 27.02.2013 (Annexure P-3) on the same line that he was suffering from mental depression and was undergoing treatment. Therefore, it does not lie in the mouth of the State to submit that no material evidence was produced by the petitioner and therefore the order of imposing penalty can be termed to be a non-speaking one, to that extent.

The punishment of stoppage of 5 years annual increments, with cumulative effect, also shocks the conscious of this Court, keeping in view the background when the employee is suffering from mental depression and is faced with an employer who is insensitive to the health of its employee. It is not a case where there is a misconduct on his part on account of some financial irregularities or misbehaviour of moral turpitude whereby the jurisdiction of this Court would be limited in interfering with the quantum of punishment. The question of proportionality of sentence imposed is also to be kept in mind keeping in view the mental set-up of the delinquent employee and the type of duty to be performed by him and similar relevant circumstances which goes into the decision making process.

It is not disputed that petitioner has been working as Assistant Professor since the year 2003 and it was only on account of the treatment which he was taking from the hospital the absence had occurred. It is a fact

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that his service record is stated to be fair otherwise and the stoppage of 5 increments would adversely affect his monetary benefits which he is receiving and thus, keeping the charges which are not that grave, this Court feels that it is a fit case for interference in the quantum of punishment.

In similar circumstances, the Apex Court in **Delhi Police through Commissioner of Police & others Vs. Sat Narayan Kaushik (2016) 6 SCC 303**, upheld the order of the Division Bench whereby the order of dismissal was substituted by punishment of compulsory retirement, keeping in view the fact that the petitioner had served for 29 years with a unblemished career. The said punishment was substituted inspite of the fact that the police official had slapped his superior while on duty. The said order was upheld by the Apex Court by holding that in exercise of writ jurisdiction, the High Court has the power to interfere with the quantum of punishment imposed by the punishing authority, in appropriate cases, taking into consideration the totality of the facts and circumstances of the case regarding the nature of charged levelled against the employee vis-a-vis the service record and the remaining tenure.

In such circumstances, this Court is of the opinion that quantum of punishment which has been imposed upon the petitioner needs to be interfered with as it is on the excessive side. However, instead of remanding the matter for passing a fresh order, which would cause inevitable delay in deciding the proceedings, resultantly, this Court exercises its extraordinary writ powers to modify the order of punishment by imposing stoppage of 3 annual increments with cumulative effect.

With the abovesaid observations, the present writ petition stands disposed of.

**(G.S. SANDHAWALIA)
JUDGE**

August 02, 2021
Naveen

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No