

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

112

CWP-2789-2024 (O&M)
Date of decision: 16.02.2024

Raminder Singh

..Petitioner

Versus

Punjab School Education Board and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Sapan Dhir and
Ms. Geeta Rani, Advocates for the petitioner.

Mr. Ranjit S. Kalra and
Ms. Mona Yadav, Advocates
for the caveator-respondents.

AMAN CHAUDHARY J.

1. The prayer in the present Civil Writ Petition filed under Article 226/227 of the Constitution of India, is for issuance of a writ in the nature of certiorari for quashing the order dated 30.01.2024, Annexure P-17 whereby, the petitioner has been dismissed from service.
2. Learned counsel submits that three chargesheets were issued to the petitioner only because he demanded his salary and thus, the action is malafide. He had to even file a writ petition before this Court seeking release of salary, which was not paid to him since June 2005 and it was disposed of on 11.07.2022, Annexure P-13, with a direction to the Department to consider his legal notice. A speaking order that was passed, has also been challenged by way of another writ petition, which is pending. It is further submitted that since documents were not supplied to him in the enquiry, prejudice has been caused to him. The allegations of absence from duty, tampering of record etc. are wrong. The impugned order has been passed by the

disciplinary authority, who is the Chairman and thus, there will be no purpose of filing an appeal, she being a part of the Appellate Authority.

3. Learned counsel for the caveator-respondent, on the other hand, opposes by stating that since there is a statutory remedy of appeal available, which has not been availed of, the petition is liable to be dismissed on this ground. The chargesheets having been issued prior to filing of writ petition i.e., CWP-14419-2022 and CWP-2598-2023, cannot be said to be as a result thereof. Insofar as the submission of there being three chargesheets issued is concerned, he has clarified that the first, dated 27.08.2021, Annexure P-7, already stands culminated in an order dated 22.04.2022, Annexure P-10, whereby punishment of stoppage of one annual increment with cumulative effect had been imposed but is not under challenge. The impugned order is passed in the subsequent one dated 16.09.2021 and supplementary dated 28.07.2022. As regards conducting of enquiry by the Chairman is concerned, the same is permissible in terms of Regulation 9 (2) of the Punjab School Education Board employees (Punishment and Appeal) Regulations, 1978 framed under Section 24 (2)(b) of the Punjab School Education Board Act, 1969 (for short 'the Act'). The apprehension expressed of not getting justice on account of the Chairman being a part of the Appellate Authority, is misconceived, for which a pertinent reference is made to the appendix of Regulation 6, which is to be considered by the Board and in terms of Section 4 of the Act, wherein there are ex-officio members from the Universities and the Government, besides the Chairman. He, on instructions, also submits that in case the petitioner avails of his remedy of appeal, the Chairman would recuse from the said proceedings. Notices were duly sent and received by the petitioner to join the proceedings. Efforts were being made by him to delay the completion of the enquiry, by seeking inspection of record etc, for which many opportunities were afforded, but not availed of. No reply was filed by him to the chargesheets, whereas there were other delinquent employees, who did

for treating the petitioner differently, had he also done the same, it would have been given the deserved weightage. The appellate Authority has vast power as per the Regulation 14, to pass any sort of order that the facts may require. No prejudice will be caused to him by availing the remedy.

4. Heard learned counsel on either side.

5. Incontrovertibly, in terms of the provision of Regulation 9 (2), an enquiry can be conducted by the punishing authority itself. A statutory remedy of an appeal is provided under Regulation 6 and for a penalty as imposed in this case, it would lie before the Board, as specified in the appendix therewith. Though the Chairman is a member of it, however, as per Section 4 of the Act, it consists of the Vice-Chairman and ex-officio members, that include Vice-Chancellors of all the universities, Secretary to Government in the Department of Education, Director of Public Instruction (Colleges and Schools), Director, State Council of Educational Research and Training, besides seven members nominated by the Government. The Board, while functioning as an Appellate Authority, under Regulation 14, can pass any order including to set aside, reduce, confirm and enhance penalty or to remit the case back to the authority which passed the punishment order or to any other authority.

6. Having analysed the matter in light of the dictum of law, as laid down by Hon'ble the Supreme Court in **SBI vs. Narendra Kumar Pandey**, (2013) 2 SCC 740, no exception from the general rule of availing of, the alternative remedy could be carved, by pointing out any error of law or procedure or violation of the principles of natural justice. The submission of the action being malafide cannot be countenanced, it having remained unsubstantiated. It is a case, which calls for an authority higher than the one, which has passed the impugned order, to examine the same.

7. On the premise aforesaid and as a fall out thereof, the present petition is

found to be not maintainable and is hereby dismissed.

8. In the parting, to dispel the apprehensions of the petitioner, should he decide to prefer an appeal, the Chairman would, but ofcourse, not be a part of the proceedings. The Appellate Authority must proceed uninfluenced by the fact that the enquiry was conducted by the Chairman. Needless to also mention that the observations made in this judgment are only for the purpose of deciding the issue of maintainability of the petition on the ground of an alternative remedy being available and would in no manner be construed to be an expression on the merits of the case.
9. Disposed of accordingly.

16.02.2024
ashok

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No