

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

**(201) CWP-22075-2020
Date of Decision : May 09, 2022**

Rajwant Kaur .. Petitioner

Versus

State of Punjab and others .. Respondents

(201-A) CWP-4482-2022

Sukhwant Kaur .. Petitioner

Versus

State of Punjab and others .. Respondents

(268) CWP-22829-2021

Ramdar Singh .. Petitioner

Versus

State of Punjab and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

**Present: Mr. Harnoor Singh Sidhu, Advocate, for
Mr. H.P.S Mann, Advocate, for the petitioner,
(in CWP No.22075 of 2020).**

**Mr. D.D. Bansal, Advocate, for the petitioner,
(in CWP No.4482 of 2022).**

**Mr. Sunny Singla, Advocate, for the petitioner,
(in CWP No.22829 of 2021).**

**Ms. Anju Sharma Kaushik, Deputy Advocate General,
Punjab.**

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 disposed of as the same question of law has been raised in all the petitions. For the sake of convenience, the facts are being taken from CWP No.22075 of 2020.

In the present case, the challenge is to the charge sheet dated 22.11.2019 (Annexure P-4) as well as the order dated 17.12.2019 (Annexure P-5) vide which, the punishment of stoppage of two increments with cumulative effect was imposed upon the petitioner and also the order dated 15.10.2020 (Annexure P-8) by which the order dated 17.12.2019 has been modified to the extent that the amount of increment be deducted from the pensionary benefits of the petitioner. The facts leading to the filing of the present petition are as under:-

The petitioner was working as a District Education Officer Barnala cum Public Information Officer and while working as such, an application was received under the Right to Information Act, 2005 on 11.02.2019 seeking information regarding the sanctioned/filled/vacant posts of PTI in District Barnala. The Secretary of respondent-Department was summoned by this Court while hearing COCP No.1588 of 2019 and keeping in view the said fact, the petitioner was charge sheeted by respondent No.1-Secretary to Government of Punjab in which, the allegation against the petitioner was that she has not performed the duties with due devotion and was careless in discharging her duties in supplying the information as being sought for under the RTI Act, 2005 in respect of the application dated 11.02.2019. Though, the charge sheet was dated 22.11.2019 and 21 days time was given to the petitioner to file a reply in her defence to the charge

sheet, the petitioner received the said charge sheet on 03.12.2019 and before the expiry of 21 days from the date of receipt of the charge-sheet, the punishment order was passed on 17.12.2019 imposing the punishment of stoppage of two increments with cumulative effect by recording that no reply to the charge sheet was submitted by the official concerned.

Learned counsel for the petitioner argues that impugned order of punishment was passed by the respondents without any application of mind as the petitioner was to retire in the year 2020 and two increments were not to be earned by the petitioner by the date she would have superannuated and further that punishment which was major in nature, has been imposed and the same could not have been imposed without holding an enquiry against the petitioner even if the reply to the charge sheet was not filed by the petitioner.

As the respondents could not implement the punishment imposed upon the petitioner on 17.12.2019, the said order was modified subsequently on 15.10.2020 vide which the amount, which the petitioner would have lost for the two increments withheld, be deducted from the pensionary benefits of the petitioner. The said orders are under challenge in the present petition.

Similar punishment has been imposed upon the petitioner in CWP No.22829 of 2021 and CWP No. 4482 of 2022.

Upon notice of motion, the respondents have filed a reply wherein, the respondents have submitted that as the petitioner failed to give reply to the charge sheet within a period of 21 days of issuance of charge-sheet, the order of punishment was passed and further as the initial order of punishment dated 17.12.2019 could not be executed as the petitioner was to

retire from service on 31.03.2020, i.e. within a period of four months of imposition of punishment, the same was modified so as to secure the interest of justice.

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

In the present case, the sheer haste in imposing the punishment upon the petitioner has been shown by the department, which fact is apparent on record not only on the basis of the facts but even the punishment which has been imposed by the respondents-Department. The charge sheet was served upon the petitioner on 03.12.2019 giving her 21 days to reply for but before the expiry of 21 days, even the punishment was imposed on 17.12.2019 by stating that no reply was filed to the charge sheet. Even if it is assumed for the sake of arguments that no reply was filed by the last date, then also before imposing punishment, an enquiry is must as envisaged under Rules to prove the allegations against the petitioner. It is not a case where the petitioner has admitted the allegation so that the punishment order could be passed straightaway.

Be that as it may, even otherwise, the punishment which was imposed upon the petitioner, was without any rationale or application of mind. It was to the knowledge of the respondents that the petitioner is to retire on 31.03.2020 then why such punishment was imposed upon her, which could not be executed.

Further, there is no power with the respondents to modify the punishment order once imposed. No rule has been brought to the notice of this Court that punishment once imposed can be modified and that too without hearing the delinquent officials.

Even vide order dated 15.10.2020, the punishment, which has been imposed is that the amount which the respondents would have retained with themselves while stopping two increments, be recovered from the pensionary benefits of the petitioner. No such punishment has been envisaged under the rules governing the service and therefore, the said punishment which is not envisaged under the rules could not have been imposed upon the petitioner even while modifying the order dated 17.12.2019. That being so, the said order and the punishment imposed therein is contrary to the law as well as the rules governing the service.

Keeping in view the above, the present petitions are allowed. The order dated 15.10.2020 (Annexure P-8) in CWP No.22075 of 2020, order dated 27.11.2020 (Annexure P-10) in CWP No.4482 of 2022 and order dated 17.09.2021 (Annexure P-8) in CWP No.22829 of 2021, are set aside.

However, the respondents will be at liberty to pass appropriate orders of punishment as envisaged under the Rules after giving due opportunity of hearing to the petitioners.

May 09, 2022

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes