

2023:PHHC:064605

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

CWP-1253-2018(O&M)

Date of decision:04.05.2023

DEEPIKA SHARMA

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Puneet Gupta, Advocate for the petitioner.

Mr.R.S.Pandher, Sr.DAG, Punjab.

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ANIL KSHETARPAL, J.

1. The services of the Probationer Teacher have been dispensed with by the order dated 13.12.2017, challenging its correctness, the present writ petition have been filed.

2. In order to comprehend the controversy involved, the following facts are required to be noticed:-

The petitioner was appointed as Elementary Trained Teacher on 27.09.2016. She is stated to have applied for leave to study B.Sc. (Non Medical). When her application for study leave was being processed, she absented from her duties w.e.f. 07.12.2017. On

07.04.2017, Block Primary Education Officer taking serious view of the absence of the petitioner directed her to join immediately. The petitioner claims that she received the communication on 11.04.2017 and submitted joining on 12.04.2017. However, she was not permitted to join. Thereafter, the petitioner was called upon to supply information about the days of classes attended by her during all this while. She replied to the aforesaid communication but she was issued a charge sheet on 29.09.2017 under Rule 8 of Punjab Civil Services (Punishment and Appeal Rules), 1970 (hereinafter referred to as “the Rules”).

3. The allegation that the petitioner took admission on regular basis in Government Shivalik College Naya Nangal in B.Sc in the 6th Semester without getting permission from the Department. The petitioner submitted the reply and thereafter the impugned order was passed dispensing with the petitioner’s service during probation period for violation of the terms of appointment.

4. The petitioner claims that once the disciplinary proceedings were initiated under Rule 8 of the Rules, the Government has no right to dispense with the services without completing the disciplinary proceedings. The counsel representing the petitioner further contends that the impugned order is stigmatic and hence the same cannot be passed without holding an inquiry. In support thereof, he relies upon judgement passed in *Dr. Vijaykumaran C.P.V. Vs. Central University*

of Kerala and others, Civil Appeal No.777 of 2020 decided on 28.01.2020.

5. On the other hand, learned State Counsel while referring to Clause 7 of the appointment letter wherein it was clearly stipulated that the petitioner will not pursue any type of higher studies further, without getting prior permission. In this regard, he further submits that the petitioner does not deserve to remain in Government service particularly when she left the students of the class allotted to her in the lurch in between the academic session. He submits that he has no objection if the order dispensing with the petitioner services is declared to have been dispensed with without any stigma.

6. This Court has considered the submissions and analyzed the arguments of the counsel representing the parties. Clause 7 of the appointment letter reads as under:-

7. That it is clearly informed that he/she will not be pursue any type of higher studies without getting prior permission in this regard.

7. It is evident from narration of facts that the petitioner within the period of less than five months absented from her duties while leaving the studies of the students at the mercy of almighty. The petitioner was appointed to impart and take care of students at primary level. Undoubtedly, there are instructions of the Government which permit the

employee to improve their qualifications after taking permission from the Government. These instructions are in the nature of concession but for that, prior permission is necessary.

8. In the present case, she absented after merely 4 months of her joining. Mere submission of application for leave is not sufficient to justify her absence from the school. Though at one point of time, the petitioner submitted her joining in the month of April. However, that would not absolve the petitioner from her unauthorized absence.

9. At one point of time, the petitioner was served with charge sheet under Rule 8 of the Rules. However, the services of the petitioner could be dispensed with as she was on probation. After considering the reply submitted by the petitioner, the competent authority found that the petitioner has violated the terms of the appointment letter during the probation period. Hence, a decision was taken to dispense with her services. It is specifically noted that her services are being dispensed with in terms of Clause 10 of the appointment letter which enables the disciplinary proceedings to pass order.

10. The judgement relied upon by the learned Counsel is in the context of the fact as to whether the termination order is simplicitor or ex-facia stigmatic. As submitted by the learned State counsel, the State is prepared to state that the order is non stigmatic.

11. After having evaluated the arguments of the learned counsel for the parties, this court is of the view that in exercise of the writ jurisdiction, it would not be appropriate to interfere. The petitioner may, in anxiety to progress in life, have absented from duty to study further. However, she was required to seek prior permission. While deciding the case, this court cannot overlook the petitioner's continuous absence from duty during crucial period immediately before the final examination of the students.

12. At this stage learned counsel representing the petitioner submit that since the petitioner was not permitted to join in the month of April, the petitioner is entitled for salary. The petitioner may, if so advised, avail the alternative remedy.

13. Keeping in view the aforesaid facts, no ground is made out to issue the writ. Consequently, the present writ petition is dismissed.

14. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

04.05.2023

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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No