

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

CWP No. 22002 of 2010 (O&M)

Date of Decision: 25.08.2022

Gurdial Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Manu K. Bhandari, Advocate
for the petitioner.

Mr. R.K. Kapoor, Additional Advocate General, Punjab

MAHABIR SINGH SINDHU, J.

1. Present writ petition has been filed under Article 226 of the Constitution for quashing the impugned order dated 06.06.2005, whereby minor punishment for stoppage of two increments (without cumulative effect) was imposed upon the petitioner; further prayer is to quash the order dated 28.11.2005 & 13.07.2010, whereby statutory appeal as well as Memorial preferred by petitioner against the aforesaid order were rejected; also prayed that respondents be directed to restore above increments of the petitioner and re-fix his pay alongwith all consequential benefits.

2. Facts are not in dispute.

3. It transpires that vide office order dated 30.07.2004, petitioner was deputed on temporary basis as Personal Assistant with the then Minister of Animal Husbandry, Fisheries, Dairy Development & Tourism, Govt. of Punjab (for short "the Minister") w.e.f. 02.08.2004 to 31.08.2004. He was asked to give his explanation, vide memo dated 10.09.2004, for the allegations of absence from duty for the period 26.08.2004 to 31.08.2004.

4. In response to the above Memo, petitioner submitted his reply dated 14.09.2004 *inter alia* raising the following pleas:-

- (i) Mother of the petitioner had been undergoing treatment for cancer and due to her sudden deteriorating health condition, she was taken to hospital on 26.08.2004; therefore, he could not attend the office.
- (ii) the petitioner had informed through telephone to one Junior Assistant Satinder Singh in the office that he is not able to attend the duties for the aforesaid reason.
- (iii) On 27.08.2004, petitioner had attended the office throughout the day, but the Hon'ble Minister was on tour.
- (iv) 28.08.2004 & 29.08.2004 were gazetted holidays being Saturday & Sunday respectively.
- (v) petitioner had sent casual leave for 30.08.2004 & 31.08.2004 from his home.
- (vi) he was performing duties on a responsible post and had never taken leave unnecessarily.
- (vii) he was not absent from duty; rather was on casual leave for three days as his mother had fallen ill.

5. Aforesaid explanation of petitioner was duly considered, but the competent authority did not feel satisfied. As a result thereof, he was issued charge-sheet dated 10.12.2004 for attracting minor penalty under Rule 10 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short “Rules of 1970”).

6. In order to controvert the charges, petitioner submitted written response dated 23.12.2004, while reiterating his earlier stand; but the punishing authority after consideration of the same, did not feel convinced and that resulted into passing of the impugned punishment order dated 06.06.2005.

7. Aggrieved against the aforesaid order, petitioner preferred statutory appeal but the same was rejected by the Appellate Authority. Thereafter he submitted a Memorial before the Governor of Punjab, but did not find favour. Hence, present writ petition.

CONTENTIONS

8. **ON BEHALF OF THE PETITIONER:**

(i) that mother of petitioner was suffering from cancer.

Her health condition deteriorated on 26.08.2004 and due to that reason, petitioner had to take his mother for medical check-up in Behgal Cancer Centre, Mohali; thus he was not able to attend the office. Also contended that information in this regard was duly given on telephone to one Sh. Satinder Singh, Junior Assistant in the office. Further contended that on 27.08.2004, petitioner

remained on duty throughout the day; whereas 28.08.2004 & 29.08.2004 were gazetted holidays being Saturday & Sunday, respectively. Also submitted that for 30.08.2004 & 31.08.2004, the petitioner sent request for casual leave from home. Thus, by no stretch of imagination, it could be said that charge of absence from duty is proved against the petitioner.

- (ii) neither the punishing authority nor appellate authority or even while rejecting his Memorial, petitioner was afforded proper opportunity of hearing; thus the order(s) impugned are in violation of the procedure prescribed under Rules of 1970.
- (iii) Abovesaid Satinder Singh was not examined by the respondents; thus a great prejudice has been caused to the defence of petitioner.
- (iv) While making reference to information received under Right to Information Act, 2005, learned counsel for the petitioner contended that the Minister remained on tour from 02.08.2004 to 02.09.2004, therefore, there was no occasion to comment regarding the working of petitioner to the effect that he is not taking interest in his official work.

(v) request of petitioner for seeking leave was never rejected by the competent authority; thus it can be safely presumed that leave was duly sanctioned. Hence petitioner cannot be held liable for absence from duty.

(vi) punishment imposed upon the petitioner is too harsh and disproportionate to the allegations levelled against him.

(vii) the orders impugned are perverse and passed under the influence of Minister; thus not legally sustainable.

(viii) on completion of 4/9 years of service, petitioner was entitled for placement in higher pay scale w.e.f. 01.11.2006, but due to the currency of punishment, the benefit was delayed uptill 01.03.2008; thus he suffered financial losses.

9. On the other hand, learned State Counsel while opposing the prayer of petitioner, submitted that impugned orders have been passed after affording proper opportunity of hearing to the petitioner and the procedure prescribed under the Rules of 1970 was duly followed. Learned State Counsel further contended that petitioner was not an ordinary employee; rather he was working as a Personal Assistant with the Minister, having four portfolios, still he did not bother to attend his duties on lame excuses; hence deserves no leniency. Again submitted that magnitude of carelessness on the part of petitioner can be well imagined in view of the fact that the

Minister himself forwarded a written note for disciplinary action against him. Further submitted that mere asking does not mean that leave had been sanctioned in favour of the petitioner; rather it is the discretion of the competent authority to grant leave or refuse the same. Lastly submitted that jurisdiction under Article 226 of the Constitution is not like an appeal and as such, it is not appropriate for this Court to interfere with the findings of facts recorded in the impugned order(s).

10. Heard learned counsel for parties and perused the records.

11. Before proceeding further, it is necessary to re-capitulate the Rules 3.10 & 8.15 of the Punjab Civil Services Rules (Vol. 1 Part-1) (In short CSR), which deals with the subject matter and same are read as under:-

“ 3.10 Unless in any case it be otherwise distinctly provided, the whole time of a Government employee is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority, without claim or additional remuneration, whether the services required of him are such as would ordinarily be remunerated from Union or State revenues, or from the revenues of a local fund.”

8.15 Leave cannot be claimed as a matter of right. When the exigencies of the public services so require, discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it.

The nature of leave due and applied for by a Government employee cannot be altered at the option of the sanctioning authority. So, while it is open to the sanctioning authority to refuse or revoke leave due and applied for under this rule it is not open to him to alter the nature of such leave.”

A perusal of Rule 3.10 (*ibid*) *inter alia* envisages that *the whole time of a Government employee is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority.*

Still further, Rule 8.15 (*ibid*) *inter alia* says that *leave cannot be claimed as a matter of right and when the exigencies of the public services so require, discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it.*

12. In the present case, it is claimed on behalf of petitioner that his mother was undergoing treatment. Due to sudden health problem, petitioner had to go for her medical check-up on 26.08.2004 in Behgal Cancer Centre, Mohali and that was the precise reason he could not attend office on that day. Aforesaid plea of the petitioner was duly considered by the punishing authority, however, same was found to be unbelievable. For reference, the observation made in para-5 of the impugned order dated 06.06.2005 (true English translation) would be as under:-

“ 5. Thereafter an opportunity of personal hearing was granted to Shri Gurdial Singh, Personal Assistant and he came present before the undersigned on 27.5.2005 at 10.30 A.M. for the personal hearing. During the course of personal hearing he reiterated about the illness of his mother. From perusal of the copy of the prescription record from Behgal Cancer Centre, SCF 11, Phase-V, Mohali submitted by him, it has been found that he did not take his mother for the check-up from 26.8.2004 to 31.8.2004. As per the entries made in this card, she was taken for the check-up in the aforementioned Centre on 08.08.2004 and thereafter on 26.11.2004, therefore, the explanation submitted by Shri Gurdial Singh has not been found to be satisfactory. ”

A bare perusal of the above extract clearly reveals that petitioner had never gone to Behgal Cancer Centre, Mohali for medical check-up of his mother from 26.08.2004 to 31.08.2004; rather he tried to project a concocted story just for raising lame defence. Thus, present writ petition is liable to be dismissed only on this ground.

13. The contention raised on behalf of the petitioner that he remained present in the office on 27.08.2004, is only self-serving statement and there is no material on record to substantiate the same. Again the plea that 28.08.2004 & 29.08.2004 were gazetted holidays being Saturday & Sunday, respectively, is not acceptable for the reasons that petitioner was deputed as Personal Assistant with the Minister, having four portfolios and as such, he cannot avoid his responsibilities, while holding such an important assignment, without permission of the concerned Minister. Again the contention that petitioner sent request for casual leave on 30.08.2004 & 31.08.2004 from home, is also not acceptable for the reason that there is no material available on record to prove such a plea. Moreover, as already discussed, mere sending of application by the petitioner from home, cannot be construed that he was granted casual leave for 30.08.2004 & 31.08.2004, till the sanction is granted by the competent authority to that effect.

14. Concededly, petitioner was issued a show cause notice as well as charge-sheet for absence from duty and showing indiscipline being irresponsible employee for attracting minor punishment under Rule 10 of the Rules of 1970. It is also not in dispute that petitioner submitted his reply to the charge-sheet and he was granted the opportunity of personal hearing;

thus, there was due compliance of the procedure prescribed under Rules of 1970 as well as principles of natural justice.

15. Even the Appellate Authority also granted proper opportunity of hearing to the petitioner and while agreeing with the findings recorded by the punishing authority rejected the appeal, observing as under:-

“it is hard to believe regarding the version of the sending leave by the appellant for the relevant period particularly when the Animal Husbandry Minister had submitted his clear report regarding his absence from duty from 26.08.2004 to 31.08.2004 ”.

It was further observed by the Appellate Authority that :-

“ no documentary evidence submitted by him before the punishing authority supports his version and the punishing authority has given a right conclusion in his order.”

16. Although, while taking somersault, a plea was raised on behalf of petitioner that the Minister was on tour from 02.08.2004 to 02.09.2004, however, the same is not helpful in view of the fact that petitioner failed to prove his basic plea for not attending the office on 26.08.2004, while pleading serious illness of his mother and which was found to be unbelievable by the punishing authority.

17. Again, learned counsel for the petitioner tried to make a faint attempt on the premise that impugned orders were passed under the influence of Minister, but same is not acceptable in view of the fact that he remained unsuccessful even before His Excellency, the Governor of Punjab.

Thus, the plea is totally unfounded.

18. The contention on behalf of the petitioner that on completion of 4/9 years of service, he was entitled for placement in higher pay scale w.e.f. 01.11.2006, and it was delayed uptill 01.03.2008; is also not helpful in view of the fact that during the currency of punishment for stoppage of two increments without cumulative effect, he had no right to get the higher placement of pay scale under the relevant Rules.

19. So far as adequacy of punishment is concerned, the same is neither harsh nor disproportionate to the allegation levelled against the petitioner.

20. In view of the facts and circumstances discussed hereinabove, this Court does not find any ground to interfere with the impugned orders while invoking jurisdiction under Article 226 of the Constitution. As a result thereof, there is no option except to dismiss the petition.

Ordered accordingly.

Pending application(s), if any, shall also stand disposed off.

August 25, 2022
'geeta/dk kamra'

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>