

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

**CWP-33-2023 (O&M)
Date of Decision: 11.08.2023**

Harcharan Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. J.C. Kapoor, Advocate
for the petitioner.

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

Mrs. Anu Chatrath, Sr. Advocate with
Ms. Manu Sangwan, Advocate
for respondents No.3 and 4.

SANJEEV PRAKASH SHARMA, J (ORAL)

1. The petitioner by way of this petition has prayed for quashing the termination order dated 15.05.2019 (Annexure P-25), whereby, he was terminated w.e.f. 08.01.2019.

2. The petitioner has stated that he was appointed in Computer Faculty, vide order dated 21.12.2006 on contract basis under the ICT Project. The Punjab Information and Communication Education Society (PICTES) extended his period of service from time to time till he was regularized as computer faculty, vide order dated 29.06.2011 and was placed in the pay scale of Rs.10,300-34,800 with grade pay of Rs.3800/-.

3. It is submitted that he had applied for leave on 07.01.2019 to the Principal of Government Senior Secondary School, Kishanpura Kalan, District Moga where he was lastly posted. On account of ill-health of his mother, he had applied for second half leave on 08.01.2019 and then for three days leave

on 09.01.2019. He joined on 14.01.2019 and submitted his joining report but was terminated, vide order dated 15.01.2019 w.e.f. 08.01.2019 on the ground of being absent from duty. The services of the petitioner were terminated without issuing any charge-sheet, inquiry, show-cause notice and without giving any opportunity of hearing. The petitioner states that he submitted the representation to the District Education Officer to allow him to join duties but it was not considered. On 09.01.2021, he suffered with depression and was admitted in Tek Chand Sidana Memorial Psychiatric Hospital & De-addiction Centre. A medical certificate dated 09.01.2021 has been filed in support of his submissions. Thereafter, he has preferred this writ petition.

4. Learned counsel for the petitioner submits that the action of the respondents is wholly illegal, arbitrary and unjustified. The petitioner could not have been removed from service without following due procedure as laid down under the Rules. The petitioner, being a regular employee, was entitled to protection of the provisions governing the service conditions of a regular employee. Learned counsel has submitted that the action of the respondents is also in violation of the Article 311 of the Constitution of India and thus, services of the petitioner could not have been terminated.

5. Per contra, the respondents have filed a reply and stated that the petitioner has suppressed the material facts from this Court and therefore, does not deserve any equity. It is further stated that there is a delay of three and a half years in filing the petition and therefore, the petition deserves to be dismissed on the ground of delay and laches.

6. It is stated by respondent No.3 that the petitioner was working as Computer Teacher under the Punjab Information and Communication Education Society (PICTES). He was never a regular employee of the State Government. A letter dated 01.10.2015 was received from the office of respondent No.8 that Harcharan Singh (petitioner) was posted at Government

Senior Secondary School (Boys), Balianwali (Bathinda), and also additional charge of Government Middle School, Gossal (Bathinda). The school Head, Government Middle School, Gossal, had informed that the behaviour of the petitioner towards the students was not good and he spoiled the atmosphere of the school. The school staff and students are facing difficulty due to weird/unusual behaviour of the petitioner, especially the female staff of the school. After passing a resolution, the Gram Panchayat also requested for transfer of the petitioner to another school. The matter was inquired through the Principal, Government Senior Secondary School, Rampura Pind (Bathinda). The Inquiry Officer, after conducting enquiry and giving opportunity of hearing, stated in his report that petitioner used to misbehave with students. He used to beat the students and used bad language. It was also mentioned in the report that there are separate toilets for female and male school staff in the school campus, but he (petitioner) used female toilet for urinal. It seems that he is mentally not stable. Inquiry Officer had recommended for transfer of the petitioner in another school after prima facie proving the allegations levelled against him. Thereafter, a show cause notice was issued on 02.12.2015 in view of inquiry report (R-1). Reply to show cause notice was received with the remarks of Principal, Government Senior Secondary School, Balianwali that after getting medical treatment, he is medically fit as per certificate issued by the Doctor. After considering the reply to show cause notice, a punishment of censure had been imposed on the petitioner vide order dated 16.03.2016. The District Education Officer (SE), Bathinda informed vide letter dated 16.08.2016 that a complaint was received from the Principal, Government Senior Secondary School (Boys) Balianwali (Bathinda) against Harcharan Singh (petitioner). The matter was inquired through Principal Government Senior Secondary School Gehri Devi Nagar (Bathinda), wherein, he concluded that the concerned employee is harassing

the school staff. In view of inquiry report dated 06.08.2016, petitioner was transferred from Government Senior Secondary School (Boys) Balianwali (Bathinda) to Government Senior Secondary School Kotli Kalan (Mansa) vide order dated 14.09.2016.

7. It was further stated that the petitioner had sent a complaint against the School Principal which was found to be without merit. At the same time, a complaint was also received from the Principal relating to the conduct of the petitioner for which in-house inquiry was conducted and in the inquiry report, it was found that the behaviour of the petitioner is not good with the school staff and the petitioner is not mentally fit/stable. The Enquiry Officer recommended for transfer of the petitioner to another school. The District Education Officer in his letter also mentioned that the petitioner's behaviour towards the school staff and employee was not good and he created indiscipline and therefore, a show-cause notice was served on the petitioner on 05.06.2017. The petitioner in his reply stated that he has improved relationship with the school head and staff and had cleared the misunderstanding. He further had tendered his apology. Thereafter, the petitioner was transferred to Mansa Senior Secondary School, thereto, the petitioner's behaviour was not found to be proper and on 17.07.2018, the petitioner manhandled with the school head and also gave beatings to the students and abused the school staff. He attempted to get nude in front of male staff and an FIR was registered whereafter it was informed that he was absent from duty. He was transferred to Government Senior Secondary School, Kishanpura Kalan, District Moga. It is stated that the petitioner misbehaved at Moga also and the District Education Officer recommended for taking action against him. The District Education Officer, Moga also informed that the petitioner was absent from duty on 08.01.2019, vide his letter dated 16.01.2019 and therefore, show-cause was issued to him on 07.02.2019

regarding termination of his services. The District Education Officer, Moga informed that the petitioner had not accepted the allegations levelled but the school head is not satisfied with his reply and states that the petitioner was using bad language and misbehaved. The petitioner was given opportunity of personal hearing on 10.04.2019 and it was found that the petitioner was guilty of disrupting the school discipline and his behaviour towards school head, staff, students and higher officers was not good. He has already been transferred three times on administrative basis and a punishment of censure has been imposed. The services of the petitioner, therefore, were terminated, vide order dated 15.05.2019. The petitioner preferred an appeal before respondent No.2 to gave a personal hearing to the petitioner and the appeal was dismissed.

8. Having noticed the aforesaid submissions and the documents which have been placed on record, while this Court is satisfied of there being several complaints against the petitioner but at the same time, this Court finds that the respondents have not denied of the petitioner's ACRs being very good and excellent. It is also seen that apart from issuing show-cause notice, the regular inquiry has not been conducted.

9. Removal and dismissal from service are major penalties as provided under the Punjab Civil Services (Punishment and Appeal) Rules, 1970 and a procedure has been laid down for conducting an inquiry for imposing such punishment. However, the Rules of 1970 may not be applicable to the PICTES.

10. It is also noticed that the petitioner has admitted that he was mentally not stable and has also undergone treatment after he remained admitted in a mental hospital. The services of the petitioner could have been terminated after following due procedure of law. The method and manner in which the respondents have passed the orders do not come within the sphere of principles of natural justice and fair play. By conducting an in-house inquiry

and without giving an opportunity of personal hearing to the petitioner to put up his defence and without giving him any charge-sheet, action of removing him from service could not have been taken. More so, as on the previous allegations, the respondents have adopted a procedure and punished him with censure.

11. After considering the entire aspects, this Court deems it appropriate to set aside the termination order dated 15.05.2019 (Annexure P-25) and direct the petitioner to be reinstated in service.

12. Accordingly, the present petition is allowed. The petitioner would be entitled for reinstatement with continuity of service and with all actual back wages. Accordingly, the respondents are directed to reinstate the petitioner in service with all consequential benefits and his arrears of salary be released within a period of two months from today.

13. However, the respondents would be free to proceed in accordance with law and take disciplinary action, if they are so advised. Such an action if taken, would have to be in conformity with the procedure as laid down for regular departmental inquiry under the Rules of 1970 as the PICTES is a Government controlled Society working under the Punjab Government.

14. No order as to costs.

15. The pending miscellaneous application, if any, shall stands disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

11.08.2023
D.Bansal

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No