

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-9348-2017 (O&M)
Date of decision: 25.04.2024

Inderbir Kaur

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. RK Arora, Advocate for the petitioner.

Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY. J (Oral)

1. The prayer made in the present petition is for setting aside the impugned charge sheet dated 24.07.2009, Annexure P-2, enquiry report dated 16.08.2011, Annexure P-15 and dismissal order dated 12.10.2016, alongwith all consequential benefits.

2. Learned counsel would contend that the petitioner joined as a Lecturer in Shaheed Bhagat Singh Municipal College, Kotakpura on 12.08.1983, which was taken over by the Govt. of Punjab vide Notification dated 12.05.1997 and she was granted benefit of her previous service towards her pay fixation and grant of leave etc. She proceeded to Canada after acceptance of her Ex-India Leave (without pay) w.e.f. 29.04.2008 to 28.07.2008, where she developed medical problems and applied for extension, based on certificates issued by authorized Doctors stating that it was not possible for her to undertake Air travel, which was rejected. Subsequently, a charge-sheet dated 24.07.2009 was issued for being unauthorizedly absent from the duty w.e.f. 29.07.2008 and demanding extension of leave. Meanwhile, she submitted resignation on 02.11.2011 and in

pursuance thereof, received a letter dated 11.07.2013, from Joint Director

(Administration), requiring her to deposit the due payment of salary for her resignation to be forwarded to the Govt, whereafter she submitted the copy of challan transferring an amount of Rs.1,65,447/- on 14.08.2012. Be that as it may, on 18.10.2016, she was awarded the punishment of dismissal from service.

3. On the contrary, learned State counsel submits that the absence of the petitioner having been found to be willful in the enquiry initiated against her, which she had not joined and due to the fact of having violated the terms of the Ex India leave granted to her, she was rightly dismissed from service. Furthermore, even the period of her service was only 19 years and 5 months, starting from the date of taking over of the college.

4. Heard learned counsel on either side.

5. Notably, the petitioner after taking due approval left for Canada, where she overstayed her leave, leading to her being charge-sheeted for unauthorized absence from duty, without appreciating the factum of her health problems and her requests for extension of stay. During the enquiry, letters were issued to the Consulate General of India in Canada, which evoked no response, whereas Dr. Dalwinder Toor, vide letter dated 05.11.2010 stated that the written consent of the patient was required before furnishing her medical records. The final report dated 16.08.2011, though contained that she had shared her history of her disease and records of hospital admission, as also that it was acknowledged that there can be a possibility of her not being able to return by air owing to her medical condition, yet it was concluded that she was intentionally trying to extend her Ex-India leave. Subsequently, the petitioner submitted her resignation, in response to which she was asked to deposit her salary for three months, so that her case could be forwarded to the Government, which she did and deposited a challan to that effect. However, vide the impugned order dated 12.10.2016, she was

awarded the punishment of dismissal from service.

6. Insofar as the contention of learned State counsel regarding the total length of her service being 19 years and 5 months taken from the date of takeover of the college is concerned, the same cannot be countenanced in view of the submission advanced on behalf of the petitioner inasmuch as that her previous service rendered from 1987 till 1997 was already taken into consideration for the purpose of pay fixation and leave. Therefore, if calculated from the date of initial joining till the date of her dismissal, it would add up to 33 years from the date and even if the service is taken till the date of proceeding on Ex-leave in 2008, it comes to 25 years.

7. Since, the respondents asked for deposition of three months' salary, to consider the request of the petitioner for forwarding her resignation to the government for approval, thus, ostensibly, they were themselves meaning to consider her case for premature retirement.

8. Rule 3 of Punjab Civil Services (Premature Retirement) Rules, 1975, clarifies that if premature retirement is sought, there is a requirement of serving three months' notice and no provision exists vide which salary can be asked to be deposited, in lieu thereof, which was paid by the petitioner, on asking of the Department. Notwithstanding, the respondents had it both ways, wherein on one hand payment of salary was demanded and received, while subsequently, she was also dismissed from service.

9. Having considered the facts and circumstances of the case, the punishment appears to be harsh and disproportionate to the alleged misconduct, moreso, given the long length of service rendered by the petitioner and it being satisfactory, since nothing was placed on record to prove otherwise, thereby shocking the conscience of this Court.

10. Sequentially, the impugned order of dismissal dated 12.10.2016 is set aside and the Competent Authority is directed to revisit the quantum of

punishment and so as to balance equities, the amount of 1,65,447/-, be refunded, without interest, but forthwith.

11. The present petition stands disposed of accordingly.

(AMAN CHAUDHARY)
JUDGE

25.04.2024

Hemant

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