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2023:PHHC: 009360

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-21929-2023

Date of decision: 24.01.2024

DHARAMVIR SINGH

...PETITIONER

Vs.

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Sandeep Sharma, Advocate
for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

JAGMOHAN BANSAL, J (ORAL)

1. The petitioner through the instant petition under Articles 226 of the Constitution of India is seeking setting aside of order dated 02.06.2017 (Annexure P-2) whereby petitioner has been dismissed from service.

2. The petitioner on 29.06.2015 joined Punjab Police as Constable. During training period, the petitioner was sent to District Batala. The petitioner was found absent on 06.09.2016 and this fact was noted in roznamcha at Police Lines, Barnala. The absence of petitioner was further noted vide Rapat No. 32 dated 17.09.2016 of P.R.T.C., Jahan Khela. Due to continuous absence from duty, the petitioner could not complete his training. The petitioner was issued charge-sheet. He was issued notice thrice for appearance, however, he did not join proceedings and an ex-parte order came to be passed. The petitioner on account of absence from duty from 06.09.2016 to 02.06.2017 (270 days) came to be dismissed vide order dated 02.06.2017 passed by SSP, Sangrur. The petitioner preferred appeal which came to be dismissed vide order dated 20.09.2018 passed by DIG, Patiala Range, Punjab. The petitioner further

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preferred representation before Government which came to be dismissed vide order dated 21.04.2023 passed by Additional Chief Secretary, Department of Home Affairs and Justice, Punjab.

3. Counsel for petitioner submits that the petitioner was absent from duty because his mother was ill.

4. The petitioner joined force on 29.06.2015 and he remained absent for 270 days from 06.09.2016 to 02.06.2017. There is nothing in the impugned order disclosing that petitioner at that stage came forward with a plea of illness of his mother. The petitioner opted to remain absent from duty as well as did not join departmental proceedings which indicates that he was never interested to pursue his job. The petitioner was dismissed from service on 02.06.2017 and his appeal was dismissed on 20.09.2018. The petitioner could very well approach revisionary authority or this Court after dismissal of appeal, however, from the record it appears that he approached Government in December, 2020.

5. It is settled proposition of law that scope of interference while exercising jurisdiction under Articles 226/227 of the Constitution of India in disciplinary proceedings is very limited. The Court has no power to look into quantum of sentence/punishment unless and until Court finds that sentence awarded is disproportionate to alleged offence. It is further settled proposition of law that High Court while exercising its jurisdiction under Article 226 of Constitution of India can look into the procedure followed by authorities. In case, it is found that enquiry officer or disciplinary authority has not considered any evidence on record or misread the evidence or procedure as prescribed by law has not been followed, the Court can interfere. A two-judge Bench of Hon'ble Supreme Court in ***Union of India and others vs. Subrata Nath, 2022 LiveLaw (SC) 998*** while advertng with scope of interference under Article 226 of the Constitution of India in disciplinary proceedings has held that

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departmental authorities are fact finding authorities. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. The Hon'ble Supreme Court has considered its judicial precedents including a two-judge Bench judgment in ***Union of India and Others v. P. Gunasekaran***. The relevant extracts of the judgment read as:

“19. Laying down the broad parameters within which the High Court ought to exercise its powers under Article 226/227 of the Constitution of India and matters relating to disciplinary proceedings, a two Judge Bench of this Court in Union of India and Others v. P. Gunasekaran held thus:

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.”*

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22. To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct.

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However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P.Gunasekaran (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor.”

6. Applying the aforesaid principles laid down by Hon’ble Supreme Court, this Court is of the considered opinion that interference of this Court in the case in hand, in exercise of power conferred by Article 226 of the Constitution of India, is not warranted.

7. Dismissed.

24.01.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

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