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

**CWP No.23814 of 2016 (O&M)
Date of Decision:22.08.2022**

ARASHDEEP KAUR

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM:- HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Vivek Sharma, Advocate for the petitioner.

Mr. R.K. Kapoor, Addl. AG, Punjab for the respondent(s).

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution for quashing of the impugned order dated 11.12.2015 whereby petitioner was dismissed from the post of Math Mistress by the Director, Education Department (S.E.), Punjab (here-in-after referred as “the Punishing Authority”) as well as the order dated 06.04.2016 (P-12), whereby an appeal against the aforesaid order was rejected by Principal Secretary, Department of Education (School), Government of Punjab (here-in-after referred as “the Appellate Authority”).

2. Facts are not in dispute.

3. Petitioner was inducted as a Math Mistress by the Education Department, Punjab on 23.08.2011 for 3 ½ years with the condition that after

completion of this period, she would be considered for regular appointment. It transpires that in the interregnum, due to some family problem, she requested for 06 months' leave without pay w.e.f. 03.01.2014. However, the request was neither accepted, nor rejected; rather resulted into issuance of charge-sheet dated 20.05.2014 with the allegations of absence from duty.

In response to the aforesaid charge-sheet, petitioner filed reply dated 17.06.2014, but the competent authority was not satisfied with the explanation and as a result thereof, Deputy District Education Officer (S.E.) Sangrur was appointed as Inquiry Officer in the matter. The Inquiry Officer submitted his report dated 03.08.2015; thereby proving the charges levelled against petitioner. A copy of inquiry report was supplied to the petitioner at the time of personal hearing on 11.12.2015 and in order to prove her innocence, she filed written response, but the Punishing Authority was not convinced which resulted into passing of the impugned dismissal order.

4. Aggrieved against the aforesaid action, petitioner preferred statutory appeal, but the same was rejected. Hence, present writ petition.

5. Learned counsel for the petitioner contended that neither the Punishing Authority; nor the Appellate Authority followed the procedure prescribed under Rules 8 and 19, respectively, of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 (for short "the rules of 1970"). Further contended that genuine pleas raised by the petitioner regarding her 'inter-caste marriage' as well as 'threat to life' for seeking leave without pay were not considered by both the authorities below; hence, the impugned orders are not legally sustainable.

6. On the other hand, learned State counsel opposed the prayer while submitting that concurrent findings of facts have been recorded by both the authorities after taking into consideration the material available on record. Further submitted that the Appellate Authority passed detailed order; thereby considering every point raised by the petitioner and as such, no interference is warranted by this Court while exercising jurisdiction under Article 226 of the Constitution.

7. Heard learned counsel for the parties and perused the paper book.

8. It is not in dispute that petitioner was charge-sheeted under Rule 5(v to ix) of the rules of 1970 and gist of the charges can be recapitulated from the paper-book as under:-

“Smt. Arshdeep Kaur, Math Mistress, GSSS Fatehgarh Panjgraian (Sangrur) had gone by giving six months without pay leave from 03.01.2014 to the Head of School. Department had not approved her leave. She has violated the rules/instructions by remaining continuously absent from duty w.e.f. 03.01.14 and has caused loss to the students of the school and has made herself liable for punishment under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970.”

9. Rule 19 (*ibid*) deals with the procedure for deciding the statutory appeal and relevant part of the same reads as under:-

“Rule 19.-Consideration of appeal

(1).....

(2)In the case of an appeal against an order imposing any of the penalties specified in Rule 5 or enhancing any penalty imposed under the said Rules, the appellate authority shall consider-

(a) *Whether the procedure laid down in these Rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice;*

(b) *Whether the findings of the punishing authority are warranted by the evidence on the record; and*

(c) *Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe and pass orders-*

(i) *Confirming, enhancing, reducing, or setting aside the penalty; or*

(ii) *remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case:*

Provided that.....

From perusal of sub-rule 2 (*ibid*), it is apparently clear that the Appellate Authority while deciding statutory appeal shall be under obligation to consider, *inter-alia*:-

(i) as to whether the procedure prescribed under Rules of 1970 has been complied with?

(ii) if not, whether such non-compliance has violated any provision of the Constitution or resulted into failure of justice?

(iii) Whether the findings recorded by the Punishing Authority are warranted by the evidence on record?

(iv) Whether the penalty imposed by the Punishing Authority is adequate or severe?

10. It is quite evident that petitioner solemnized inter-caste marriage with one Ravinder Pal Bawa and apprehending threat to life, a protection petition i.e. CRM M-42872-2013 was filed by both of them and which was disposed off by this Court vide order 17.12.2013 in the following manner:-

“Counsel for the petitioners states that the petition may be

dismissed as withdrawn with liberty to the petitioners to approach the Senior Superintendent of Police, Sangrur.

Dismissed as withdrawn with liberty aforesaid.

However, without meaning to express any opinion on the merits of the controversy and going into the question of validity or otherwise of the marriage, if the petitioners file a detailed representation before the Senior Superintendent of Police, Sangrur within five days, the same shall be considered and disposed of, in accordance with law.”

11. It is also discernible from the order dated 06.04.2016 passed by the Appellate authority that plea of inter-caste marriage as well as threat to life was duly raised by the petitioner and reference in this regard can be made to paragraph No. (j) of the aforesaid order which reads as under:-

“(j) That I am an official belonging to Scheduled Caste. I had got married with non-Scheduled Caste boy with my own sweet will. The government encourages such types of marriages in order to remove the racism. The head of our families were not earlier agreeing to this marriage. We were apprehending danger to our lives, due to which hiding myself at some unknown place was a defensive step. Telling this problem, I applied for six months leave. This fact is authenticated from the letters dated 06.01.2014 and 26.05.2014 regarding my application for six months leave. The application for leave mentioned in the representation has not been rejected. Head Master, Government High School, Panj Graian (Sangrur), District Education Officer and DPI (Secondary Education) Punjab have not written any writing to me rejecting my application and for appearing on duty as due to leave loss is being caused to study. They even not called for substitute in my place. They have demanded permission for granting leave. He in his letter dated 26.05.2014 has recommended to consider my case

sympathetically. In his letter dated 26.05.2014, Head Master nowhere mentioned that loss has been caused to the study of children. This situation and my pity condition has not been kept in mind by the DPI while passing the order of major punishment. Impugned order of punishment may be cancelled and appropriate order be passed.

12. This Court has carefully gone through the order of the Appellate Authority, but the specific pleas of inter-caste marriage as well as threat to life raised by petitioner; which were the basis for seeking 06 months' leave without pay, have not been considered by either of the authorities. Apart that, the Appellate Authority failed to consider the matter with reference to its obligation in terms of rule 19 (*ibid*) noticed in para 9 (*supra*) and as such, the order dated 06.04.2016 is found to be indefensible in law.

13. In view of the above, there is no option except to allow the writ petition.

14. Consequently, the writ petition is allowed and the impugned order dated 06.04.2016 passed by the Appellate Authority is set aside. The matter is remanded to the Appellate Authority for fresh decision in accordance with law by passing reasoned order within three months from receipt of certified copy of this order.

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

August 22, 2022

P.Bhatt/SN

**(MAHABIR SINGH SINDHU)
JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No