2023:PHHC:091223

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15113-2023 (O&M)
Date of Decision:- 18.7.2023

Kuldeep Singh Kang ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Shvetanshu Goel, Advocate for the petitioner.

Mr. IPS Kang, AAG, Punjab.

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GURVINDER SINGH GILL, J.

1. The petitioner seeks issuance of a Writ in the nature of Certiorari so as to quash chargesheet dated 15.9.2021 (Annexure P-1), inquiry report dated 24.6.2022 (Annexure P-2), order dated 19.9.2022 (Annexure P-6) and order dated 19.6.2023 (Annexure P-18).

2. The petitioner was appointed as a Clerk in the year 1992 in the Department of Water Resources, Punjab, Chandigarh and was subsequently promoted as Senior Assistant in the year 2011. Chargesheet dated 15.9.2021 (Annexure P-1) was served upon the petitioner with the allegations that he had remained absent from duty w.e.f. 7.5.2019 to 28.4.2021. Reply filed by the petitioner was found unsatisfactory. A departmental inquiry was conducted by Shri B.C. Gupta, Additional District & Sessions Judge (Retd.) and as per inquiry report dated 24.6.2022 (Annexure P-2), the allegations were found to

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be duly established. A show cause notice dated 12.7.2022 (Annexure P-3) was served upon the petitioner. The petitioner submitted his reply dated 29.8.2022 to the aforesaid show cause notice. Thereafter, the impugned order dated 19.9.2022 (Annexure P-6) retiring the petitioner compulsorily came to be passed. The petitioner filed an appeal to respondent No. 2 – Principal Secretary, Water Resource Department, Punjab, Chandigarh. It is the case of the petitioner that respondent No. 2, instead of deciding the appeal on merits, issued a show cause notice dated 21.4.2023 (Annexure P-14) to enhance the penalty of compulsory retirement to dismissal from service. However, subsequently upon consideration of the matter, Respondent no. 2 dropped the show cause notice dated 21.4.2023 (Annexure P-14) pertaining to enhancement of penalty while dismissing the appeal vide order dated 19.6.2023 (Annexure P-18).

3. The learned counsel for the petitioner while assailing the impugned orders has *inter alia* made the following submissions :-

   (i) that the petitioner was not permitted to join, although he had been trying to join duties and that as a matter of fact one of the witnesses PW-3 - Smt. Balwinder Kaur, Superintendent, examined by the Inquiry Officer during her cross-examination, had admitted the fact that the petitioner had approached her for joining of his duties;

   (ii) that the petitioner was not furnished with copies of the documents relied upon by the department and on account of which he was seriously prejudiced in defending himself;

   (iii) that the fact that the authorities were prejudiced against him is evident from the factum of respondent no. 2 having issued a notice

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for enhancement of punishment to dismissal from service, although sufficient stringent punishment of compulsory retirement had already been imposed upon him.

(iv) that the punishment imposed, in any case, is not commensurate with the misconduct alleged against him.

4. This Court has considered the aforesaid submissions and has also gone through the impugned orders dated 19.9.2022 (Annexure P-6) and 19.6.2023 (Annexure P-18) as well as other documents annexed with the petition.

5. It is a case where the petitioner had remained continuously absent for a long period of about 2 years without any justifiable explanation. The contention of the petitioner that he was always ready and willing to join duties and that it is his superiors who did not permit him to join duties is nothing but an afterthought and is not substantiated. Though, it is correct that PW-3 Smt. Balwinder Kaur, Superintendent has stated that petitioner had met her for joining duties but it remains unexplained as to why the petitioner did not make any attempt to request any superior officer for joining duties. In case he was not being permitted by anyone in the office to join duties, he could have sent any written request to the higher authorities pointing out the said fact but there is no such document on record which could indicate any such request which necessarily shows that the petitioner was never willing to join duties and had willfully remained absent for a long period.

6. Though, it is correct that respondent no. 2 i.e. the appellate authority had issued notice to the petitioner for enhancement of the proposed punishment of compulsory retirement but merely issuance of such notice cannot be construed to mean that higher officials were prejudiced against him. Upon

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considering the entire facts, the respondent no. 2 did not choose to enhance the punishment though the appeal filed by the appellant against impugned order dated 19.9.2022 (Annexure P-6) was dismissed. A perusal of impugned order dated 19.9.2022 (Annexure P-6) and order dated 19.6.2023 (Annexure P-18) passed by the appellate authority shows that the same have been passed after noticing all the relevant facts and upon due application of mind. Nothing could be shown to this Court from which it could be inferred that the procedure adopted for conducting inquiry was defective. Though, the petitioner asserts that he had not been furnished with the requisite documents but it remains unexplained as to why he did not move any application for supply of such documents in case he had really not been furnished with such documents and which goes to show that the said ground is also a made-up ground. As such, this Court does not find any infirmity either in the procedure adopted by the respondents for conducting departmental proceedings or in the impugned order dated 19.9.2022 (Annexure P-6) and order dated 19.6.2023 (Annexure P-18).

6. As far as the contention of the petitioner that the punishment of compulsory retirement is not commensurate with the alleged misconduct, this Court finds that the petitioner had remained continuously absent for a period of about 2 years. Such like unauthorized long absence cannot be considered lightly and is a grave act of misconduct and indiscipline and certainly cannot be encouraged.

7. In view of the discussion made above, this Court does not find any infirmity in the impugned order dated 19.9.2022 (Annexure P-6) or in order dated 19.6.2023 (Annexure P-18) and the same are upheld.

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8. There is no merit in the petition and the same is hereby dismissed.

18.7.2023 **(Gurvinder Singh Gill)**
kamal **Judge**

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

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