233

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19059-2019 (O&M)
Date of Decision:10.10.2023

RUKMANI DEVI .....Petitioner

V/s.

STATE OF PUNJAB AND OTHERS .....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Ms. Supriya Garg, Advocate,
for the petitioner.

Mr. R.K. Kapoor, Addl. A.G., Punjab.

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SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioner has preferred this Writ Petition seeking quashing of the order dated 29.03.2019 as well as the order dated 17.10.2013 whereby 5% cut on her pension was imposed for life and the Appeal against the said order was dismissed on account of delay of more than five years as well as on merits.

2. Learned counsel for the petitioner submits that the petitioner had been suffering from mental depression due to which she was unable to join duties and thus, she cannot be said to have committed any misconduct of being absent from duty. She, therefore, could not have been punished. Further, learned counsel for the petitioner submits that the punishment awarded to the petitioner is too harsh and does not commensurate to the charges which have been found to be proved as against the petitioner. In support of her contentions, learned counsel for the petitioner has relied on the judgment rendered by the Hon'ble Supreme Court in the case of ***D.V. Kapoor***

Suresh Kumar
2023.10.12 17:00
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Vs. ***Union of India and Others***; *(1990) Supreme Court Cases 314* and the judgment rendered by this Court in the case of ***Jagdish Mitter*** Vs. ***Central Administrative Tribunal and Others***; *2014 SCC OnLine P&H 10051.*

3. *Per Contra,* learned State counsel submits that enquiry was conducted wherein the petitioner was given a fair opportunity and it was found that she had unauthorizedly remained absent from duty for a period 24.01.2006 to 30.01.2007 and from 23.11.2007 to 01.12.2007 and then from 02.12.2007 to 23.12.2007. She was directed to attend a Camp duty which she refused and remained absent from 24.12.2007 to 31.12.2007. She again remained absent from duty from 08.05.2008 to 16.05.2008. Joined duties on 17.05.2008 and again absented from duty from 18.05.2008 to 30.06.2008. Vide order dated 24.08.2008, she was asked to perform temporary duties at another school, but did not join. The order of her temporary duty was also set aside, but she did not joined back to her parent school also and remained unauthorisedly absent from duty until she retired on 30.04.2010. Thus, it is stated that the petitioner had remained absent from duty for a considerably long time. Initially 30% cut in pension of the petitioner was proposed, but taking sympathetic and humanitarian grounds, the same was reduced to 5% cut which does not call for any interference. The claim of the petitioner being mentally unwell is not corroborated or substantiated with any medical record, report or certificate.

4. I have considered the submissions of counsel for the parties and carefully gone through the enquiry report.

5. The petitioner was served with a charge sheet to which she did not submit any reply, but she appeared before the enquiry officer and stated

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2023.10.12 17:00
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that she was transferred to Government Girls Senior School, Mansa to Government Senior Secondary School, Bamme Kala, Mansa vide order dated 19.08.2005 and her husband, who was serving as Pharmacist, has died on 05.10.1979 and as a widow, she was wrongly transferred from Mansa to Bhamme Kalan.

6. The Enquiry Officer notices the statement of the other witnesses also and the attendance registers were also produced. The enquiry report was made available to the petitioner who has submitted her response thereto. In the Appeal, she has taken a different stand of being mentally unwell, but no documents had been produced. Even before this Court, no documents regarding the petitioner being mentally unwell have been annexed.

7. This Court finds that it is a case where the petitioner has not only once but several times remained absent from duty without giving any valid explanation. The respondents have taken a sympathetic view and stopped only 5% cut on her pension which in the opinion of this Court cannot be said to be shocking the conscience. In view thereof, the same cannot be said to be unreasonable and unjustified.

8. The judgments cited at bar by the learned counsel for the petitioner are on different facts altogether.

9. In the case of **Jagdish Mitter (Supra),** the stopping of 5% cut in pension for life was imposed for supervisory negligence which was found to be disproportionate to the misconduct and instead the punishment was reduced to cut of pension for period of five years.

10. In **DV Kapoor (Supra)**, the Court while examining the rights and powers of withholding pension with reference to the concerned Rules,

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the Court ultimately reached to the conclusion that the pension can be stopped if a grave conduct is found to be proved. Thus, it is seen that each facts and circumstances of the case, the authorities has a right to take a decision regarding the appropriate punishment which is required to be awarded.

11. In a recent judgment, the Hon;ble Supreme Court has observed about the scope of interference in departmental proceedings and has held in the case of ***Union of India and others*** Vs. ***P. Gunasekaran***; *2015(2) SCC 61* held as follows:-

> *"13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:*
>
> *a. the enquiry is held by a competent authority;*
>
> *b. the enquiry is held according to the procedure prescribed in that behalf;*
>
> *c. there is violation of the principles of natural justice in conducting the proceedings;*
>
> *d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
>
> *e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
>
> *f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*

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g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii. go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

12. The aforesaid view has been reiterated by three Judges' bench in the case of ***Central Industrial Security Force and Others*** VS. ***Abrar Ali***; *2017 (4) SCC 507*.

13. In view of the above, I do not find any merit to interfere with this Writ Petition and the same is ***dismissed*** accordingly.

14. All the pending applications in this Writ Petition stand disposed of accordingly.

October 10, 2023 **[SANJEEV PRAKASH SHARMA]**
Ess Kay **JUDGE**

Whether speaking / reasoned : Yes / No
Whether Reportable : Yes / No

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