

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

Civil Writ Petition No. 4365 of 2019

Date of Decision: April 05 , 2022.

Shamsher Singh

..... PETITIONER (s)

Versus

State of Haryana and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sunil Kumar Goswami, Advocate for
Mr. Arvind Chauhan, Advocate
for the petitioner.

Dr. Kiran Pal Singh, AAG, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This writ petition has been filed for quashing of order dated 28.06.2016 (Annexure P3) passed by respondent No.3 whereby services of the petitioner have been terminated.

Briefly stated, petitioner was appointed as Refrigeration and Air Conditioning (R&AC) Instructor on contract basis in the Government Industrial Training Institute, Kalanaur, Rohtak on 25.04.2013. His services were terminated vide order dated 29.05.2013 (Annexure P1). Petitioner filed CWP No.17794 of 2013 challenging his termination from service. During pendency of the said writ petition, he was reinstated and said writ petition was disposed of

on 09.02.2015 (Annexure P2) as infructuous. It is stated that the respondent-authorities were, however, not happy with the reinstatement of the petitioner and he was again dismissed from service vide impugned order dated 28.06.2016 (Annexure P3). It is mentioned in the impugned order that students submitted a written complaint against the petitioner to the effect that the petitioner was harassing the students and carrying out cutting in the attendance register. Enquiry was conducted into the matter in which the petitioner was found to be guilty. Stern warning was given to the petitioner asking him to bring about improvement in his behaviour. There is then a reference to subsequent communication sent by the Institute to the petitioner with regard to misbehaviour by him and no effort on the part of the petitioner to improve his conduct. It is further mentioned that attendance of 10 out of 13 MCEA trade students was shortened by the petitioner in a deliberate fashion. Reference is also made to complaint dated 24.05.2016 submitted by the students of MCEA to the effect that the petitioner had hit the students with a brick. Explanation given by the petitioner was not found to be adequate or acceptable. Accordingly petitioner's services were terminated by cancelling his contract.

Present writ petition has been filed challenging the said order dated 28.06.2016 terminating his services on the ground that the same is absolutely illegal, whimsical, arbitrary and in complete violation of the principles of natural justice. Learned counsel for the petitioner argues that proper opportunity of hearing was not afforded to the petitioner before passing the impugned order. Moreover, a stern warning had already been given to the petitioner, therefore, there was no occasion for passing of the impugned order

terminating the petitioner's services on the same allegations. It is submitted that the previous complaint on which the stern warning was given to the petitioner had been moved by the Principal, therefore, termination order should not have been passed by the Principal himself.

Written statement has been filed on behalf of the respondents wherein it is alleged that the petitioner has concealed material facts from the Court inasmuch as it has not even been revealed that appeal preferred by the petitioner challenging termination of his services was dismissed by the Director, Industrial Training Department, Haryana vide order dated 12.08.2016, a copy of which is attached as Annexure R4 with the written statement. Petitioner's services, it is submitted, were terminated keeping in view his misconduct and misbehaviour. Proper opportunity of hearing was afforded to him, which has been actively concealed in the writ petition. Representation dated 22.03.2018 (Annexure P10) and legal notice dated 07.09.2018 (Annexure P11) are stated to have been submitted by the petitioner, which are clearly unwarranted keeping in view dismissal of his appeal/representation vide order dated 12.08.2016, Annexure R4. It is submitted that the said representation and legal notice appear to have been submitted with ulterior motive after a delay of about two years and the present writ petition was thereafter filed on 31.03.2019. It is, thus, prayed that this writ petition be dismissed.

I have heard learned counsel for the parties and have gone through the file with their assistance.

It is a matter of record that petitioner was appointed on the post of Refrigeration and Air Conditioning (R&AC) Instructor in the Government

Industrial Training Institute, Kalanaur on contractual basis. Petitioner's services were terminated on 29.05.2013 on the ground that his experience certificate was not in the relevant trade for two years. He was reinstated in service after an inquiry was conducted and he was found eligible to be appointed on the said post. Arrears of salary were also released. It is borne out from the file that written complaint was submitted against the petitioner regarding his misbehaviour. On a complaint regarding bad behaviour of the petitioner, besides, overwriting and cutting in the attendance register, an inquiry was conducted by Mr. Sumit Sehrawat, Joint Director, Govt. Institute of Training of Trainers in the presence of the persons, who were duly mentioned in the inquiry report, Annexure R2 attached with the written statement filed on behalf of the respondents. It was concluded by the Inquiry Officer that petitioner had carried out cutting/overwriting in the column of the students, as mentioned in the complaint, at his own level and the explanation put-forth by the petitioner, it is observed, reflects that the petitioner did not take his work seriously and is not conscious and mature in his work. Allegations against the petitioner were found to be proved whereupon a stern warning was issued by the Principal of the Institute.

Subsequent thereto, arose the question of petitioner's misbehaviour with the principal, besides, students of MCEA gave a written complaint against him on 24.05.2016 that the petitioner had hit them with a brick. An explanation was called for from the petitioner, wherein he explained that the brick went towards the students by bouncing off. It was found that the petitioner was becoming habitual in repeating irregularities again and again and was not

keeping good behaviour with the students of the Institute/trade. In this view of the matter, services of the petitioner were terminated by cancelling his agreement vide order dated 28.06.2016. Thereafter the petitioner filed a representation/appeal dated 29.06.2016. It is specifically mentioned in the written statement that the Director personally heard the petitioner and rejected the appeal being devoid of merit. A copy of order dated 12.08.2016 passed by the Director, Industrial Training Department is attached as Annexure R4 with the written statement.

Perusal of order dated 12.08.2016 reveals that a detailed description of misconduct of the petitioner has been narrated and finding no merit in the appeal, same was rejected. Though learned counsel for the petitioner sought to argue in Court today that the petitioner was not even aware of passing of this order, the same seems to be a little farfetched inasmuch as despite the written statement having been filed in November, 2019, there is no replication on record. The averments therein have not been controverted in any manner. Endorsement of order dated 12.08.2016 reveals that copy thereof was duly forwarded to the petitioner for information.

The events subsequent to the issuance of warning given to the petitioner on 01.12.2015 are clearly and succinctly mentioned in order dated 12.08.2016. There is a clear reference to the notice(s) given to the petitioner about improving his habits as well as the reply(ies) thereto by the petitioner. Petitioner was also issued a warning vide communication dated 29.04.2016. The explanation, about the students being hit with the brick to the effect that it must sprung out on its own and hit the students, was found to be unjustified as well.

In the given facts and circumstances, there appear to be no infirmities in the

action taken by the respondent – authorities.

It is relevant to note, at this stage, that the petitioner was admittedly appointed on contractual basis, therefore, the argument raised on behalf of the petitioner that a full-fledged departmental inquiry should have been conducted before terminating petitioner's services, is not tenable in the given factual matrix especially, in the absence of any particular provision of law calling for the same being pointed out. A perusal of the file reveals that sufficient opportunity of hearing was afforded to the petitioner. He was given an opportunity to explain his position and it is only on the explanation not being found sufficient/adequate that his services were dispensed with.

Furthermore, it is to be noted that there is no explanation forthcoming for ominous silence on the part of the petitioner since the passing of impugned order dated 28.06.2016 even if the petitioner's version is to be believed that he was not aware of order dated 12.08.2016 passed by the Director, Industrial Training Department, Haryana dismissing his appeal/representation. It is a settled position that delay is antithetical to the prayer for the relief as claimed.

Last but not the least, another argument raised by learned counsel for the petitioner that as the previous complaint on which a stern warning was given to the petitioner had been initiated by the Principal, termination order should not have been passed by the Principal himself, is also devoid of any merit. This is so, for the reason that it is on the basis of complaint received against the petitioner forwarded by the Principal that a Committee had been constituted to look into the allegations. Overwriting and cutting etc. in the

attendance register of the students as per wish was found. Subsequently, behaviour of the petitioner with the students of the class/trade was again not found to be appropriate. Written complaint given by the students was taken into consideration and it is in this view of the matter that the Principal sought to take action. In such a situation, there can be no estoppel against the Principal of the Institute to have passed the impugned order.

Learned counsel for the petitioner is unable to point out, at this stage, any provision of law which bars the course adopted by the respondent-official in terminating the services of the petitioner.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, I do not find any ground to interfere in the impugned order dated 28.06.2016 (Annexure P3) passed by respondent No.3.

Writ petition is, accordingly, dismissed with no order as to cost.

April 05 , 2022.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No