

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 3022 of 2023

Date of Decision: 15.02.2023

Sukhvir Kaur

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Saurabh Arora, Advocate
for the petitioner(s).

Mr. R.S.Pandher, Senior Deputy Advocate General,
Punjab, for the respondents.

Anil Kshetarpal, J.

1. The petitioner is presently stated to be settled in Auckland, New Zealand. Formerly, she was serving as a Lecturer in Geology in India. On 27.02.2016, she submitted an application along with notice for a period of three months to seek voluntary retirement w.e.f. 31.05.2016 which was rejected on 25.03.2016 i.e. within a period of 28 days. She is alleged to have absented herself from duty w.e.f. 02.05.2016. Since the petitioner did not join her duties, therefore, a charge sheet under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred to as “the 1970 Rules”) was issued to her. All the efforts made to serve the charge sheet on the petitioner failed. Finally, the District Education Officer (hereinafter referred to as “the D.E.O.”) was nominated as an Inquiry Officer who submitted an *ex parte* report on 10.02.2017. In order to give another opportunity to the petitioner, a public notice in the newspapers i.e. “Dainik

Jagbani” and “The Tribune (English) was published. Ultimately, the services of the petitioner were dispensed with on 22.05.2017. The petitioner is stated to have left for New Zealand on 11.02.2019. Now, she has filed a writ petition challenging the correctness of the order dated 25.03.2016 and 22.05.2017, respectively.

2. Heard the learned counsel representing the petitioner at length and with his able assistance, perused the paper-book.

3. The learned counsel representing the petitioner, while referring to sub-Rule 4 to Rule 8 of the 1970 Rules, submits that the petitioner was not served with any copy of the article of charges, therefore, the inquiry is illegal. He further submits that there is an error in the order dated 25.03.2016 whereby the petitioner’s request for voluntary retirement has been wrongly rejected.

4. This Court has considered the submissions. Rule 8 of the 1970 Rules is extracted as under:-

“8. Procedure for imposing major penalties – (1) -No order imposing any of the penalties specified in clauses (v) to (ix) of rule 5 shall be made except after an inquire held, as far as may be in the manner provided in this rule and Rule 9 or the manner provided by the Public Servants (Inquiries) Act 1850 (37 of 1850), where such inquiry is help under that Act.

(2) Whenever the punishing authority is of the opinion that there are ground for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government employee, it may itself inquire into, or appoint under the provision of the Public (Inquiries) Act 1850, as the case may be, an authority to inquire into the truth there of.

Explanation: -- Where the punishment authority itself holds the

inquire, any reference in sub-rules (7) to (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the punishing authority.

(3) Where it is proposed to hold an inquiry against a Government employee under this rule and rule 9, the punishing authority shall draw up cause to be drawn up:-

(I) the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charges;

(ii) a statement of imputation of misconduct or misbehaviour in support of each article of charge, which shall contain-(

a) a statement of all relative facts including any admission or confession made by the Government employee;

(b) a list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The punishing authority shall deliver or cause to be delivered to the Government employee, a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of document and witness by which each article of charge is proposed to be sustained and shall require the Government employee to submit, within such time as may be specified, a written statements of his de fence and to state whether he desires to be heard in person.

(4-A) If on receipt of written statement of de fence, the punishing authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 5 should be imposed on the Government employee and for that reason the punishing authority does not consider it necessary to enquire into the

articles of charges for imposing any of the penalties specified in clauses (v) to (ix) of rule 5, it shall, after following the procedure specified in rule 10, make an order imposing any of the penalties specified in clauses (i) to (iv) of rule 5.

(5)(a) Subject to the provision of sub rule (4-A) on receipt of the written statement of defence, the punishment authority may itself inquire into such of the articles of charge as are not admitted or, if it consider it necessary so to do, appoint under sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government employee in his written statement of charge have been admitted by the Government employee in his written statement of defence, the punishing authority shall records its finding on each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 9;

(b) If no written statement of defence is submitted by the Government employee, the punishing authority may itself inquire into the article of charge or may, if it considers it necessary to do so, appoint under sub-rule (2), inquiring authority for the purpose.

(c) Where the punishment authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may by an order appoint a Government employee or a legal practitioner, to be known as the 'Presenting Officer' to present on its behalf the case in support of the articles of charge.

(6) The punishing authority shall, where it is not the inquiring authority, forwards to the inquiry authority-

(I) a copy of the article of charges and the statement of the imputation of misconduct or misbehaviour;

(ii) a copy of written statements of defence, if any submitted by the Government employee;

(iii) *a copy of the statement of witnesses, if any referred to in sub-rule (3);*

(iv) *evidence proving the delivery of the documents required to be delivered to the Government employee under sub-rule (4);*

(v) *a copy of the order appointed the “Presenting Officer”.*

(7) *The Government employee shall appear in person before the inquiring authority on such day and at such time within ten within ten working days form date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehaviour as the inquiring authority may, be a notice in writing, specify in this behalf, or with in such further time not exceeding ten days, as the inquiry authority may allow.*

(8) *The Government employee may take the assistance of any other Government employee [or a retired Government employee]* to present the case on his behalf, but may not engage a legal practitioner, or the punishing authority having regard to the circumstances of the case, so permits.*

(9) *If the Government employee who has not admitted any of the articles any of the articles of charge in his written statements of de fence or has not submitted any written statement of the de fence, appears before the inquiring authority shall ask him whether he is guilty or has any de fence to make and if he pleads guilty to any of the articles of the charge*. The inquiring authority shall records the plan, sign the record and obtain the signature of the Government employee thereon.*

(10) *The inquiring authority shall return a finding of guilt in respect of these articles of charges to which the Government employee pleads guilty.*

(11) *The inquiring authority shall if the Government employee fails to appear within the specified time or refuses or omits to plead, require the Officer to produce the evidence by*

which he proposes to prove the articles of charges, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government employee may for the purpose of preparing his defence-

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

(iii) Apply orally or in writing for the supply of copies of the statements, if any recorded, of witness mentioned in the list referred to in sub-rule (3), in which case the inquiring authority shall furnish to him such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the punishing authority; and

(iv) Give a notice within ten days of the order or within such further time not exceeding ten days, as the inquiring authority may allow for the discovery or production of any documents which is in the possession of Government, but not mentioned in the list referred to in sub-rule (3) and the Government employee shall also indicate the relevance of the document required by him to be discovered or produced by the Government.

(12) The Inquiring Authority shall on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition;

Provided that the inquiring authority may, for reason to be recorded by it in writing; refuse to requisition such of the documents as are in its opinion not relevant to the case.

(13) On receipt of the requisition referred to in sub-rule (12) every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority;

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reason to be recorded by it in writing that the production of all or any or such document would be against the public interest or security of the state, it shall inform the inquiring authority accordingly and the inquiring authority shall on being so informed, communicate the information to the Government employee and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be on behalf of the punishing authority. The witnesses shall be examined by or on behalf of the Government employee. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also may also put such question to the witnesses as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the punishing authority, the inquiring authority may, in its discretion, allow the presenting officer to produce evidence not included in the list given to the Government employee or may itself call for new evidence or recall and re-examine any witness and in such case the Government employee shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the date of adjournment and the day to which the inquiry is adjourned. The

inquiring authority shall give the Government employee an opportunity of inspecting such documents before they are taken on the record. The inquiry authority may also allow the Government employee to produce new evidence if it is of the opinion that the production of such evidence is necessary in the interest of justice.

Provided that new evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) when the case for the punishing authority is closed . the government employee shall be required to state his defence orally or in writing as he may prefer. If the defence is made orally it shall be recorded and the Government employee shall then be examined and shall be liable to cross – examination, re – examination and examination by the inquiring authority according to the provision applicable to the witness for the punishing authority.

(17) The evidence on behalf of the Government employee shall then be produced . The Government employee may examine himself on his own behalf, if he so prefers either at the outset or after the conclusion of examination of the witnesses produced by him. The witnesses produced by the Government employee shall then be examined and shall be liable to cross – examination, re – examination and examination by the inquiring authority according to the provision applicable to the witness for the punishing authority.*

(18) The inquiring authority may, after the Government employee closes his case, and shall, if the Government employee has not examined himself, generally question him on the circumstances, appearing against him in the evidence for the purpose of enabling the Government employee to explain any circumstances appearing in the evidence against him.

(19) *The inquiring authority may, after the completion of the production of evidence hear the presenting officer, if any appointed and the government employee or permit them to file written brief of their respective cases, if they so desire.*

(20) *If the Government employee to whom a copy of the articles of charge has been de-livered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex – parte .*

(21)(a) *Where a punishing authority competent to impose any of the penalties specified in clauses (I) to (iv) of rule 5 but not competent to impose any of the penalties specified in clauses (v) to (ix) of rule 5 has itself inquired into or caused to be inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of opinion that the penalties specified in clauses (v) to (ix) of rule 5 should be imposed on the Government employee , that authority shall forward the records of the inquiry to such punishing authority as is competent to impose the last mentioned penalties.*

(b) *The punishing authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, recall the witness and examine , cross-examine and re – examine and re – examine the witnesses and may impose on the Government employee such penalty as it may deem fit in accordance with these rules.*

(22) *Whenever any inquiring authority after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein and is succeeded by another inquiring authority which has and which exercises*

such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor and partly recorded by itself.

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross – examine and re – examine any such witnesses as herein before provided.

(23)(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain-

- (a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;*
- (b) the defence of the Government employee in respect of each article of charge;*
- (c) an assessment of the evidence in respect of each article of charge;*
- (d) The findings on each article of charge and the reasons therefore.*

Explanation: - If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its finding on such article of charge.

(ii) The inquiring authority where it is not itself the punishing authority shall forward to the punishing authority the records of inquiry which shall include –

- (a) the report prepared by it under clause (i);*
- (b) the written statements of de fence, if any submitted by the Governments employee;*
- (c) the oral and documentary evidence produced in the course of the inquiry;*
- (d) written brief, if any filed by the Presenting Officer, or the Government employee or both during the course of the course of the inquire; and*
- (e) the others, if any, made by the punishment*

authority and the inquiring authority in regard to the inquiry.”

5. Sub-Rule 4 to Rule 8 of the 1970 Rules provides that the punishing authority shall deliver or cause to be delivered to the Government employee, a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour. The intent is to make a sincere endeavour to serve a copy of the article of charges so as to apprise the employee with regard to the imputations of misconduct and misbehaviour and enable him/her to prepare their case. Such a provision in the Rules cannot be read in the manner as suggested by the learned counsel representing the petitioner. It is evident that the disciplinary authority made a sincere endeavour to serve a copy of the article of charges upon the petitioner. The learned counsel has failed to draw the attention of the Court to any lack of effort or malafide intent on the part of the disciplinary authority to serve a copy of the article of charges upon the petitioner. The expression “deliver or cause to be delivered” cannot be construed to mean that in no case, the disciplinary inquiry can be held *ex parte*, even though the employee, despite best efforts of the disciplinary authority, fails to join the proceedings or intentionally avoids it. Moreover, the authority resorted to all the possible means of service and thus, a presumption of effective service can be drawn in its favour.

6. At this stage, it is significant to note that the petitioner, as per her own case, left India only on 11.02.2019, whereas, the article of charges were framed on 12.09.2016.

7. As regards the second argument of the learned counsel with respect to the correctness of the order dated 16.04.2016, it would be noted

that the writ petition suffers from unexplained delay and laches. This writ petition has been filed after a period of nearly seven years from the impugned order has elapsed. If the petitioner was to file a civil suit challenging the correctness of the order dated 25.03.2016 in the year 2023, the same would have been dismissed on the ground of limitation.

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

(AniKshetarpal)
Judge

February 15, 2023
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No