

CWP-3076-2024

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2024:PHHC:020148

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-3076-2024

Date of decision : 13.02.2024

Shashi Bala

... Petitioner

Versus

Punjab and Haryana High Court, Chandigarh and another

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Ms.Rakhi Sharma, Legal Aid Counsel
for the petitioner.

VIKAS BAHL, J.(ORAL)

1. This is a civil writ petition filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned order dated 12.09.2023 (Annexure P-12) passed by the learned Administrative Judge, the impugned order dated 11.02.2016 (Annexure P-13) passed by respondent no.2 vide which respondent no.2 has imposed penalty of stoppage of two annual grade increments without cumulative effect. A further prayer has been made for quashing of charge sheet dated 21.05.2015 (Annexure P-7) and the enquiry report dated 21.12.2015.

2. Brief facts of the present case are that the petitioner was appointed as a Stenographer Grade-III and as per her own case, she joined on the said post on 23.03.2009. Prior to the said appointment, the petitioner was being granted an unemployment allowance of Rs.900/- per month. Since the petitioner had received the unemployment allowance upto

September 2009 i.e. after having been appointed as a Stenographer Grade III on 23.03.2009, thus, on the basis of a complaint filed by V. B. Khanna, Convener, ACF-cum-RTI Activist, Anti Corruption Front, U. T. Chandigarh as well as Dr.Rakesh Sehgal, MD Prof. & Head Department of Medical Parasitology, Post Graduate Institute of Medical Education & Research, Chandigarh, a charge sheet dated 21.05.2015 was issued to the petitioner along with statement of charges and statement of allegations. The said charges and the allegations against the petitioner are reproduced hereinbelow:-

“CHARGES

"That before entering into this department she used to receive unemployment allowance from the Employment Exchange, Hansi, District Hisar @ Rs. 900/- per month (Rs. 2,700/- quarterly). After selection in this Sessions Division as Stenographer Gr. III, she joined her duties on 23.03.2009 (forenoon), but even then she continued to receive unemployment allowance till September, 2009 and thus, she received an amount of Rs. 5,850/- as unemployment allowance in addition to the salary drawn by her from this department

ALLEGATIONS

1. That Sh. V. B. Khunna, Convener ACF-cum-RTI Activist, Anti Corruption Front (UT), Chandigarh, made a complaint dated 31.10.2014 to the Superintendent of Police, Hisar through E mail interalia submitting that Ms. Shahsi Bula D/o Sh. Harbans Lai Kamra. R/o Jagdish Colony near Radhey Shyam Mandir Hansi, Distt. Hisar, had caused revenue loss to the State Exchequer by availing unemployment allowance while doing Government Job at District and Sessions Court, Faridabad and requested for registration for FIR against her under relevant provision of law for cheating and the causing criminal breach of trust. A copy of the said complaint was also endorsed to this office and was received in this office through E-mail on 31.10.2014. In response to the same, vide this office letter No. 180/PF dated 11.11.2014, her comments on the allegations made in the aforesaid complaint were obtained by this office.

2. That she has submitted her comments stating that after employment in judicial department, she had requested Sh. Mahender, Clerk of Employment Exchange. Hansi, for stopping the unemployment allowance released beyond the date of the appointment but due to

unexplained reason, she was not in a position to explain as to why and under what circumstances, he (Mahender) did not submit her request regarding stoppage of unemployment allowance and later on it was brought to her notice that during the period of 11/2008 to 10/2009, unemployment allowance remained in continuation to her and excess amount after re-employment amounting to Rs.5,850/- was deposited by her with interest thereon total amounting to Rs.8,570/.

3. *That a similar complaint regarding receipt of unemployment allowance by her even after employment in judicial department was also made by Dr. Rakesh Sehgal, MD Prof. & Head Department of Medical Parasitology, Post Graduate Institute of Medical Education & Research, Chandigarh.*

4. *That this office vide letter No. 6556/PF dated 06.05.2015, has asked the Assistant Employment Officer, Employment Exchange Hansi, District Hisar, to intimate this office as to how much amount she had taken after joining her duties as Stenographer Gr. III in this Sessions Division and as to whether she has deposited any unemployment amount and if so on which date. In pursuance to aforesaid letter, the Assistant Employment Officer, Employment Exchange, Hansi, District Hisar, vide his office letter No. H-1/15/345 dated 12.05.2015, intimated that she had received an amount of Rs. 5,850/- for the period from Murch, 2009 to September, 2009 as unemployment allowance despite selection and joining as Stenographer Gr.III on 23.03.2009 in this department and she has deposited an amount of Rs. 8570/- including interest to his office on 29.10.2014, vide receipt No. 000018, Book No. 99 dated 29.10.2014.”*

3. A regular enquiry was conducted by the Civil Judge (Jr.Div.), Faridabad, in accordance with law and vide report dated 21.12.2015, the Enquiry Officer held the petitioner guilty of misconduct. A perusal of the enquiry report dated 21.12.2015 would show that the statement of witnesses including the statement of the present petitioner was recorded and after recording the same, the Enquiry Officer came to the conclusion that the petitioner in her cross-examination had categorically admitted that she had neither moved any written application to the Employment Exchange, Hansi, asking them to stop the payment of unemployment allowance to her nor could she produce any such application during the course of inquiry and

thus, it could not be proved by the petitioner that she had exercised due diligence of not receiving unemployment allowance after she had secured a job of Stenographer Grade III on 23.03.2009. It was further observed that there existed three entries in her passbook Ex.RW1/A dated 20.03.2009, 14.05.2009 and 22.06.2009 which appeared to be in a different ink and different printing setting than the entries from 05.09.2009 onwards, which showed that the said entries were got entered by the petitioner in her passbook prior to 05.09.2009 and thus, it ought to have come to her knowledge that she had received unemployment allowance on 14.05.2009 and it had been further observed that the petitioner had made a withdrawal of Rs.1500/- from her account on 22.06.2009 and the said facts and circumstances, clearly showed that the petitioner was in the knowledge of the payment of unemployment allowance in her saving account in the Punjab National Bank prior to 05.09.2009. It was observed that as a government employee, it was incumbent upon the petitioner to have taken reasonable steps at the earliest possible opportunity to ensure that the Employment Exchange, Hansi had received the information regarding her employment so that no unwarranted payment of unemployment allowance could have been made to her and thus, it was held that the petitioner on account of such negligence was guilty of misconduct unbecoming of a government servant.

4. The said report was submitted by the Enquiry Officer and the same was accepted by the District and Sessions Judge, Faridabad and a show cause notice dated 11.01.2016 of the proposed penalty was issued to the petitioner and an opportunity of hearing was also given to her for showing cause against the action sought to be proposed. A reply to the said

show cause notice was submitted by the petitioner and the said reply was duly considered by the District and Sessions Judge, Faridabad and the petitioner was also personally heard on 04.02.2016 and after considering all the facts and circumstances, it was observed by the District and Sessions Judge, Faridabad that the act of the petitioner amounts to gross misconduct on her part and the same was unbecoming of a government servant and keeping in view all the facts and circumstances, a punishment of stoppage of two annual grade increments without cumulative effect was imposed upon the petitioner.

5. Service appeal no.23 of 2016 was filed by the petitioner against the order dated 11.02.2016 and the learned Administrative Judge after considering the entire matter and after giving opportunity of hearing to Mr.Salil Sabhlok, counsel appearing for the petitioner, dismissed the appeal and upheld the order dated 11.02.2016. A perusal of the said order would show that it was specifically observed that the entries recorded in the passbook as well as the factum of withdrawal of Rs.1500/- from her account showed that the petitioner had the knowledge of the amount being illegally credited to her account, to which she was not entitled. The learned Administrative Judge had however, keeping in view the fact that the deposit of the said amount along with interest @ 9% per annum had been made by the petitioner and that the offence was compoundable, observed that the disciplinary authority concerned might consider making of an application before the trial Magistrate concerned for compounding the offence constituted against the appellant. It is the said orders which have been challenged in the present writ petition.

6. Learned counsel for the petitioner has submitted that the

complaints filed by V. B. Khanna as well as Dr.Rakesh Sehgal were at the behest of her husband as the petitioner had a matrimonial dispute with her husband and on the said account, the proceedings against the petitioner were malafide and thus, the present writ petition deserved to be allowed and the impugned orders deserved to be set aside.

7. This Court has heard the learned counsel for the petitioner and has perused the paper book.

8. The complaints are stated to have been filed by V. B. Khanna, who is stated to be Convener, ACF-cum-RTI Activist, Anti Corruption Front, U. T. Chandigarh and Dr.Rakesh Sehgal who is stated to be MD Prof. & Head, Department of Medical Parasitology, Post Graduate Institute of Medical Education & Research, Chandigarh and there is nothing on record to even prima facie show any collusion between the husband of the petitioner and the said V.B. Khanna and Dr.Rakesh Sehgal. Moreover, in the present case, a regular departmental enquiry has been conducted by the Civil Judge (Jr. Div.), Faridabad and after giving due opportunity to the petitioner including recording of evidence of the petitioner, the enquiry officer had come to the conclusion that the petitioner was guilty of the misconduct of which she was charged and the defence raised by the petitioner was rejected by giving a detailed finding in paragraph 14 of the report dated 21.12.2015. Complete procedure in accordance with law was followed before the order dated 11.02.2016 was passed. Nothing has been shown to this Court to contend that there was violation of any rules/regulations or principles of law in conducting the said enquiry. Thus, even assuming that the complaints were instituted on the asking of the husband of the petitioner, though there is nothing on record to prove the same even

prima facie, still the same would not call for setting aside the impugned orders, which are in accordance with law and have been passed after taking into consideration the entire material on record.

9. Keeping in view the abovesaid facts and circumstances, finding no merit, the present petition is dismissed.

(VIKAS BAHL)
JUDGE

February 13, 2024
Davinder Kumar

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