

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18787-2012

July 17th, 2023

Rajinderpal Kaur

.....Petitioner

VERSUS

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr.Raman Sharma, Advocate, for the petitioner.
Mr. D.K.Singal, Addl. A.G.Punjab

SANJEEV PRAKASH SHARMA, J

1. The petitioner has preferred this writ petition seeking quashing of orders dated 18.01.2012 (Annexure P-21) and another of even date Annexure P-23, whereby the petitioner was punished with removal from service and thereafter punished with dismissal from service with retrospective effect with regard to the same allegations and departmental inquiry. He also prays for quashing of the order passed subsequently dated 21.10.2014 endorsed on 27.10.2014 (Annexure R-1) during the pendency of this writ petition, whereby the order of dismissal has been confirmed and order dated 18.01.2012 has been modified to the extent of dismissal from service with immediate effect.

2. Learned counsel for the petitioner submits that petitioner had prayed for leave of five years permissible to Punjab Government Employees, who are willing to opt for searching for self-employment avenues and prayed for granting earned leave for the period from 01.07.2005 to 30.08.2005, half pay leave from 31.08.2005 to 02.12.2005, without pay leave from 03.12.2005

to 30.06.2010 and prefixing her leave with summer vacation from 15.05.2005 to 30.06.2005. The said leave application dated 24.05.2005 was recommended and forwarded by the Principal of the School wherein the petitioner was working as a Teacher. District Education Officer (S.S) Bathinda forwarded the leave application vide letter dated 31.05.2005 to the Director Education Department (S.S) Punjab. As per the Policy Instructions, it is stated that the Director, who was the authority to grant leave and the instructions required that the application be submitted for grant of leave at least 30 days before the date on which the employee proposes to leave. Since she proposed to leave on 01.07.2005, she asserted that her leave application was well within time on 24.05.2005 considering that the application is required to be sanctioned in terms of the Policy Instructions. She appears to have left the country on 01.07.2005. The Director, on the other hand, forwarded the application of the petitioner to the Government on 23.12.2005. The Secretary Education Department raised a query that her application has been sent to the State Government on 23.12.2005 and therefore, a revised leave application be asked for since the period from 01.07.2005 to 30.06.2010 for which the special leave was prayed for, stood already expired. Since the petitioner had already left, apparently she did not receive the said communication although she states that she had left behind her address of Foreign Country with the Principal.

3. It is her case that when she returned back even before completing of five years leave, she requested to join on 04.12.2009. The petitioner was allowed to join by the Secretary vide order dated 10.02.2010. The petitioner joined, where-after a charge sheet was served upon her on 10.03.2010 for having proceeded on self employment scheme leave without getting the same sanctioned.

4. It would be apposite to quote the charges levelled against her, which reads as under:-

(I) The petitioner proceeded on 5 years special self-employment scheme leave w.e.f 01.07.2005 to 30.06.2010 without getting the same sanctioned and as such she is to be treated as absent from duty w.e.f 01.07.2005.

(II) Because of petitioner having proceeded on leave without sanction, the study of the students got affected as a result of which no alternate arrange could be made.”

5. Petitioner replied to the charge sheet vide his letter dated 12.03.2010. A retired IAS Officer was appointed to conduct the inquiry, who submitted his Inquiry Report after recording the submissions of the Incharge Officer as well as of the prosecution and held both the charges as above proved against the petitioner. Copy of the Inquiry Report was made available to the petitioner who submitted her objections.

6. The Disciplinary Authority passed two orders on 18.01.2012 with Endst No.15/203/2005-5E2/705 and Endst. No.15/203/2005-5E2/909. In the first order with Endst. No.705, he recorded that the petitioner is continuously absent w.e.f 01.07.2005 and that she did not participate in the inquiry and a public notice was published in leading newspapers but she did not submit reply and therefore, it was presumed that she is not interested in Govt. service and order of removal was passed w.e.f 01.10.2005.

In the order dated 18.01.2012 with Endst. No.909, while the aforesaid facts were mentioned identical to that in the order passed earlier, the Secretary invokes power under Rule 5(ix) of the Rules of 1970 and orders her dismissal from service. The petitioner has challenged both the orders before this Court.

7. Learned counsel for the petitioner submits that there has been a complete non application of mind while passing the punishment orders. He submits that the charge sheet nowhere mentions of petitioner being continuously absent from duty.

(a) He further submits that the Inquiry Report was not considered at all by the disciplinary authority nor the objections raised by the petitioner were considered;

(b) He further submits that the punishment order could not have been passed with retrospective effect; passing of order of removal and dismissal are wholly unwarranted. Moreso, petitioner continue to work after having rejoined her duties. The disciplinary authority had allowed her to join and she did not even availed five years leave. The Inquiry Officer has held her guilty of not getting her leave sanctioned before leaving as per the charge sheet and that study of students got affected since no alternative arrangement could be made.

8. Learned counsel submits that the disciplinary authority has gone beyond the charge sheet and proceeded to presume that the petitioner has not rejoined and is not interested in service. Such a course was not available to the respondents – Disciplinary Authority.

9. The respondents had filed their reply to the writ petition and have placed on record another order issued by the Principal Secretary who seems to have re-examined its earlier order dated 18.01.2012 and while upholding the decision of removal awarded to the petitioner, the Principal Secretary makes the punishment order effective from the date the order has been passed namely on **21.10.2014**. Learned counsel for the respondents submits that the petitioner

is no more interested in service and therefore, she has rightly been punished with order of dismissal.

10. I have considered the submissions.

11. From perusal of the orders passed by the Disciplinary Authority, after two years of 18.01.2012 and the order dated **21.10.2014**, this Court finds that none of the orders refers to the inquiry conducted by the Inquiry Officer or his Inquiry Report. The charges levelled are different from the charge mentioned in the impugned order of punishment.

Rules 8 and 9 of the Rules of 1970 laid down a procedure of adopting of an inquiry against a delinquent. Statement of parties are required to be served upon the delinquent who is required to submit his report and then the Inquiry Officer has to examine the legality and the veracity of the charges. If he holds the charges to be proved, the Disciplinary Authority is required to look into the Inquiry Report and if he agrees with the Inquiry Report, he has to pass punishment order in terms of Rule 5 considering the gravity of the charges. The options are available with him which are to be exercised in different circumstances and including removal and dismissal. However, the order of removal in the present case was converted to dismissal on the same date on the Disciplinary Authority presuming that the petitioner has not joined and is not interested in service. Rather, facts are otherwise.

12. The scope of interference in Departmental Inquiry has been well settled is limited. In **Union of India and others v. P.Gunasekaran 2015(2) SCC 610**, the Apex Court has held as under:-

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;*
- 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.*

13. The aforesaid law has been further approved by three judges Bench of the Supreme Court in **Central Industrial Security Force and others v. Abrar Ali (2017) 4 Supreme Court Cases 507**. It has been again reiterated in **Union of India and others v. Subrata Nath 2023(1) SLJ 97** has held as under:-

“28. We are unable to commend the approach of the learned Single Judge and the Division Bench. There was no good reason for the High Court to have entered the domain of the factual aspects relating to the evidence recorded before the Inquiry Officer. This was clearly an attempt to reappraise the evidence which is impermissible in exercise of powers of judicial review vested in the High Court under Article 226 of the Constitution of India. We are of the opinion that both, the learned Single Judge as well as the Division Bench, fell into an error by setting aside the order of dismissal from service imposed on the respondent by the Disciplinary Authority and upheld by the Appellate Authority.”

14. Thus, if we examine the present case in light of aforesaid well settled propositions of judicial review, we need not re-appreciate the Inquiry Report, which has been held by a competent authority. However, the Disciplinary Authority has clearly gone beyond the charge sheet and has been influenced by extraneous consideration. Once, the petitioner has participated in the inquiry and an Inquiry Report was available, it was incumbent upon the

Disciplinary Authority to examine the case of the petitioner with references to the charge sheet and the Inquiry Report. However, since it presumed that the petitioner is continuously absent from duty and is not interested in further serving the State, it proceeded to pass an erroneous punishment order. The findings arrived at by the Disciplinary Authority are based on no evidence. Such findings are un-sustainable in law and punishment awarded stands vitiated. Even the order passed after filing of writ petition by the Special Secretary on **21.10.2014** does not take into consideration the Inquiry Report and suffers from the same error, as above. Therefore, the order passed by the respondents cannot be upheld and is accordingly, quashed and set aside.

15. During the course of arguments, it is informed by learned counsel for the respondents that the petitioner attained superannuation on 31.08.2016.

16. Ordinarily, this Court would have directed the Disciplinary Authority to pass a fresh order after examining the Inquiry Report. However, as more than seven years have elapsed, it would not be appropriate to remand the matter back to the Disciplinary Authority considering the law laid down by the Apex Court in **B.C. Chaturvedi vs Union Of India And Ors. 1995 SCC (6) 749** and considering that the charge framed against the petitioner is of proceeding on leave without sanction. Although, she had applied for the leave and has re-joined duties after returning back from leave, this Court deems it appropriate to put a quietus to the proceedings and in view of the **charge** being approved by the Inquiry Officer, award punishment of stopping of five grade increments with cumulative effect. The punishment will be effective for the five years preceding the date of retirement as the Inquiry Report was submitted in 2011. The petitioner would be entitled for reinstatement and consequential benefits of her service accordingly.

17. Writ petition is partly allowed, as above.

July 17th , 2023
mamta

(SANJEEV PRAKASH SHARMA)
JUDGE

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