



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(228)

CWP No. 4899 of 2019 (O&M)
Date of Decision : 05.09.2024

Ramesh Chander

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sumukh Singh, Advocate for the petitioner.
Mr. Satnam Preet Singh, Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the grievance being raised by the petitioner is that though the petitioner is working as a Junior Assistant, his appointing and punishing authority is the Director Public Instructions (SE), however, the impugned order dated 21.09.2016 (Annexure P-13) has been passed by the appellate authority i.e. the Secretary, Department of Education, which is arbitrary and illegal and even the appeal which the petitioner preferred against the said order of punishment has been decided by the same authority i.e. the Secretary, Department of Education vide order dated 19.01.2018 (Annexure P-14), which clearly shows that while conducting the disciplinary proceedings and passing the punishment, the rules governing the service have been violated.

2. Learned counsel for the petitioner submits that the question of law raised in the present petition that the appellate authority cannot pass the



order of punishment, has already been decided by the Co-ordinate Bench of this Court in CWP No. 6678 of 2018 titled as ***Surinder Kumar Sharma Vs. State of Punjab and others***, decided on 07.02.2020, hence, the impugned order of punishment (Annexure P-13) as well as the order passed in appeal (Annexure P-14) are liable to be set-aside.

3. Learned counsel for the respondents has not been able to dispute the fact that for the post of Junior Assistant, the appointing authority/punishing authority is the Director Public Instructions (SE).

4. Learned counsel for the respondents is also not able to dispute the fact that the order of punishment has been passed by the Secretary, which is an appellate authority.

5. Learned State counsel also concedes the factum that even the appeal has been decided by the Secretary though by a different Officer.

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. As per the rules governing the service, the order of punishment can only be passed by the punishing authority and not by the appellate authority. In case, the appellate authority passes an order of punishment, the right to appeal is taken away, which is not permissible. In the present case, the impugned order of punishment has been passed by the appellate authority i.e. Secretary, Department of Education and in an appeal preferred by the petitioner, the same authority has decided his appeal, which shows that actually, the petitioner has been punished and his appeal has been decided by the same authority, which is impermissible and contrary to law.



8. The judgment of the Co-ordinate Bench of this Court in *Surinder Kumar Sharma's case (supra)*, is perfectly applicable on the facts and circumstances of the present case as, the impugned order of punishment has been passed by the appellate authority, which is impermissible and being contrary to the statutory rules, hence, the impugned order of punishment dated 21.09.2016 (Annexure P-13) as well as the order passed in appeal dated 19.01.2018 (Annexure P-14) are set-aside.

9. The case is remanded back to the disciplinary authority to pass an appropriate fresh order on the disciplinary proceedings initiated against the petitioner.

10. Let the fresh order be passed within a period of eight weeks of the receipt of copy of this order and it is made clear that in case, petitioner is prejudiced by the order of punishment, the petitioner can avail appropriate remedy before the appellate authority.

11. The present petition is disposed of in above terms.

12. Pending miscellaneous application, if any, also stands disposed of.

September 05, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No