2023:PHHC:056572

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5378-2019 (O&M)
Reserved on : 20.03.2023
Pronounced on : 21.04.2023

Sawinder Kaur ...... **Petitioner**

versus

Punjab School Education Board and another ...... **Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rajinder Goyal, Advocate
for the petitioner.

Mr. D.V. Sharma, Advocate with
Ms. Pooja Yadav, Advocate
for the respondents.

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PANKAJ JAIN, J.

Petitioner has challenged order dated 05.01.2018 (Annexure P-8) passed by respondent No.2 whereby she has been ordered to be dismissed from service and further order dated 26.12.2018 (Annexure P-10) passed by the appellate authority dismissing the departmental appeal preferred by the petitioner affirming the order of punishment. Further prayer is for issuance of a writ in the nature of mandamus directing the respondent to reinstate the petitioner back in service alongwith all consequential benefits.

2. Petitioner joined service with respondent-board in August 1993 as Clerk on daily wages. Her services were regularized in August 2004 and she was further promoted as Senior Assistant in January 2013. Husband of the petitioner namely Tarun Kumar Bhagirath was also employee of the respondent-board serving as Senior Assistant in

Accounts Branch (Salary Section). Owing to embezzlement, said Tarun Kumar Bhagirath was placed under suspension on 15.07.2014. Petitioner was also appointed vide order dated 05.11.2014. Petitioner, her husband and some other employees were served with chargesheets. FIR was also registered against the said Tarun Kumar Bhagirath and his colleagues in the Accounts Branch namely Mehar Singh and Shubh Karan for having duped the Board to the extent of Rs.2,04,51,116 by raising false claims of arrears of salary by preparing false bills/vouchers for the period commencing from 2008-2014. The petitioner was not named in the FIR. The link of the petitioner to the aforesaid embezzlement was that an amount of Rs.7,11,730/- was transferred by husband of the petitioner in her account and the same was later on transferred to the account of Tarun Kumar Bhagirath. The gravamen of the allegation against the petitioner was that once an amount of Rs.7,11,730/- was received in her account from the account of Board, she ought to have informed the same to the board. In all 12 officials were issued chargesheets. As per the allegation of the chargesheet, the charges proved against the employees are as under:-

> "Charges were leveled against different Class categories, the detail of which is as under:-

Sr. No.	Name of officers/officials	Proved charges	Not proved Charges
1.	Sh. Tarun Kumar, Senior Assistant	1,2,3,4,5,6,7 & 8	----
2.	Smt. Sawinder Kaur, Senior Assistant	1,2,3,4,5,6 and 7	----
3.	Sh. Shubhkaran, Clerk	1,2,3,5,6,7 and 8	Charge no.4

4.	Sh. Gurminder Singh, A.P.O.	1,2,3,4,5,6 and 7	----
5.	Shri Mohan Singh, Senior Assistant	1,2,3,4,5,6 and 7	----
6.	Sh. Joginder Kumar, Daftri	1,2,3,4,5 and 6	----
7.	Sh. Hazari Lal, Daftri	1,2,3,4,5 and 6	----
8.	Sh. Ram Singh, Helper	1,2,3,4,5 and 6	----
9.	Sh. Balbir Singh, Senior Assistant	1,2,3,4,5,6 and 7	----
10.	Sh. Subash Chand, Driver	1,2,3,4,5 and 6	----

3. Petitioner was issued with show cause notice dated 02.03.2017 alongwith inquiry report. On receiving the response, common order qua all the employees was passed. The petitioner has been ordered to be dismissed from services. The operative part of the order dealing with petitioner reads as under:-

> "An amount of Rs.7,11,730 transferred in the bank account of Smt. Sawinder Kaur daughter of Sh. Gurbachan Singh wife of Sh. Tarun Kumar (main culprit), Senior Assistant, (under suspension) and the conspiracy as well as ill will is proved due to not providing the information deliberately to the department and all the allegations as alleged in the prescribed list are proved as correct. The seriousness of the offence can not be covered with deposited amount in the Board's Bank account without interest. This employee is wife of Sh. Tarun Kumar and it is to be considered that she has full knowledge of this fraud. It means that moral turpitude action is to be taken as she played a role by committing the financial fraud with the department and she is also accused of embarrassment of the department in the area.

> Therefore under Punjab School Education Board Employees (Punishment and Appeal) Rules, 1978 and Rule 5(ix) which may be read as Rule 6, it is recommended that Smt. Sawinder Kaur daughter of Sh. Gurbachan Singh, Senior Assistant Account Branch (under termination) is dismissed from her service with immediate effect.

4. The petitioner preferred appeal which stands rejected affirming the order of dismissal.

5. Counsel for the petitioner submits that so far as the fraud committed in the Accounts Branch is concerned, the petitioner has no relation to the same. Even as per chargesheet issued to the petitioner, there is no allegation that she participated in the fraud. Allegation against the petitioner is on the basis of a transaction made in her salary account by her husband who is the prime accused and kingpin of the fraud.

6. Counsel further submits that in fact it was her husband who used to operate her salary account. It was he who in order to dupe the board transferred the amount of Rs.7,11,730/-, first in her account and thereafter to his account. The petitioner being not in the knowledge of such transaction made in her bank account cannot be held guilty for offence committed by her husband. In order to drive home the point, further reliance is being placed upon decree of divorce annulling the relation of petitioner with her husband which is claimed to be outcome of the bad deeds of her husband. It has been further contended by counsel for the petitioner that the employees who were working in the Accounts Branch and have been proved to be guilty of the principal

offence of fraud have been dealt with soft hands and have been saddled with much lesser punishment liked that of reversion. Reference is being to the allegations and the punishment awarded to Shubh Karan son of Chajju Ram and that too Mehar Singh who are accused in the FIR registered for embezzlement.

7. Per contra, Mr. Sharma submits that the story being put forth w.r.t. snapping of relationship between the petitioner and her husband Tarun Kumar Bhagirath is an afterthought with an intent to gain sympathy. Counsel further submits that so far as the case of Shubh Karan and Balbir Singh are concerned, though they are charged with the offence of embezzlement and Shubh Karan is also one of the accused in the FIR, but the financial implication of the charges levelled against Shubh Karan is much less as compared to that owing to the misconduct of the petitioner. He submits that so far as Shubh Karan is concerned, the amount transferred in his salary account was only Rs.77,512/- whereas the amount transferred to the account of the petitioner was Rs.7,11,730/- and thus the petitioner cannot claim parity vis-a-vis Shubh Karan.

8. I have heard counsel for the parties and have gone through the records of the case.

9. Facts are borne from the records of the case which are not in dispute. So far as the plea raised by counsel for the petitioner w.r.t. the bank account of the petitioner being operated by her husband and her ignorance w.r.t transferred amount is concerned, this Court does not intend to venture into the said factual controversy. For a lady in employment that too for last more than 25 years, it is highly

unbelievable that her account was operated by her husband. Trite it is that this Court while exercising writ jurisdiction cannot sit as a Court of Appeal over the findings recorded by the Inquiry Tribunal. Thus, the aforesaid arguments raised by counsel for the petitioner sans merit and is hereby rejected. Otherwise also while issuing notice of motion on 27.01.2020, this Court observed as under:-

> "Petitioner, who was serving on the post of Senior Assistant under the respondent-Board has filed the instant writ petition assailing the order dated 5.1.2018 (Annexure P-8) whereby she has been dismissed from service. Further challenge is to the order dated 26.12.2018 (Annexure P-10) rejecting the appeal that she had preferred.
>
> Counsel at the very outset confines the scope of the instant petition only as regards quantum of punishment. In such regard it is submitted that the allegations were primarily against Tarun Kumar (husband of the petitioner) as also co-delinquent namely Balbir Singh, Shubhkaran Singh and others in the nature of embezzlement and causing loss to the respondent-Board. In so far as the petitioner is concerned, the allegation was that a sum of Rs.7 lakh approximately had been deposited in the account of the petitioner and as such, she had acted in connivance with her husband. It is argued that the other co-delinquents namely Balbir Singh and Shubhkaran Singh against whom there were direct allegations of embezzlement, have been awarded a lesser penalty of reversion. Further urged that petitioner was serving in a different branch as opposed to the branch in which her husband and Balbir Singh and Shubhkaran Singh were working

and as such, she had no direct role pertaining to the allegation. Yet
another mitigating factor cited seeking lesser punishment is that the amount of Rs.7 lakh approximately has since been deposited back by the petitioner from her G.P.F account.

Notice of motion confined to such limited aspect, returnable for 19.5.2020."

10. Thus, the issue now involved in the present writ petition is limited to the quantum of punishment. Argument raised on behalf of the petitioner is on the basis of parity vis-a-vis Shubh Karan who is also one of accused facing the criminal trial pertaining to the fraud involved. In order to appreciate the argument raised by counsel for the petitioner, the chargesheet served upon the petitioner and that upon Shubh Karan need to be compared. The two chargesheets when juxtaposed read as under:-

Chargesheet of the petitioner	**Chargesheet issued to Shubhkaran**
1. As per the enclosed details of allegations, Smt. Sawinder Kaur, Senior Assistant (Under Suspension) in connivance with her husband Shri Tarun Kumar, Senior Assistant (Under Suspension), Subh Karan, Junior Assistant (Under Suspension) and Mihar Singh, Senior Assistant (Now Retired) has committed serious irregularities in her salary account to the tune of Rs. 7,11,730/- by transferring the same in an illegal manner.	1. <u>As per the enclosed details of allegations against Sh. Subhkaran son of Shri Chhaju Ram, Clerk, Publication Branch (Under Suspension) by embezzling an amount of Rs. 1,98,14,294/- (One crore ninety eight lakhs fourteen thousand two hundred ninety four) in connivance with Shri Tarun Kumar, Senior Assistant (Under Suspension) and Mihar Singh, Senior Assistant (now retired) has committed serious irregularities.</u>
2. The amounts, which were illegally transferred by Shri Tarun Kumar, Senior Assistant (Under Suspension)	2. Out of the embezzled amount, an amount of Rs. 97937/- Shri Sh. Subhkaran, Clerk (Under Suspension) was got transferred in

in the account of Smt. Sawinder Kaur, Senior Assistant (Under Suspension), Smt. Sawinder Kaur, Senior Assistant (Under Suspension) re-transferred the amounts in the account of Shri Tarun Kumar, Senior Assistant (Under Suspension).	his salary account in an illegal manner.
3. The amounts illegally transferred through ECR in the salary account of Smt. Sawinder Kaur, Senior Assistant (Under Suspension) in addition to the salary were not brought to the notice of the Board.	3. Shri Sh. Subhkaran, Clerk (Under Suspension) in connivance with his co-fellow employees, amount was transferred in the salary account in an illegal/wrong manner.
4. Smt. Sawinder Kaur, Senior Assistant, Accounts Branch (Under Suspension) by doing so misused her position with a mala fide intention cheated the office and committed a very big financial fraud.	4. Shri Sh. Subhkaran, Clerk (Under Suspension) got the arrears of salary bill passed manually in the name of some other official/officer but out of that amount, in an wrong manner got transferred in his account or in the account of his co-fellow employees.
5. Because of doing such like acts on the part of Smt. Sawinder Kaur, Senior Assistant, Accounts Branch (Under Suspension) and publication in the newspapers, reputation of the office has been damaged.	5. Shri Sh. Subhkaran, Clerk (Under Suspension) by doing so misused his position with a mala fide intention cheated the office and committed a very big financial fraud.
6. Smt. Sawinder Kaur, Senior Assistant, Accounts Branch (Under Suspension) violated Rule 5 (a), (b) and (c) and Rule 8 of the Punjab School Education Board Employees Conduct Rules.	6. Because of such like acts on the part of Sh. Subhkaran, Clerk (Under Suspension) and publication in the newspapers, reputation of the office has been damaged.
7. By doing so, Smt. Sawinder Kaur, Senior Assistant, Accounts Branch (Under Suspension) has caused financial loss to the tune of Rs. 711730/- to the office of the Board.	7. Sh. Subhkaran, Clerk (Under Suspension) violated Rule 5 (a), (b) and (c) and Rule 8 of the Punjab School Education Board Employees Conduct Rules. 8. By doing so, Shri Shubkaran,

Therefore, Smt. Sawinder Kaur daughter of Shri Gurbachan Singh, Senior Assistant, Accounts Branch (Under Suspension) is liable to be punished under the Punjab School Education Board Employees (Punishment and Appeal) Rules, 1978.	Senior Assistant, Accounts Branch (Under Suspension) has caused financial loss to the tune of Rs. Rs. 1,98,14,294/- to the office of the Board. Therefore, Shri Sh. Subhkaran son of Shri Chhaju Ram, Clerk (Under Suspension), Publication Branch (Under Suspension) is liable to be punished under the Punjab School Education Board Employees (Punishment and Appeal) Rules, 1978.

11. The comparative analysis of the two chargesheets shows that Shubh Karan is accused of having embezzled an amount of Rs.1,98,14,294/- (One crore ninety eight lacs fourteen thousand two hundred and ninety four only), whereas there is no allegation of embezzlement against the petitioner. I may also add here that Shubh Karan is one of the accused alongwith Tarun Kumar Bhagirath in the FIR case, whereas the petitioner has neither been named in the FIR nor the crime travelled to her door in the course of investigation. Thus, the question is that in the background of this factual position that allegations against Shubh Karan were far graver than that faced by petitioner, does saddling the petitioner with more harsh punishment than that awarded to Shubh Karan amounts to hostile discrimination against her?

12. In the background of the aforesaid facts, it is necessary to visit law on the subject. Apex Court in the case of ***Sengara Singh and others vs. State of Punjab and others 1983(4) SCC 225*** held as under:-

> "7. What then is the situation ? As a sequel to police agitation, the State Government dismissed

about 1100 members of the Police Force on the allegation that they participated in the agitation. The State Government also filed criminal prosecutions against a large number of the agitators. Subsequently, the State Government reinstated 1000 dismissed members of the Police Force in their original posts and withdrew the criminal cases against them. If the filing of the criminal cases was distinguishing feature, which would distinguish the case of the present appellants from others, that feature has become irrelevant because the criminal cases against those who were subsequently reinstated have been withdrawn. It is not suggested that the present appellants were leaders or indulged into more violent activities. We repeatedly questioned the learned counsel to specify the distinguishing features of the present appellants from those in whose cases the Committee recommended the reinstatement and the State Government accepted the recommendations. There is not an iota of evidence which would distinguish the case of the present appellants from those who were the beneficiaries of the indulgence of the Committee and the largesse of the State. The net result has been that the present appellants have been arbitrarily weeded out for discriminatory and more severe treatment than those who were similarly situated. This discrimination is writ large on the record and the Court cannot overlook the same.

8. As usual the bogey was raised that this Court should not encourage indiscipline in ranks of para-military forces like the police because that will tinker with national security. We asked Mr. Sharma, learned counsel whether the charge should be

addressed to the Court or to the State Government. The High Court dismissed the petitions on an earlier occasion probably guided by this consideration. The State Government thereafter constituted a Committee to review the cases of all dismissed agitators and the Committee picked and chose some for its indulgence leaving the rest to fend for themselves. May we repeat the question as to who would be responsible for creating such situation and encourage indiscipline in the Police Force ? The State or the Court. The State divided the agitators into two classes i.e. favourites and non-favourites. The Court is restoring the balance by this order. Therefore, the charge misdirected at the Court must be ignored.

9. What then should be done ? The appellants have been accused of participating in a procession taken out by the members of the Police Force for ventilating their grievances about their service conditions. May be that still having not reached the stage of tolerance for formation of associations amongst police personnel, the demonstrators may be looked upon with disfavour. But approaching the matter from this angle, all the 1100 dismissed members of the Police Force were guilty of same misconduct namely indiscipline to the same extent and degree as the present appellants. Now if the indiscipline of a large number of personnel amongst dismissed personnel could be condoned or over looked and after withdrawing the criminal cases against them, they could be reinstated, we see no justification in treating the present appellants differently without pointing out how they were guilty of more serious misconduct or the degree of

> indiscipline in their case was higher than compared to those who were reinstated. Respondents failed to explain to the Court the distinguishing features and, therefore, we are satisfied in putting all of them in same bracket. On that conclusion the treatment meted to the present appellants suffers from the vice of arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Article 14 of the Constitution. The Court must accordingly interpose and quash the discriminatory action."

13. Further in the case of ***State of UP vs. Raj Pal reported as 2010 (5) SCC 783*** it was held as under:-

> "xx xx xx
>
> It is undoubtedly open for the disciplinary authority to deal with the delinquency and once charges are established to award appropriate punishment. But when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory.

14. Near home, this High Court in ***Parbodh Sagar vs. Punjab State Electricity Board, Patiala, (P&H) reported as 1997(3) RSJ 194***, it was held as under:-

> "xx xx xx
>
> After all, a person who according to the respondents was merely negligent cannot be more guilty than a person who had actually embezzled the money, Punishing the one who was negligent and not taking any action against the person who has actually embezzled the money may not be very fair."

15. Similarly, in ***N.C. Arora vs. State of Haryana reported as 1997(1) SCT 206,*** it was held as under:-

> "17. Another ground which deserves to be taken note by me relates to the plea of discrimination. Though in ordinary circumstances the Court cannot sit in appeal over the decision of the employer in the matters involving punishment but in the peculiar facts of this case I deem it necessary to observe that the respondents have failed to explain any rational ground for meeting out different punishments to the petitioner on the one hand and Shri V.K. Munjal on the other hand. Admittedly, Shri V.K. Munjal was the leader of the team which was constituted by the Government for arranging cement and the final decision was in the hands of Shri V.K. Munjal. If Shri V.K. Munjal has been let off with a penalty of two increments and recovery of Rs. 48,000/- it is not discernible to me why the petitioner was chosen to be removed from service. Though the allegations levelled against some of the officers of the department may not have been substantiated to such an extent which may justify the recording of adverse finding by the Court against such officers, the imposition of extreme penalty of removal from service upon the petitioner lends credibility to his plea that the respondents have acted arbitrarily."

16. The said precedents were followed by Division Bench in ***2002(1) RSJ 97,*** titled as ***Chattar Singh vs. Haryana Vidyut Prasaran Nigam Limited*** where in somewhat similar circumstances dealing with the issue of parity in the cases involving departmental proceedings, it was held as under:-

"xx xx

As noticed above, all those who were in service against whom allegation of embezzlement had been established were inflicted with the punishment of stoppage of increments with cumulative effect, whereas for the same allegations those who had retired from service were inflicted the punishment of cut in pension. The charge against the petitioner is not of embezzlement but is only of negligence and/or dereliction in the discharge of duties. Certainly a punishment graver than the punishment inflicted upon the employees against whom the charge of embezzlement was proved, could not have been inflicted upon him.

8. The conclusion drawn above is also in consonance with the judgments relied upon by the learned counsel for the petitioner. In ***Parboth Sagar v. Punjab State Electricity Board, Patiala, 1997(3) RSJ 194 : 1997(3) SCT 383***, this Court in paragraph 23 opined that a person who according to the authorities was merely negligent could not be more guilty than a person who had actually committed embezzlement. In the instant case, the only allegation against the petitioner is of negligence in the discharge of his duties. He can certainly not be inflicted a punishment which is more stringent than the punishment inflicted on those who have been found to be guilty of embezzlement. Learned counsel for the petitioner has also placed reliance on the decision rendered by this Court in ***N.C. Arora v. State of Haryana, 1997(1) SCT 206***. In the aforesaid case three officials had been charged with negligence in respect of a transaction which had resulted in loss to the Government. The Punishing Authority inflicted

> upon one of the three officials the punishment of stoppage of two increments; against another, the Punishing Authority passed an order of recovery of a part of the loss; whereas against the petitioner, the Punishing Authority passed the order of dismissal from service. On the basis of the facts in the aforesaid case, this Court arrived at the conclusion that the Punishing Authority had acted unfairly. Consequently, the order of punishment was quashed with liberty to the Government to take a fresh decision in accordance with law."

17. From reading of aforesaid precedents, it can be thus concluded as under:-

(i) Where delinquent employees are facing similar charges, they need to be treated as par.

(ii) Wherever the treatment is discriminatory, the same would be an act of discrimination and arbitrariness and cannot be sustained being forbidden by Article 14 of the Constitution of India.

(iii) Wherever there is an arbitrary action tantamounting to denial of equality as guaranteed by Article 14 of the Constitution of India, the Court must intervene and quash the discriminatory action.

(iv) In the matters involving embezzlement, a person accused of mere negligence cannot be more guilty than the person accused of embezzlement. Meaning thereby a person charged with principal offence is always more guilty than the one charged with negligence.

18. Admittedly, the petitioner is not accused of embezzlement, there is no allegation against her of having embezzled the amount. The charge against the petitioner is of being negligent in not informing the board w.r.t the amount transferred in her account by Tarun Kumar

Bhagirath who happens to be her husband. Thus, the punishment inflicted upon the petitioner cannot be more severer then the punishment imposed upon the delinquent accused of embezzlement i.e. Shubh Karan.

19. In view of the above, this Court has no hesitation in holding that the action of the authorities is arbitrary and thus cannot be sustained. Since there is no charge against the petitioner qua embezzlement, the punishment inflicted upon her could not have been graver than the punishment inflicted upon Shubh Karan who is one of the accused in a criminal case. The financial implication cannot be the sole basis when the charges levelled against the petitioner are much less serious than the charges levelled and proved against other officials in enquiry.

20. Resultantly, the impugned order of punishment and the order passed by the Appellate Authority affirming the same is hereby set aside. Punishing authority is granted liberty to pass an order afresh within a period 08 weeks from the date of receipt of certified copy of the order after affording opportunity of hearing to the petitioner.

21. Writ petition is allowed in the aforesaid terms.

22. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

21.04.2023
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes