

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

104+210

CWP-27319-2016 (O&M)
Date of decision: 29.02.2024

Gurdarshan Kaur

....Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Ms. Rajni Gupta, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

AMAN CHAUDHARY. J.

CM-3645-CWP-2024

For the reasons mentioned in the application, the same is allowed.

Replication to the reply filed by respondent Nos.1 to 4 is taken on record, subject to all just exceptions.

CWP-27319-2016

1. The present civil writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of the impugned order dated 29.08.2014, which was issued on 01.01.2015 and order dated 16.09.2016 vide which the appeal filed by the petitioner against the order dated 28.09.2014 was dismissed.
2. Learned counsel would submit that the petitioner, being abroad, could not come to know of the notice and was not informed the same by any other

means of communication. She was however, dismissed from service on 29.08.2014, without serving any show cause notice, chargesheet or conducting enquiry. The said order was received by her on 09.02.2015 at her address in Canada, it having been sent by the Principal. The petitioner, on 18.03.2015 itself preferred appeal against the same in time, taking all pleas available to her including the factum of having applied for extension of leave, on 19.12.2011 i.e. 100 days prior to it coming to an end, as required by the policy and once again on 14.01.2014. On both occasions, it had been forwarded to the Director, Secondary Education, but no response thereof. Even the medical record was appended thereto. During the pendency of the appeal, the petitioner also joined the proceedings, wherein a Board of doctors was constituted, who examined her. The medical records sought were also received through the Embassy. The injuries suffered by her were duly authenticated, however, the matter was sent to Director, Health and Family Welfare seeking the opinion to verify the time taken by her to get well, which was stated by him to be 5 years, as she remained under treatment till 28.08.2015. The said appeal, even though filed within 35 days of receipt of the order, was wrongly rejected being time barred. Now the petitioner is otherwise, to attain the age of superannuation in August, 2024. It is for reasons beyond her control that she stayed away from her job and only she knows the agony faced by her in a foreign land, in no position to work, the purpose for which she went defeated, she, being a single mother had her minor daughter along with her to tend to and then to return expecting some solace but meted with a step motherly

treatment. She had a good service record, that has also not been taken into account.

3. Learned State counsel on the other hand submits that the appellate authority has rightly passed the order after granting opportunity of hearing to the petitioner and thus, prays for the dismissal of the present petition.

4. Heard learned counsel on either side.

5. It may be accentuated that an employee could apply under the Self Employment Scheme of the State of Punjab dated 05.03.2008 for leave to go abroad, which could be granted for 3 years in the initial stage and further extended by 2 years provided the request was made 60 days prior to the expiry of it. Even an application for premature retirement could be filed at least 60 days before the completion of 5 years. The petitioner had applied for the said leave, which was sanctioned on 03.04.2009 till 02.04.2012. Unfortunately, she met with a roadside accident in Canada during this period, wherein she received serious head injuries, multiple fractures of bilateral tibia and fibula, pelvis as also injury to right shoulder, for which, she had to undergo treatment in the said country, where she is stated to have remained admitted in the hospital for 3 months, followed by rehabilitation. She, thus, requested for extension of leave on 19.12.2011 i.e. about 100 days prior to the expiry of 3 years sanctioned leave, followed by a reminder, which however did not evoke any response but in the meantime, a public notice in the local newspaper in India is said to have been taken out on 20.05.2014, Annexure P-2, for the petitioner as also two other teachers, to respond within 21 days regarding their absence.

6. Apropos the submissions, ironically despite the appeal having been filed promptly on receipt of the order of dismissal of service along with documents; which were subsequently, even got produced through the Embassy; put up before the Board of Doctors, who examined her as well, still the Appellate Authority axed the appeal on ground of delay and without properly appreciating that even the Director, Health and Family Welfare, affirmed the factum of petitioner having taken 5 years to recover from the injuries sustained, the unblemished service rendered by her and the spirit of the policy for grant of such leave and extension thereof.

7. The judgment in **Mahadeo Vithoba Nikam vs. Gajanan Pandurang Kulkarni**, (1998) 9 SCC 716, can be gainfully referred, wherein the appeal was allowed, setting aside all the orders of the appellate and revisional authority as also the High Court and the matter was remanded for fresh decision on merits after hearing the parties and Hon'ble the Supreme Court had observed that even though the appellant was not present before the Additional Tehsildar and filed the appeal against the order after a significant delay, the Appellate Authority was to consider the same on merits but it had been dismissed solely on the basis of delay.

8. A perusal of the order reveals that it does not contain the reasons it ought to have, on the basis whereof the decision has been reached. The appeal being a substantive right, the Appellate Authority was required to deal with the grounds that were raised by the petitioner therein, while laying a challenge to the order of punishment. It was thus imperative for it to be self-contained, speaking and reasoned.

9. It is trite that disciplinary proceedings against employees conducted under the provisions of the relevant service rules are quasi-judicial in nature and as such, it is necessary that orders passed by the competent authorities, who have been specified as disciplinary/appellate/reviewing authorities should have the attributes of a judicial order.

10. Hon'ble the Supreme Court in **Mahabir Prasad Santosh Kumar vs. State of U.P.**, (1970) 1 SCC 764, observed that recording of reasons in support of a decision by a quasi-judicial authority is obligatory, as it ensures that the decision is reached in accordance to law and is not a result of caprice, whim or fancy, or reached on ground of policy or expediency.

11. The cause of justice deserves to be preferred, when pitted against technical considerations. As such, a pragmatic approach instead of pedantic must be adopted.

12. Even for this Court to have a holistic approach, it is much required that there is an availability of a point of view of an authority higher than the one, the order of which, was appealed against. Ordinarily and especially in the claim as involved in the present case, the petitioner would stand to lose rather than gain by delaying filing of an appeal. In a case like such, even if there was found to be some delay, still keeping in view the attending factors, the authority that was vested with the power, could have viewed the matter with a wider perspective.

13. On a cumulative evaluation of the peculiar facts and circumstances of the case, the impugned order dated 16.09.2016 is hereby set aside. The matter is remitted to the Appellate Authority, for rendering a decision on merits, taking note

of the pleas raised in their entirety, in accordance with law, within a period of three months, after affording a proper opportunity of hearing to the petitioner. Needless to say, that the observations made herein would not be construed as an expression of opinion on the merits of the case.

14. The present petition is disposed of accordingly.

(AMAN CHAUDHARY)
JUDGE

29.02.2024
M.Kamra

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