

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

915

CWP-16031-2020

Date of Decision :18.11.2022

Gulab Singh

...Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.S. Mamli, Advocate for the petitioner.

Mr. R.S. Budhwar, Addl. A.G. Haryana.

* * *

Harsimran Singh Sethi, J. (Oral)

As per the facts mentioned in the present petition, the petitioner was appointed as S.S. Master with the respondent-Education department on 04.11.1993 and thereafter, posts of Headmaster were advertised and as the petitioner duly applied for the same, he was selected and recruited as such by way of direct recruitment on 06.02.2008. While working on the said post, the petitioner was issued a charge sheet on 30.04.2010 wherein, certain allegations were levelled against him. The petitioner duly replied to the said charge sheet controverting the said allegations but not being satisfied with the reply filed by the petitioner, the respondents initiated enquiry proceedings by appointing an Enquiry Officer against the petitioner.

The Enquiry Officer submitted his report, copy of which was forwarded to the petitioner for his comments vide letter dated 12.01.2015

(Annexure P/3) Petitioner duly replied to the findings of the Enquiry

Officer giving his objections by way of reply dated 27.02.2015 (Annexure P/4) but before any order could be passed by the respondents, charge sheet dated 30.04.2010, which was challenged by the petitioner before the Civil Court, was set aside by the Civil Court vide judgment dated 14.10.2015 (Annexure P/5).

The order passed by the Civil Court was challenged by the department concerned by way of filing an appeal and in the appeal, the judgment of the Civil Court was set aside by the appellate Court vide order dated 29.11.2018 (Annexure P/8) holding that the charge sheet issued to the petitioner was perfectly valid and legal. The petitioner impugned the judgment of the lower appellate Court by filing a regular second appeal before this Court but the said regular second appeal was also dismissed meaning thereby, that charge sheet issued to the petitioner in pursuance to the departmental proceedings being held against the petitioner, was found to be valid.

The appointing authority after considering all the facts on record, passed order dated 09.09.2020 having endorsement dated 15.09.2020 (Annexure P/10) dismissing the petitioner from service. The said order of dismissal is under challenge in the present petition.

First contention of the petitioner in respect to challenge to the order dated 09.09.2020 (Annexure P/10) dismissing him from service is that the said order has imposed the punishment, which is not commensurate to the charges alleged and proved against him during the enquiry. Further contention of the petitioner is that there was no sufficient material on record to prove the allegations as done by the Enquiry Officer hence, the report proving allegations against the petitioner by the Enquiry Officer, which

report was accepted by the respondents, is not based upon the evidence, which has come on record and therefore, punishment imposed upon the petitioner is arbitrary and illegal and without any application of mind.

After notice of motion, the respondents have filed reply, wherein, the respondents have submitted that the petitioner is habitual offender as on four occasions the petitioner has remained absent. It has further been mentioned in the reply that the petitioner participated in the election rally of a candidate on 03.12.2008 and further that certain scholarship amount which was required to be disbursed within the period of 15 days on receipt of the same, was delayed by 40 days. Hence, as the said allegations were proved against the petitioner, the petitioner has been imposed with punishment as required under the law and therefore, no grievance can be made.

I have heard learned counsel for the parties and have gone through the record.

The undisputed facts are that the petitioner upto the date of passing of the impugned order had 27 years of service to his credit and was fully eligible to get the pensionary benefits. Further, nothing has come on record to controvert the statement of the petitioner that during the entire service career except the charge sheet in question, no other charge sheet or show cause notice was issued to him much less any punishment was imposed upon the petitioner. Keeping in view the said fact, this Court is required to adjudicate as to whether allegations alleged and proved on the basis of the evidence which had already come on record to prove those allegations coupled with the service career of the petitioner, punishment imposed upon the petitioner is commensurate to the charges alleged and

proved against him or not.

The allegations which have been alleged against the petitioner are that he remained absent on four different occasions for one day each. Learned counsel for the respondents has conceded the fact that there is nothing to controvert that apart from those four days, the petitioner has ever remained absent from duty. Even for the said four dates, it has been mentioned that though, an application was sent by the petitioner but the same was not approved by the authority concerned and the petitioner availed the casual leave for the 04 days in question. Another allegation is that the petitioner was seen on stage in a rally being conducted by a political personality and that the petitioner delayed the release of certain grant of scholarship by 40 days. Though, said allegations have been proved by the Enquiry Officer but enquiry report is silent about the evidence which had come on record to prove those allegations and also with regard to the description of the witnesses as recorded in the enquiry report who tendered their statements so as to hold the petitioner guilty of the charges. The enquiry Officer's report is totally silent in respect of the recording of the evidence so as to prove the charges.

As per the judgment of Hon'ble Supreme Court of India in **Civil Appeal No.1078-1079 of 2013** titled as **A. Savariar vs. Secretary, Tamil Nadu Public Service Commission and another** decided on 15.02.2013, the report of the Enquiry Officer must make mention of the evidence which have come on record and same should have been relied upon while recording findings and in the absence of any such recording of evidence or reliance being placed upon the evidence which has come on record to substantiate findings, the enquiry report cannot be treated as valid enquiry

report. Relevant paragraphs of the judgment are as under:-

“15 On behalf of the Commission oral evidence is said to have been adduced to substantiate the allegations leveled against the appellant but neither the report of the Enquiry Officer nor the orders passed by the Controller of Examinations or the Chairman of the Commission make a mention of that evidence and none of them relied upon the same for recording a finding that the appellant had arrogated to himself the powers of his superiors and unauthorisedly appointed Invigilators. As a matter of fact, Enquiry Officer simply referred to the statement of the appellant, analysed the same and concluded that Charges No. 1, 2, 4 and 6 have been proved against him. It is thus evident that the inquiry report was not prepared in consonance with Rule 17(b)(i) of the Rules.

16. The Controller of Examinations went a step further and recorded a finding that the actions of the appellant had resulted in compromising the integrity of the Commission as a whole. The concerned officer did so despite the fact that the appellant had not been charged with the allegation that he had by his action/omission compromised with the integrity of the Commission and no evidence was produced to substantiate the same. The Appellate Authority, i.e., the Chairman recorded detailed reasons but the order passed by him also does not make reference to the evidence produced for proving the charges leveled against the appellant.

17. The learned Single Judge and the Division Bench of the High Court failed to notice the aforesaid fatal flaw in the orders passed by the Controller of Examinations and the Chairman and decided the matter by assuming that even though the Commission had not adduced any tangible evidence to prove the charges against the appellant, the same stood proved because of the weakness of his defence.

18. [In Delhi Cloth and General Mills Company v. Ludh Budh Singh](#) (1972) 1 SCC 595, this Court held that it is the primary duty of the person making the allegations to establish the same by producing evidence and not for the delinquent to produce negative evidence to prove his innocence.

19. [In Roop Singh Negi v. Punjab National Bank](#) (2009) 2 SCC 570, this Court considered the question whether mere production of the document by the department is sufficient for holding the employee guilty and observed:

“Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.”

Rule 7.2 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 lays out the same procedure as envisage by the rule which has been interpreted by the Hon'ble Supreme Court of India in A. Savariar (supra) hence, the enquiry report should have contained nature of evidence brought on record and how the same has been relied to prove the charges, which fact is missing in the present case.

Keeping in view the settled principle of law, noticed hereinbefore, in the present case, no evidence has been mentioned or

discussed to hold the petitioner guilty and the same cannot be treated as valid enquiry report to be acted upon to punish the petitioner.

With regard to the allegation of remaining absent from duty for 04 days, as per the respondents, evidence was collected in the preliminary enquiry, which was used while conducting regular enquiry also. Nothing has come on record whether the petitioner was associated in the preliminary enquiry or not and whether the preliminary enquiry report, without there being any fresh evidence, can be taken as gospel truth so as to hold the petitioner guilty.

The allegations against the petitioner are not regarding corruption nor do they reflect on his moral conduct but are only relating to being absent from duty for 04 days in the service carrier of 27 years and that to on different occasions. Second allegation is of being present on stage in a political rally without there being any evidence showing his active participation in any manner. Third allegations is of distributing the grant of scholarship amount with a delay of 40 days. These allegations are not such which will warrant severest of punishment envisaged in the rules. The severest of the punishment is invited where act of an employee shocks the conscience of an employer.

In the present case, availing the four days leave, even if, it is presumed that the same was not sanctioned, is not a kind of allegation which will warrant extreme punishment especially, when the petitioner's conduct in 27 years of his service carrier is unblemished and that too when a casual leave is sought.

Similar question of law came up for consideration before the

Hon'ble Supreme Court of India in **Civil Appeal No.4059-2015** titled as

Union of India and another vs. R.K. Sharma where an extreme punishment of dismissal from service was imposed upon an employee, who remained absent from service. The Hon'ble Supreme Court of India held that a civil servant remaining absent from duty is different from police official or employee of disciplined forces remaining absent from duty. In R.K. Sharma (supra) the employee had remained absent over a period of four months but Hon'ble Supreme Court of India held that punishment of dismissal imposed upon the employee who had 07 years of service at the relevant time was too harsh and disproportionate to the charges alleged and proved. Relevant paragraph of the judgment is as under:-

11. As regards to the period for which the respondent was absent from duty, we are satisfied that the punishment of dismissal from service is too harsh, disproportionate and not commensurate with the nature of the charge proved against the respondent. We are, therefore, of the view that the ends of justice would have been adequately met by imposing some lesser but major penalty upon the respondent.”

In the present case, the petitioner is at much better footing as the petitioner has 27 years of service to his credit and the allegations are remaining absent from duty on four different days and that too for a single day each time. Hence, by ignoring the unblemished service rendered by the petitioner for 27 years, imposition of the severest of the punishment only for remaining absent for four days and that too when leave application was sent though, not sanctioned, is too harsh a punishment in the facts and circumstance of the present case.

Even qua second allegation that the petitioner was seen on stage in a political rally, nothing has come on record that the petitioner had participated in the said rally actively and whether standing on a stage

without active involvement will amount to participating in rally in support of a political candidate is also a question of fact which needs to be ascertained. The only finding which is recorded in the enquiry report is that the petitioner was seen standing on stage in a political rally. That being so, in the absence of any finding that petitioner was actively participating in the rally concerned in any manner the said act of being present on the stage alone was also not of such nature so as to invite maximum punishment envisaged under Rules.

With regard to the third allegation, the same is only of distributing scholarship amount with a delay of 40 days. The said charge does not relate to corruption or misappropriation of amount. Further, it has not come on record that respondents suffered any financial loss qua the said allegations.

It is a settled principle of law that punishment has to be imposed by the employer by not only taking into consideration the allegations alleged and proved but also the other benefits which will be taken away from the employee upon imposition of the said punishment. The service record and the conduct of the employee during the entire period of service is of paramount consideration to arrive at a conclusion whether employee is habitual of committing misconduct and as to whether retaining of the said employee in service is harmful to the institution concerned or not.

In the present case, nothing has come on record that in petitioner's service career of 27 years apart from the charge sheet in question, any other charge sheet was issued against the petitioner. Further, even upon proving of the charges alleged against the petitioner, nothing has

come on record that the same has harmed the institution financially or administratively in any manner. That being so, it can be safely held that the punishment imposed upon the petitioner i.e. dismissal from service, is not commensurate to the allegations alleged and proved against him, keeping in view the facts and circumstance, which have been narrated hereinbefore.

In view the above, impugned order 09.09.2020 having endorsement dated 15.09.2020 (Annexure P/10) passed by the respondents is set aside but with liberty to the respondents to pass a fresh order in accordance with law in case respondents feel that the allegations need to be taken to the logical end and while passing fresh order due care be taken that the punishment proposed/imposed is commensurate with the allegations alleged and proved against the petitioner.

Learned counsel for the respondents submits that as the present order has been passed on technicalities and the petitioner stands reinstated in service after quashing of the order, the petitioner will claim benefit for the period he remained out, which will cause financial prejudice to the department.

Learned counsel for the petitioner, on instructions from the petitioner, who is present in Court, submits that the petitioner will not claim any benefit as arrears of salary from the date of passing of the impugned order till today but continuity in service be given to him till any fresh order is passed by the respondents.

Keeping in view the observations made in the present petition and as undertaken by the petitioner that petitioner will not be entitled for any back wages and financial benefits as arrears of salary for the period he remained out but he will be allowed continuity in service alongwith notional

benefits for the period he remained out of service.

Present petition stands allowed in above terms.

November 18, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

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