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

CWP-21691-2023 (O&M)
Date of Decision: 20.12.2023

Nirmal Singh

. . . . Petitioner

Vs.

State of Punjab and others

. . . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Ish Puneet Singh, Advocate,
for the petitioner.

Mr. Paramjit Batta, Addl. A.G., Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. This case has been taken up for final disposal at this stage itself, considering the short point involved.
2. The petitioner was working as a Guest Lecturer in the Government College, Derabassi. An FIR was registered wherein he was made as one of the accused on 01.08.2021 for offences under Sections 406, 409, 381, 419, 420, 465, 467, 468, 471, 201, 120-B of IPC.
3. The petitioner has stated that he had moved anticipatory bail before the Additional Sessions Judge, Patiala and also applied for leave on 22.02.2023. He was arrested on 23.02.2023 and was released on regular bail on 12.07.2023.
4. The petitioner having remained absent from duty from 27.02.2023 till 31.07.2023 was charge-sheeted while he was in jail, as he did not join duties within the period of two days for which leave was granted.
5. Therefore, the respondents after having sent reminders to him to join, issued a charge sheet on 28.04.2023 under Rule 9 of the Punjab Civil

Services (Punishment and Appeal) Rules, 1970, and conducted ex parte enquiry and terminated his services on 03.06.2023.

6. Learned counsel for the petitioner submits that the order has been passed while the petitioner was in jail, and he could not possibly have participated in the inquiry nor he could have any knowledge about the inquiry proceedings.
7. On the other hand, learned counsel appearing for the State submits that notices were sent on his e-mail and the notice was even published in the newspaper. The respondents had no knowledge that the petitioner was in jail, nor anyone intimated the respondents about the aforesaid fact. In these circumstances, the course adopted by the respondents cannot be said to be unjustified or illegal.
8. I have considered the submissions.
9. This Court finds that while the inquiry proceedings initiated vide charge sheet dated 28.04.2023 culminated in order of dismissal from service on 03.06.2023, the entire period is when the petitioner was incarcerated, and he was released from jail only on 23.07.2023. The petitioner thereafter immediately submitted a letter on 24.07.2023 to the respondents to restore his services.
10. This Court finds that the petitioner while in jail could not have possibly received any e-mails, nor could there be any source by which he could be informed about the pendency of the charge, nor could he possibly participate in the inquiry. Thus, this Court is satisfied that the entire inquiry proceedings have been conducted without giving fair opportunity of submitting defence to the petitioner. Moreover, he has

been dismissed on account of being absent from duty which cannot be said to be willful and deliberate as he was put behind bars.

11. The principle of *audi alteram partem* is found to have been violated.

Inquiry proceedings and the punishment order therefore stand vitiated in law. The order passed by the respondents cannot be sustained. Hence, the respondents are directed to reinstate the petitioner and allow him to continue on the post. The order of dismissal dated 03.06.2023 is accordingly set aside.

12. However, the respondents would be at liberty to conduct inquiry afresh by serving a charge sheet on the petitioner, if they so choose, and conduct inquiry afresh with regard to allegations.

13. Petitioner would be free to take up all his defence. It is expected that the respondents, if they want to do inquiry, shall conduct it strictly in accordance with the Rules of 1970.

14. Writ Petition stands *allowed*.

15. All pending applications also stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

December 20, 2023

Mohit goyal

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |