

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

Date of Decision : 22-08-2024

.....Petitioner

STATE OF PUNJAB AND OTHERS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Mr. Swapan Shorey, DAG Punjab.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present petition, the grievance being raised by the petitioner is that the punishment of 10% cut in pension for a period of 10 years has been imposed upon the petitioner.

The factual matrix of the present petition is that the petitioner joined as a Lecturer in Economics in Government College, Gurdaspur in 18.08.1983. The petitioner was promoted to the post of Principal on 28.05.2016. It may be noticed that certain Class-IV employees who were working in the Government College, Gurdaspur on part-time basis had filed CWP No.2827 of 2013 seeking regularisation of their services against Class-IV Posts and in the said petition, by an interim order dated 28.05.2016, a direction was issued to decide the claim of the petitioners therein under the

Instructions dated 16.06.1977 qua their claim of regularisation of their services against the Class-IV post.

As per the averments made in the petition, the Principal is the competent authority to pass appropriate order on the said aspect but before doing so, the petitioner being the Principal at the relevant time formed a 5 Member Committee to evaluate the claim of the petitioners in CWP No.2827 of 2013 and make a recommendation and keeping in view the report which was received from the said Committee, the services of the Class-IV employees were regularised.

Respondent No.2 vide order dated 18.02.2019 cancelled the said order regularising the services of the petitioners in CWP No.2827 of 2013.

The petitioner was to retire from service on attaining the age of superannuation on 31.05.2019 but 7 days prior to the said date, the petitioner was served a chargesheet on 24.05.2019 wherein it had been mentioned that the services of the Class-IV employees was wrongly regularised by the petitioner which amounts to misconduct.

Thereafter, after the initiation of the departmental proceedings, the Inquiry Officer submitted a report proving the charges of misconduct and for regularising the services of Class-IV employees without the permission of the Director, Department of Education, the punishing authority decided that with regard to the members of the Committee, on whose recommendation the petitioner regularised the services of Class-IV employees, lenient view be taken and their chargesheet was dropped with a simple warning to remain careful in further whereas, the same punishing authority qua the same allegation against the petitioner, directed that

punishment of 10% cut in pension be imposed on the petitioner for a period of 10 years which order is under challenge in the present petition.

Learned counsel appearing on behalf of the petitioner submits that the order imposing 10% cut in pension for a period of 10 years is not only disproportionate to the charges alleged and proved but the same is contrary to the settled principle of law that where there is no misappropriation or loss caused to the State, punishment of cut in pension imposed is a disproportionate punishment to the charges alleged.

Learned counsel for the petitioner further submits that once, the members of the Committee which recommended the regularisation of services of the employees concerned, were also proceeded against and were also held guilty of the same charges as alleged against the petitioner, dropping the chargesheet against those Committee members with a warning and imposing punishment of cut in pension against the petitioner is discriminatory in nature.

Upon notice of motion, respondents have filed reply wherein the respondents have stated that once, the petitioner was proceeded against in the departmental proceedings and the charges have been proved, the punishment which has been imposed upon the petitioner is perfectly valid and legal as, the petitioner regularised the services of certain Class-IV employees by misinterpreting the recommendations of the Director, Education Department, Punjab.

Learned counsel for the respondents State submit that the petitioner had formed the Committee for making appropriate recommendation at his own level and any report submitted by the said Committee was not got approved from the Director Education Department,

Punjab before implementing the same hence, the impugned order of punishment has rightly been passed.

I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

From the facts which have been narrated hereinbefore, it is clear that there is no allegations of misappropriation or loss being caused to the State Exchequer against the petitioner. The only allegation alleged against the petitioner is that while working as a Principal, the petitioner had constituted a Committee to make recommendation as to whether the services of the petitioners in CWP No.2827 of 2013 should be regularised or not and upon the recommendation of the said Committee, the services of the petitioners in CWP No.2827 of 2013 were regularised but without taking prior approval of the Director, Department Education, Punjab.

It may be noticed that the respondents themselves have conceded that for an appointment to the Class-IV Post, the Principal is the competent authority. Once, the Principal is the competent authority and the power to regularise the services of the employees keeping in view the direction given by this Court, is within the domain of the Principal, the petitioner could not have been proceeded against on the ground that before exercising his jurisdiction, he should have taken approval from the Director, Education Department, Punjab. Once the petitioner was competent authority to pass an order regularising the services of Class-IV employees, the approval from the Director was not needed.

Even otherwise, the Committee members were also proceeded against for the same allegation and Enquiry Officer also proved the same allegations against the members of the Committee as well as against the

petitioner who has implemented the recommendations of the Committee. In the facts and circumstances of the present case where it is a conceded position that by taking a lenient view, on the same allegation, the chargesheet issued to the members of the Committee has been dropped with a warning only whereas the petitioner has been proceeded against so as to impose the punishment imposing cut in pension to the tune of 10% for a period of 10 years, it is a clear case of discrimination as similarly situated employees have been treated leniently and the petitioner has been imposed a severe punishment without their being any justification.

Not only this, as per the settled principle of law by the Division Bench of this Court in LPA No.340 of 2017 decided on 08.02.2023 titled as **“Gurcharan Singh Vs. State of Punjab and ors.”**, the Division Bench has held that where there is no loss caused to the State Exchequer, imposing the punishment of cut in pension is totally disproportionate to the charges alleged and proved. The relevant findings recorded by the Division Bench have been held as under:-

“Counsel for the appellant, inter alia contended that as per Rule 2.2 of the Rules, recovery from pension can be made as a punitive measure in order to make good loss caused to the Government as a result of negligence or fraud on the part of the person concerned while he was in service. Admittedly, the enquiry officer, who conducted the enquiry against the appellant in the instant case categorically recorded that no financial loss has been caused to the Municipal Council in spite of the deviation in the procedure for execution of the works done under his supervision by the Municipal Council. The enquiry officer even noted that the appellant had issued certain audit requisitions in audit report of 2009-2010 protesting against the procedure of execution of work through

quotations instead of inviting tenders. But inspite of the same, the officials of the Municipal Council ignored his protest and continued to get the works executed by inviting quotations instead of calling for tenders. Since the work pertained to manholes and was claimed to be of urgent nature by Executive officer of the Municipal Council, who claimed to have been authorized through Government letter dt.24.08.2008 to spend 20,000/- on immediate expenses if there is an urgency or immediate need to get the work done, and the appellant had protested, he cannot be prima facie accused of being negligent merely because he did not take further instructions from the Head Office as was held by the enquiry officer. Counsel contended that even respondent No.1, who passed the impugned order, gave no categorical finding that there was loss caused to the Municipal Council though he doubted the correctness of the finding of the enquiry officer that there was only procedural lapses and no financial loss.

We find force in the above contentions.

In the absence of any finding against the appellant that he was responsible for causing financial loss to the Municipal Council either by the enquiry officer or by respondent No.1, it was not open to the learned Single Judge to give a finding that financial loss was caused to the Municipal Council on the basis of assumptions and presumptions without any material on record.

Only if there is a finding of financial loss caused to Government by the enquiry office or respondent no.1. Rule 2.2(b) of the Rules can be invoked. It permits recovery of pension after it has been sanctioned as a punitive measure in order to make good loss to the Government on account of negligence on the part of an employee.

In the absence of any finding of loss caused to the Government either by the enquiry officer or by respondent No

1, no recovery from pension could have been ordered as a punitive measure by the respondents.”

Keeping in view above, the punishment imposed upon the petitioner is not only discriminatory but is also contrary to the settled principle of law passed by the Division Bench in ***LPA No.340 of 2017 decided on 08.02.2023 in Gurcharan Singh's case (supra)*** hence, the punishment of cut in pension to the tune of 10% for a period of 10 years is set aside and as the respondents have themselves taken decision to drop the chargesheet against the Committee members who were also proceeded against on the same allegations and were similarly situated as the petitioner by a simple warning, the same punishment will serve the purpose in the facts and circumstances of the present case.

Hence, the present petition is allowed in above terms.

Any amount recovered from the pension of the petitioner so far, be refunded back within a period of 8 weeks from the receipt of copy of this order.

At this stage, learned counsel for the petitioner submits that though the petitioner is claiming interest also but keeping in view the facts and circumstances of the present case, the said prayer may kindly be disposed of having been not pressed any further.

Ordered accordingly.

Pending application, if any, also stands disposed off.

(HARSIMRAN SINGH SETHI)
JUDGE

22-08-2024

Sapna Goyal

NOTE: Whether speaking: YES/NO
Whether reportable: YES/NO