

CWP-12583-2018 (O&M)

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

CWP No.12583 of 2018 (O&M)

Date of Decision: 01.06.2022

Kanwaljit Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. D.S. Patwalia, Senior Advocate assisted by
Mr. Kannan Malik, Advocate for the petitioner.

Mr. Ayush Sarna, AAG, Punjab for the respondents.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution for quashing the impugned order dated 29.09.2015 (P-4), passed by respondent No.2-Director Public Instructions (Secondary Education), Punjab (*for short 'Director'*), whereby services of the petitioner were terminated from the post of Vocational Master (Garment Making), Government Senior Secondary School, Jalal Usman, Amritsar on account of registration of a criminal case.

Further prayer is to quash the impugned order dated 16.01.2018 (P-11), vide which representation of petitioner for reinstatement in service after his acquittal in the aforesaid criminal case was rejected.

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(2) Facts are not in dispute.

(3) Initially, pursuant to an advertisement dated 23.09.2009, petitioner was appointed as Vocational Master (Garments Making) on contract basis w.e.f. 23.05.2011. Later on, his services were regularized, vide order dated 15.07.2014 (P-1), and he was kept on probation for a period of two years.

During probation, an FIR No.83 dated 09.08.2015, was registered against petitioner, under Sections 363, 366-A & 376 of the Indian Penal Code, 1860 (*for short 'IPC'*) at Police Station Mehta, District Amritsar.

Above criminal case was brought to the notice of authorities and that led to the passing of impugned order dated 29.09.2015, whereby petitioner was terminated from service while invoking the provisions of Rule 7(2) of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (*for short '1994 Rules'*).

(4) Subsequently, after conclusion of trial, petitioner was acquitted by learned Additional Sessions Judge/Exclusive Court, Amritsar, vide judgment dated 09.03.2016 (P-6).

It is acknowledged by both sides that acquittal of petitioner has attained finality and there is no further challenge to the same.

(5) In view of the acquittal, petitioner made a request to the Director, Department of Education (Secondary Education), Punjab for reinstatement in service, but the same has been rejected while passing the impugned order dated 16.01.2018. Hence, present writ petition.

(6) CONTENTIONS

On behalf of petitioner.

It is contended by learned Senior Counsel that petitioner was dismissed from service solely on account of the fact that criminal case was registered against him; but now after trial, he has been acquitted by the Court of competent jurisdiction, thus, entitled for reinstatement in service with all consequential benefits.

Further contended that impugned order is stigmatic in nature; but same has been passed without holding any regular departmental inquiry and as such, not legally sustainable.

Also contended that so called inquiry report, which is reflected in the impugned order, was never supplied to the petitioner and as a result thereof, the course adopted by respondent No.2 is violative of principle of natural justice.

Again contended that provisions of Rule 7 (2) of 1994 Rules are totally misplaced by the authority inasmuch as no finding of fact has been recorded to the effect that work or conduct of the petitioner remained unsatisfactory during probation.

Further contended that request of petitioner for reinstatement has been rejected without affording any opportunity of hearing and moreover, no reason whatsoever has been assigned while passing the impugned order dated 16.01.2018.

Also contended that respondents while rejecting the request of petitioner for reinstatement in service have not taken into consideration the

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fact that he stands already acquitted from criminal charges and as such, petitioner has a lawful claim for reinstatement in service.

Lastly contended that when petitioner has been honorably acquitted from the charges and that has attained finality, then there is no reason to deny him the benefit of reinstatement along with all consequential benefits.

ON BEHALF OF RESPONDENTS

On the other hand, learned State Counsel opposed the prayer and submitted that petitioner was charged with serious offences; but unfortunately, all three prosecution witnesses (PW-1, PW-2 & PW-3) turned hostile and as a result thereof, he had been acquitted by learned trial Court while giving him the benefit of doubt.

Further submitted that at the time of registration of aforesaid FIR, petitioner was on probation; therefore, instead of conducting regular departmental inquiry, his services have rightly been dispensed with by invoking the provisions of Rule 7(2) on the basis of a fact finding inquiry report dated 11.08.2015.

Also submitted that instead of causing sexual harassment to a minor girl of 12th class, petitioner being a Teacher in Govt. School ought to have exhibited as a role model for students.

Again contended that an inquiry was conducted by the Divisional Education Officer, Jalandhar on 11.08.2015 and on the basis thereof, impugned order dated 29.09.2015 had been passed by respondent No.2, which is not stigmatic in nature; rather simply dispensing with the services of petitioner.

Lastly contended that in case petitioner is reinstated in service, then it shall give a very wrong message in the Society and as such, this Court should refrain from interfering with the impugned order(s) while invoking the jurisdiction under Article 226 of the Constitution.

(7) Heard learned Counsel for the parties and perused the record.

(8) There is no dispute that initially petitioner was engaged on contract basis; but subsequently, his services were regularized on 15.07.2014. It is also an admitted position that at the time of registration of aforesaid FIR on 09.08.2015, petitioner was under probation for a period of two years i.e. up to 14.07.2016 and as per condition No.9 of the regularization order, the services could be dispensed with in case his work or conduct is not found satisfactory.

(9) Perusal of impugned order dated 29.09.2015 clearly reveals that it was passed by respondent No.2 while invoking the provisions of Rule 7(2) of 1994 Rules and for reference, relevant part of the Rule (*ibid*) is recapitulated as under:-

“7. Probation:

(1)

(2) *If, in the opinion of the appointing authority, the work or conduct of a person during the period of probation is not satisfactoryit may, -*

(a) *if such person is recruited by direct appointment, dispense with his services.....*

(b) *..... ”*

Perusal of sub-rule (2), extracted hereinabove, *inter alia*, says that if during probation, in the opinion of appointing authority, the work or

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conduct of an employee is not found to be satisfactory, his services can be dispensed with.

(10) In the present case, record reveals that immediately after registration of aforesaid FIR, an inquiry was ordered by respondent No.2 and report in this regard was submitted by the Divisional Education Officer on 11.08.2015.

It is evident from the impugned order dated 29.09.2015 that services of petitioner were dispensed with, while taking into consideration the aforesaid inquiry report and in this regard, relevant part of the order reads as under:-

“ Sh. Kanwaljit Singh, Vocational Master (Garment Making) G.S.S.S. Jalal Usman (Amritsar) was placed under suspension vide office order No.10/83-2015 Estt.1(8) dated 11.08.2015. Divisional Education Officer, Jalandhar in his report had proved the charges against the employee that he had committed a crime of physically teasing Ms. Sharanjit Kaur, who was the student of 12th class.”

(11) This Court has gone through the inquiry report dated 11.08.2015 and after perusal of the same, it transpires that enquiry was conducted by the Divisional Education Officer, Jalandhar after associating all the staff members/In-charge Principal Smt. Simarjit Kaur as well as brother of the victim, who also happened to be a student of the same very school at relevant point of time.

Also noteworthy that Divisional Education Officer, Jalandhar, who conducted the aforesaid inquiry, was an independent person and there is no allegation of biasness against him by the petitioner.

Since petitioner was on probation, therefore, in the opinion of this Court, the aforesaid inquiry report was sufficient for invoking the provisions of Rule 7(2) by the competent authority while passing the impugned order dated 29.09.2015.

(12) Although, it was contended by learned Senior Counsel that impugned order dated 29.09.2015 has been passed without supplying the copy of inquiry report dated 11.08.2015, but the same is not helpful for the reasons that:-

- (i) *inquiry was only for the limited purpose of satisfaction to invoke the provisions of Rule 7(2);*
- (ii) *order dated 29.09.2015 was not as a measure of punishment; rather simplicitor to dispense with the services of petitioner during probation.*

No doubt, the competent authority while passing the impugned order dated 29.09.2015 has used the word “*terminated*” instead of “*dispensed with*”, but in view of the facts and circumstances, discussed hereinabove, that will not make any difference as the order is not punitive in nature. However, for future, the competent authority is mandated to choose the word carefully in consonance with the language of Rule 7(2) to avoid any unwarranted litigation.

(13) The argument raised by learned Senior Counsel that petitioner has been acquitted in criminal case and as such, he is entitled for reinstatement cannot be accepted on the premise that impugned order dated 29.09.2015 was not passed on account of the conviction of petitioner while invoking Rule 13 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (*for short ‘1970 Rules’*) or under Article 311 of the

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Constitution; rather as already discussed, services of petitioner were dispensed with during probation in terms of Rule 7(2) (*ibid*); thus, in such a scenario, mere acquittal in criminal case would not give him right of reinstatement into service.

(14) In view of the facts and circumstances, discussed hereinabove, this Court is of the considered opinion that impugned order dated 29.09.2015 is neither dismissal; nor stigmatic in nature; rather simplicitor dispensing with the services of petitioner in terms of Rule 7(2) of 1994 Rules during probation. In such a situation, the request of petitioner for reinstatement in service has rightly been declined while passing the impugned order dated 16.01.2018.

It is clarified that impugned orders dated 29.09.2015 & 16.01.2018 shall not be treated as a punishment; nor the petitioner is disqualified for future employment under Government in terms of Rule 5 of 1970 Rules.

As a result thereof, no ground is made out to interfere with the aforesaid impugned orders dated 29.09.2015 & 16.01.2018, passed by respondent No.2, while exercising judicial review under Article 226 of the Constitution. Consequently, there is no option except to dismiss the writ petition.

Ordered accordingly.

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

June 1st, 2022

Gagan

(MAHABIR SINGH SINDHU)

JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes