

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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CWP-2536-2023
Date of Decision: 24.05.2023

RAM NIWAS

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Vikram Singh, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

The present petition seeks quashing of the order dated 11.11.2022 (Annexure P-7) passed by the respondent No.2 – Additional Chief Secretary to Government of Haryana, School Education Department, Chandigarh, whereby a minor penalty of recovery has been imposed upon respondent No.4 – Kanwar Singh, Principal, Government Girls Sr. Sec. School, Deroli, Ahir District Mohindergarh (Haryana).

The petitioner claims that he had submitted a complaint dated 22.10.2019 against respondent No.4 alleging embezzlement and misutilizing the grant of Rs.17,87,000/- and Sanchayika fund amongst others. Vide letter dated 08.11.2019, the District Education Officer, Narnaul was directed to inquire into the matter and to submit a report. Pursuant to the same, a Committee was formed which submitted its report concluding that the respondent No.4 – Kanwar Singh, Principal had violated the Government Instructions thus resulting in commission of financial irregularities. In view of the aforesaid report, the Authorities proposed

disciplinary proceedings under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 2016. A charge sheet was accordingly issued on 16.07.2020 under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 2016, to which the respondent No.4 filed his reply dated 30.07.2020 (Annexure P-6). The said charges were converted under Rule 8 of the Haryana Civil Services (Punishment and Appeal) Rules, 2016 by respondent No.2 vide impugned order dated 11.11.2022 and the punishment was reduced to recovery of the amount of Rs.1,16,500/- in six installments from the salary of respondent No.4. The petitioner has thus approached this Court against the above said impugned order alleging that the Disciplinary Authority has illegally converted a charge sheet issued under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 2016 to a charge under Rule 8 and have imposed a minor punishment of recovery of abovesaid amount whereas a punishment of dismissal from service ought to have been imposed. There were no compelling circumstances for such leniency shown towards respondent No.4 in reducing the punishment to a minor charge and ordering a mere recovery despite the charge of embezzlement having been established against him.

I have heard the learned counsel for the petitioner and have also gone through the documents appended alongwith the present petition as well as the impugned order bearing No.5/112-2019 HRG-I(1) dated 11.11.2022 (wrongly mentioned in the typed copy as 1-11-2012).

A perusal of the said order shows that the respondent No.4 had deposed before the Inquiry Committee that an amount of Rs.44,000/- had been withdrawn PTA fund on 08.08.2019 and was utilized for dismantling the three rooms in the school despite the department having granted the sanction for dismantling the room and that the record of the expenditure incurred from the

Sanchayika Fund had also not been maintained. The stand of the private respondents was that the said grant had been utilized for construction purpose but technical member and/or any other member of the Committee had not been associated. After the submission of Regular Inquiry Report by the Inquiry Officer, the Charged Officer submitted his response to the second show cause notice pointing out that the grant for dismantling the room was received before his joining in the school and all the funds released by the Government from time to time had been used for the best interest of the school and under the emergent circumstances. No amount of PTA fund was used in dismantling the rooms.

The employee was afforded a hearing whereupon the Punishing Authority came to a conclusion that the charges that were returned to have been proved against the delinquent employee be treated as embezzlement and the same were in the nature of negligence on account of the irregularities. Insofar as the amounts mentioned in the charge sheet at Sr. No.2, 3 and 5 are concerned, the said amount was held to be recoverable from the officer concerned and accordingly, punishment of recovery of the said amount was ordered.

Although counsel for the petitioner contends that such conversion of charge which is established is inappropriate, however, the settled legal position as regards the Service Law is that the High Court does not sit as a Court of Appeal against the view taken by the Authorities. If the order passed is within the domain and competence of the punishing Authority, the High Court would not ordinarily sit in review of such an order unless the discretion exercised is found to be perpetuated from illegality or for malicious considerations and/or is based upon abuse of power and mischief.

The power of judicial review in such matters is largely a procedural review and not a substantive review. Where the decision taken by the competent

Authority is within its scope and has been taken bonafide and as per the procedure, the said view is not to be ordinarily interfered with unless the view is in conflict with law and suffers from impropriety, illegality, misappropriation or is shocking to the conscience of the Court.

Counsel for the petitioner had relied on the judgment of the Hon'ble Supreme Court in the matter of "**B.C. Chaturvedi Vs. Union of India and others**" reported as **(1995) 6 SCC 749** to substantiate his argument. Reference was made to paragraph no.18 of the said judgment, which is extracted as under:

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of Judicial Review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

I fail to find as to how the aforesaid judgment is likely to support the case of the petitioner as he has failed to refer to any exceptional and rare circumstances on the basis whereof, this Court may hold that the punishment imposed by the Punishing Authority was not appropriate and was not commensurate with the gravity of the act and why exercise of such discretion in favour of employee was illegal. Once the Authority was of the opinion that it was

not a case of embezzlement and rather of negligence and has thus converted the charge sheet issued under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 2016 to Rule 8 of the Rules of 2016 (supra) and directed recovery, such opinion of the Disciplinary/Punishing Authority cannot be held to be inappropriate; illegal or gross deviation from the statutory powers conferred upon such Authority bordering abuse of power.

Reference was also made to the judgment of the Hon'ble Supreme Court rendered in the matter of "Addl. District Magistrate (City) Agra Vs. Prabhakar Chaturvedi", reported as (1996) 2 SCC 12 to contend that the Hon'ble Supreme Court had upheld the imposition of punishment from dismissal from service when misappropriation of huge amount of Rs.21,000/- was found to have been established.

A perusal of the aforesaid judgment shows that the Disciplinary Authority has itself imposed a punishment on the delinquent employee and the Court below chose not to interfere with the discretion so exercised by the competent Authority. The judgment in question would not be applicable to the facts and circumstances of the present case, since the Punishing Authority has not imposed the punishment of dismissal and had infact altered the charge and imposed a lesser punishment of recovery of the aforesaid amount. Hon'ble Supreme Court thus upheld the exercise of discretion by the competent Authority.

The settled position in law which emerges is that the High Court would not ordinarily interfere with the punishment so imposed by the Disciplinary/Appellate Authority unless the punishment is shockingly disproportionate to the charge and/or its magnitude and gravity and that too in an exceptional and rare circumstance. However, no such circumstances are demonstrated to exist in the present case.

I do not find any illegality, impropriety or gross dereliction of duty or miscarriage of justice on the part of the Punishing Authority in imposing the abovesaid lesser punishment. There is nothing on record to suggest that the punishment imposed could not have been imposed under the given circumstances and/or that the procedure prescribed in law has not been followed while disagreeing with the report of the Inquiry Officer and converting the charge sheet served for imposition of major penalty and finally converting the same into a minor offence and directing recovery of the aforesaid amount. There are thus no compelling circumstances to interfere with the order of the Competent Authority. All the circumstances have been taken into consideration by the Authority while reducing the sentence and directing effecting recovery. The order cannot be held to be beyond jurisdiction or in violation of law.

The present petition is accordingly dismissed.

24.05.2023
rajender

(VINOD S. BHARDWAJ)
JUDGE

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