

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

(230)

CWP-18632-2020

Date of Decision : March 22, 2022

Gurbachan Singh

.. Petitioner

Versus

Shrimoni Gurudwara Parbandhak Committee and another

.. Respondents

(230-2)

CWP-18680-2020

Dalbir Singh

.. Petitioner

Versus

Shiromani Gurudwara Parbandhak Committee and another

.. Respondents

(230-3)

CWP-18656-2020

Baj Singh

.. Petitioner

Versus

Shrimoni Gurudwara Parbandhak Committee and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Prateek Sodhi, Advocate, for the petitioners,
(in all cases).

Mr. Akshay Bhan, Senior Advocate, with
Mr. Shantanu Bansal, Advocate and
Mr. Mrigank Sharma, Advocate, for the respondents.

HARSIMRAN SINGH SETHI J. (ORAL)

By this common order, three writ petitions, the details of which have been given in the heading of the order, are being decided as the question of law in these petitions, is the same.

The grievance which is being raised by the petitioners is that they being the regular employees of the respondents-Committee, their services have been terminated by alleging allegations but without holding proper enquiry so as to pin point the guilt upon the petitioners.

Learned counsel for the petitioners argues that the respondents-Committee is governed by the rules of law and as per the rules governing the service coupled with the settled principle of law, no action can be taken against an employee, much less penal, without giving proper opportunity to an employee to defend himself/herself of the allegations being alleged. Learned counsel for the petitioners submits that as no enquiry has been held in the present case, the order terminating the services of the petitioners has been passed in violation of the rules governing the service as well as rules of natural justice, hence, the same are liable to be quashed.

Learned senior counsel appearing on behalf of the respondents concedes the fact that as per the rules governing the service, before taking any punitive action against any employee on the basis of misconduct alleged, departmental enquiry is envisaged wherein, the employee needs to

be given an opportunity to present his case apart from following other procedural requirements as envisaged under the rules governing the said aspect. Learned senior counsel for the respondents submits that as the allegations against the petitioners were too sensitive in nature, the disciplinary authority, after ascertaining the facts in question, was of the view that no enquiry is possible and therefore, straightaway the orders of punishment were passed against the petitioners. Learned senior counsel for the respondents further submits that this case be treated as exception to the rules which envisage enquiry against a regular employee in case any misconduct is alleged, before any order of punishment is passed.

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

From the pleadings noticed hereinbefore and the arguments of the learned counsel for the parties, it is clear that action against the petitioners is being taken on the basis of misconduct. Further, it is a conceded position that there are rules which govern the aspect as to how, the disciplinary authorities is to act in case of allegations regarding misconduct against a regular employee. It is a conceded position that the service rules in this regard envisage an enquiry into the allegations and that too by following proper process and giving due opportunity of hearing to the delinquent employee to defend himself/herself as the case may be. That being so, no other procedure, than the one envisaged under the rules, can be resorted to for taking punitive action against an employee much less the one which denies the delinquent right to defend himself/herself properly.

With regard to the arguments of the learned senior counsel for the respondents that the present case should be treated as an exception to the

rules keeping in view the sensitivity of the allegations, the same cannot be accepted for the reason that the rule governing the service on the said aspect must envisage such kind of exceptional power. No rule envisaging such kind of exception that the disciplinary authority had the right to pass the impugned order without holding an enquiry has been brought to the notice of this Court. In absence of any such exception, envisaged under the rules, the same cannot be claimed as a matter of right. All the authorities have to act in accordance with the rules governing the service without there being any relaxation unless and until the same is envisaged within the rules itself. As, learned senior counsel for the respondents, has not brought any rule which gives the power to the disciplinary authority to do away with the enquiry and straightaway pass an order of punishment only after alleging allegations and by conducting a preliminary enquiry, the action of the respondents in passing the impugned order of punishment, without advertent to the enquiry as envisaged under the rules governing the said aspect, cannot be sustained in the eyes of law.

Even otherwise, wherever, the rules provide exception of doing away with the enquiry for instance in case of Article 311 (2) (b) of the Constitution of India, the same can be done only after giving an explanation in writing and there is no absolute power to the authorities to do away with the enquiry. Even the reasoning for doing away with the enquiry proceedings is also subject to the judicial review keeping in view the facts and circumstances of each case. Hence, even where the law grants a disciplinary authority power to do away with the enquiry before passing the order of punishment, the same is also not an unfettered power.

The Hon'ble Supreme Court of India even while interpreting

Rule 311 (2) (b) of the Constitution of India in ***Civil Appeal No.10587 of 1983 titled as Jaswant Singh versus State of Punjab and others, decided on 27.11.1990*** held as under:-

“..... insofar as clause (b) is concerned this Court pointed out that two conditions must be satisfied to sustain any action taken thereunder. These are (i) there must exist a situation which renders holding of any inquiry "not reasonably practicable"; and (ii) the disciplinary authority must record in writing its reasons in support of its satisfaction. Of course the question of practicability would depend on the existing fact situation and other surrounding circumstances, that is to say, that the question of reasonable practicability must be judged in the light of the circumstances prevailing at the date of passing of the order. Although clause (3) of that article makes the decision of the disciplinary authority in this behalf final such finality can certainly be tested in a Court of law and interfered with if the action is found to be arbitrary or mala fide or motivated by extraneous considerations or merely a ruse to dispense with the inquiry. Also see: Shivaji Atmaji Sawani Vs. Union of India; Shivaji Atmaji Sawani Vs. State of Maharastra and Ikramuddin Ahmed Borah Vs. Superintendent of Police Darrang.”

The Apex Court further held in the above judgment that clause (b) of second proviso to [Article 311 \(2\)](#) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold enquiry. Further satisfaction has to be based on certain objective facts and not the outcome of whim or caprice of concerned officer. Following was laid down in paragraph-5 of the said judgment:

“5.....it was incumbent on the respondents to disclose to the Court the material in existence at the date of passing of the impugned order in support of the subjective satisfaction recorded by respondent no. 3 in the impugned order. Clause (b) of the second proviso to [Article 311 \(2\)](#) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at page 270 of Tulsiram's case : [SCC p. 504 para 130].

"A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the department's case against the Government servant is weak and must fall."

The decision to dispense with the departmental enquiry cannot therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a Court of law it is incumbent on those support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer.....”

From the above, it can be very well said that doing away with the enquiry not only requires the power to do so but even where there is a rule for the said dispensation, the same cannot be at the ipse dixit of the concerned authority. In the present case, firstly no rule has been brought to the notice of this Court which gives the power to the disciplinary authority to do away with the enquiry proceedings secondly when concededly a preliminary enquiry has been conducted by the respondents in light of which, it cannot be said that the regular enquiry, cannot be conducted.

Keeping in view the above, the impugned orders passed by the

respondents in terminating the services of the petitioners, are without following the rules governing the said aspect and cannot be sustained in the eyes of law and hence, the impugned orders terminating the services of the petitioners are set aside.

Though, the orders terminating the services of the petitioners are set aside but as those orders are being set aside on technicalities, the respondents will be at liberty to take action against the petitioners in case, they want, by following the rules governing the said aspect and observing the rules of natural justice so as to give proper opportunity to the petitioners to defend themselves against the allegations alleged against them.

At this stage, learned senior counsel for the respondents submits that the petitioners may kindly not be reinstated, otherwise, they will interfere in the enquiry process and might cause problem in the smooth conduct of the enquiry proceedings.

Once, the order of termination is set aside, the necessary corollary is that an employee stands reinstated. With regard to the apprehension being raised by the learned senior counsel for the respondents that the petitioners might interfere in the enquiry proceedings, there are enough powers prescribed under the rules where, a disciplinary authority, in case feels that an employee can interfere in the enquiry proceedings, may pass appropriate orders to avoid the same.

The present petitions are allowed in above terms.

March 22, 2022

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes