

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.W.P.No.24046 of 2018(O&M)

Reserved on: 10.04.2023

Date of decision:04th July, 2023

G.S.Sidhu

..Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. Navdeep Chhabra, Sr. DAG, Punjab.

ANIL KSHETARPAL, J

1. The petitioner assails the correctness of order of dismissal from service passed by the government (Additional Chief Secretary, Taxation) on 21.08.2018. The petitioner was served the summary of allegations which read as under:-

“1. Remaining absent from office since 12.10.2015 till now without sanction of leave.

2. For not responding to the letters issued by the office with regard to remaining absent and for rejection of leave.”

2. It is significant to note here that the petitioner was previously charged with misconduct, which resulted in his dismissal from service. It was alleged that the petitioner committed negligence, omission and carelessness in the performance of his duties. A letter of the Food Corporation of India was found to have been fabricated by the petitioner

while making assessment of M/s Shri Gobind Rice Mills. However, in the Civil Writ Petition No.21052 of 2017, decided on 1.09.2018, the order of dismissal from service was set aside as the said order was suffering from various procedural irregularities. The judgment passed by the learned Single Judge was upheld by the Division Bench.

3. To understand the controversy involved in the present case, the relevant facts are being noticed here.

4. The repeated efforts to serve the charge sheet on the petitioner failed. Due to that a constable was deputed to serve the petitioner personally. He vide report dated 20.7.2016 found that the house is locked and he affixed the photocopy of the letter containing charges on the gate of the petitioner's house.

5. In absence of any reply from the petitioner, an Inquiry Officer was appointed. During pendency of the said inquiry, the presenting officer requested for the publication notice in the newspaper to summon the petitioner. Thereafter, the petitioner entered appearance before the Inquiry Officer on 23.9.2016. On his appearance, he was directed to appear again on 29.09.2016. On 29.09.2016, the petitioner suffered voluntary statement admitting the charges levelled against him. In the inquiry report, the following observations have been made by the Inquiry Officer while submitting the report:-

“On 29.9.2016 Shri Gurtej Singh C.O made a voluntary statement of admitting the charges labelled against him. Being seriously ill, he was medically advised to take rest. He produced photocopies of medical advice in this regard. The same was also submitted by him to the Controlling Officer. The leave was rejected on the plea

that it had not been submitted on a proper Performa. This rejection letter sent to him by the department at his address was not received by him, being admitted in hospital. He assured that he would not commit such a mistake in future. He further stated that he was ready to accept any punishment given by the department but requested that while deciding the punishment his medical condition during the period of his absence may kindly be kept in mind. His statement was cross-examined by P.O. He stated that he had no malafide intention or vested interest in not attending the office Thereafter, P.O gave in writing that in view of the statement of charged officer, admitting the charges, she did not want to produce any more documents or any witness to prove the charges. She then closed evidence.”

6. The petitioner was then issued a second show cause notice along with the copy of the report on 22.11.2016. However, no reply was filed within a period of three weeks. Ultimately, in consultation with the Punjab Public Service Commission, the impugned order that imposed the punishment of dismissal of service was passed subject to the previous order of punishment of dismissal. Challenging the aforesaid order, the present writ petition has been filed.

7. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

8. The learned counsel representing the petitioner has filed the following written submissions:-

“1. The impugned order dated 21.02.2018 (Annexure P-11) has been passed by the Respondent without applying its mind and no reasons were recorded for imposing the

harsh and grave punishment of dismissal. The said dismissal order was passed without making any reference to the contentions of the petitioner which were raised during the departmental inquiry. The petitioner admitted the charges levelled against him but he also gave explanation regarding his absence from duty due to serious illness as he was advised to take rest and photocopies of medical advice was also produced before the Inquiry Officer. The leave of the petitioner was rejected on the ground that it is not submitted on a proper proforma and the petitioner also submitted that he had no mala fide intention to be absent without reason. The Inquiry Officer on the admission of the petitioner held that the charges stood proved against him. Thereafter, the competent authority gave its decision on the enquiry report and the petitioner was ordered to be dismissed. The punishment of dismissal imposed upon the petitioner is disproportionate and did not take into consideration the long service of the petitioner. The authorities proceeded with pre-determined mind and the medical record provided by the Petitioner was not considered. It is pertinent to mention herein that the medical record of the Petitioner was never disputed by the respondents.

2. *That as per the impugned order dated 21.02.2018, the Department sent the inquiry report to Punjab Public Service Commission (PPSC) on 05.07.2017 and thereafter on 06.02.2018 sanction was granted by PPSC. It is well-settled principle of law that the advice of the PPSC had to be taken into consideration before imposing the order of dismissal on the petitioner and such advise should also be put to the employer before passing the order of penalty. But in the present case the procedure as prescribed under Rule 9(4) of the Punishment and Appeal*

*Rules, 1970 was not followed. In other words, the PPSC only did an empty formality as such and the petitioner was denied an opportunity to defend his case and make representation to the Commission, PPSC. A prior approval of PPSC is required before dismissal order can be passed and the authorities had passed the dismissal order with a pre-determined mind and as the approval/sanction was obtained subsequently, it will vitiate the dismissal order. This issue has been dealt by the Hon'ble Division Bench of this Hon'ble Court in **Urvashi Goel Vs. State of Punjab and Others** (Doc. ID-2020963). Further, reliance has been placed on **Dr. Vijay Khariwal Vs. State of Punjab, 2013 (4) SCT-302**, **S.NNarula Vs. Union of India, 2011 (4) SCC-591** and **Union of India VsTulsiram Patel (1985) 3 SCC 398**. The impugned order has been passed with clear violations of the principle of natural justice.*

*3. That the dismissal order dated 21.02.2018 was passed when the petitioner was already dismissed from service in another separate inquiry vide an order dated 29.08.2016 which was also passed by the Department just two days before the date of superannuation of the petitioner. The employee who is dismissed from service is not on-roll of the employer and he cannot be dismissed again. There cannot be two dismissal orders and therefore, the impugned order is liable to be set aside on this ground alone. This issue has been dealt by the Hon'ble Supreme Court in **Rajasthan Housing Board VsRoshan Lal Saini and Ors. (2020) 17 SCC 438**.*

4. That the Rule 5 of the 1970, Rules provides for minor and major penalties and Clause (ix) provides for dismissal from service, which is a major penalty. Rule 8 provides procedure for imposing major penalties and Rule 9 provides for the procedure to take action on the

inquiry report. As per Rule 5 the minor and major penalties can be imposed on a government's employee. The petitioner attained superannuation on 31.08.2016 and the impugned order was passed on 21.02.2018, when the petitioner was no more a government's employee. It is further submitted that there is no enabling provision providing power to the competent authorities to impose the penalty of dismissal after his superannuation. The only recourse available to the authorities is under Rule 2.2 (b), Punjab Civil Services Rules Volume II Part-I, whereby proceedings to withhold pension or any part of it can be initiated by the competent authority, even after the retirement of the employee. The authorities have no power to order dismissal under the rules applicable to the present petitioner.

*5. The Hon'ble Supreme Court in Chairman-cum-Managing Director, Mahanadi Coalfields Limited V. Rabindernath Choubey, (2020) 18 SCC 71 has held that it is permissible for the disciplinary authority to impose punishment of dismissal even after the employee has retired. It was also held that all major or minor penalties can be imposed even after retirement of the employee depending upon the relevant rules and regulations. The Hon'ble Supreme Court was dealing with Rule 34.2 of conduct, discipline and Appeal Rules which were applicable to the employee in that case and the said rule created a legal friction that the employee shall deemed to be in service for the purpose of disciplinary proceedings even after retirement. But no such rule is applicable to the present employee and the thus in the absence of any Rule the order of dismissal cannot be passed. Reliance has been placed upon **Gaya Prasad Yadav Vs State of UP and Ors(2022) 5 ALL WC 5078.**"*

9. This court has carefully read the submissions and analyzed the arguments of the learned counsel representing the petitioner.

10. The first argument of the learned counsel representing the petitioner is without substance because the petitioner did not put forth any defence. Rather he has admitted the charges levelled against him. He has assured the competent authority that he will not commit such a mistake in future. In such circumstances, the Inquiry Officer was justified in submitting report to the disciplinary authority. Moreover, as regards his absence from duty due to illness, it may be noticed that on the application of the petitioner, leave was sanctioned on 05.10.2015 till 08.10.2015. Thereafter, on 13.10.2015 the petitioner is stated to have sent a medical leave via e-mail on the ground that he is suffering from 'Dengue' which was rejected being not on the prescribed format. He did not attend the office during the remaining period of the entire month of October, November and substantial part of December. Though the petitioner claims that he was suffering from backache, however, he submitted the application for sanction of the medical leave only on 16.02.2016, whereas he was issued show cause notice on 28.12.2015. Various communications were sent to the petitioner with respect to his absence. Despite the repeated efforts is made by the competent authority to serve the charge-sheet, the petitioner never replied. The house of the petitioner was also found locked. Thereafter, an Inquiry Officer was appointed. The petitioner on 29.09.2016, admitted the charges levelled by the department before the Inquiry Officer. In such circumstances, the petitioner did not furnish any explanation to the disciplinary authority with respect to the charges levelled against him,

hence, this court does not find it appropriate to set aside the same.

11. As regards the second argument of the learned counsel, it may be noted that the competent authority while proposing the punishment had only sent a proposal regarding the most appropriate punishment. The ultimate decision was taken by the competent authority only on receipt of the opinion of the Public Service Commission. The learned counsel representing the petitioner relies upon the judgment passed in ***Urvashi Goel vs. State of Punjab and others(LPA No.286 of 2021, decided on 08.07.2022)***. In that particular case, the order of punishment was set aside as the personal hearing was given by the Deputy Chief Minister whereas the order was passed by the Additional Chief Secretary. This concept of passing an order by a different officer was found alien to the principles of natural justice. The court also found that the Public Service Commission only went through the motions did formality and did not apply its mind with attentiveness and due diligence. Thus the aforesaid judgement does not apply to the peculiar facts of the case. From reading of para 21 of the judgment, it is evident that primarily the judgment of the Single Bench was set aside on the ground that the petitioner was not even given an opportunity of fair hearing by the Deputy Chief Minister.

12. The next judgment relied upon by the learned counsel is in ***Vijay Khariwal vs. State of Punjab, 2013 (4) SCT 302.***

13. Another judgment relied upon by the learned counsel is in ***S.N.Narula vs. Union of India, 2011 (4) SCC 591.*** In fact, it is a short order passed by the Hon'ble Supreme Court while remitting the matter back to the Tribunal with liberty to the petitioner to submit representation.

Hence, with the greatest respect, the order passed in S.N.Narula's case(supra) is not applicable to the facts of the case.

14. The learned counsel further relies upon the judgment passed in Union of India vs. Tulsi Ram Patel, 1985 (3) SCC 398. Though, the learned counsel has relied upon this judgment, however, he has failed to explain as to how the law laid down in the aforesaid judgment has been violated in the facts of the present case. As far as reliance on the judgment of the Supreme Court in Tulsi Ram Patel (supra) is concerned, it may be noticed that the aforesaid judgment does not as a ratio decidendi lay down the interpretation of Article 320(3)(c) of the Constitution of India. It may be noted here that Article 320(3) of the Constitution of India only prescribes that the Public Service Commission shall be consulted while forming an opinion in such matters. Such consultation has been held to be not mandatory. The view of Public Service Commission is only in the form of recommendation and it is not binding on the disciplinary authority. Reliance in this regard can be placed on the judgments passed in D'silva, A.N. vs. Union of India, AIR 1962,SC 1130 and N.Rajaratnam vs. State of Tamilnadu and others, 1996 (10) SCC 371. Hence, the argument of the learned counsel based on Article 320 lacks substance.

15. The next argument is with reference to the fact that the petitioner was already dismissed from service, hence subsequent order of dismissal could not be passed. On careful reading of the order passed by the Government it is evident that the disciplinary authority was conscious of the fact and it is because of that precise reason the authority has ordered dismissal of the petitioner subject to the decision of the previous order. The

judgment relied upon by the learned counsel in **Roshan Lal's Saini case(supra)** is not applicable because in the aforesaid case the High Court directed the Labour Court to decide the matter. In that context, the court held that the other set of proceedings should be kept in abeyance till culmination of judicial proceeding in the first set of proceedings. In any case, the previous order of petitioner's dismissal has been set aside in CWP No.21052 of 2017. Hence, the judgment passed in **Roshan Lal's Saini case (supra)** does not help the case of the petitioner.

16. The next argument of the learned counsel is with regard to the fact that the petitioner stood retired on 31.08.2016 whereas the impugned order was passed on 21.02.2018, when the petitioner was no more a Government's employee. In this regard, by a majority opinion, a Larger Bench of the Supreme Court in **Chairman-cum-Managing Director, Mahanadi Coalfields Ltd. vs. Rabindranath Choubey, 2020 (18) SCC 71** held that unless prohibited by the service rules, the order of punishment can be passed even after the retirement of an employee.

17. The next judgment relied upon by the learned counsel is in **Gaya Parsad Yadav (supra)**. In this case, the Division Bench of Allahabad High Court held that unless there exists a specific rule in this behalf the penalty of removal cannot be imposed after the retirement of an employee. The judgment passed in **Mahanadi Coalfields Ltd. (supra)** does not lay down that the punishment order after superannuation can only be passed if there is a specific provision in the Rules. By majority judgment, it was held that the punishment to be imposed on an employee after attaining the age of superannuation in such cases is dependent upon the applicable rules and

unless the applicable rules do not bar it expressly, such kind of order can be passed. In view of the binding precedent of the Supreme Court, the judgment of the High Court cannot be relied upon.

18. It may be noted here that it is not the case of the petitioner that the Inquiry Officer wrongly recorded his confession or it was under duress. In absence thereof, it would not be appropriate for the writ court to interfere.

21. Finding no merit, the writ petition is dismissed.

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

04th July, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	YES/NO
Whether reportable	YES/NO