(2013) 11 P&H CK 0134

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 20092 of 2012 (O and M)

Manisha		APPELLANT
	Vs	
District Judge, Panchkula and Another		RESPONDENT

Date of Decision: Nov. 8, 2013

Hon'ble Judges: Tejinder Singh Dhindsa, J

Bench: Single Bench

Advocate: Jayender Singh Chandail, for the Appellant; Rajesh Garg, for the Respondent

Final Decision: Dismissed

Judgement

Tejinder Singh Dhindsa, J.

The petitioner has impugned the orders dated 27.9.2010 and 13.11.2010 (Annexures P-1 & P-1A respectively) passed by the District & Sessions Judge, Panchkula, whereby the petitioner, who was working at the relevant point of time as Record Lifter under the Panchkula Sessions Division, has been imposed the penalty of withholding of five increments of pay with cumulative effect and further the suspension period from 12.9.2005 to 7.4.2009 has been ordered to be treated to be period not spent on duty and her allowances have been confined to the extent of amount already paid to her as subsistence and other allowances. Further challenge is to the order dated 5.5.2012 (Annexure P-2), whereby the service appeal preferred by the petitioner, has been dismissed by this Court on the administrative side thereby affirming the order of penalty. Brief facts that would require notice are that Mr. Ravi Kant, a practicing Advocate at Panchkula submitted a complaint to the District & Sessions Judge, Panchkula as regards the petitioner having misbehaved with him on 5.9.2005. On 6.9.2005 the petitioner was called upon to furnish her reply to the complaint. The reply submitted by the petitioner having been perused, she was charge sheeted on 28.11.2005 on the following Articles of Charge:-

1. That you during your posting as Record Lifter in the office of Civil Judge (Sr. Divn.), Panchkula on 05.09.2005 at 3.45 p.m. misbehaved and used filthy language with Shri

Ravi Kant, Advocate, District Court, Panchkula when he was coming back from the room of the Ahlmad of the Court of Shri Gulab Singh, Civil Judge (Sr. Division), Panchkula by saying that as her face is similar to his sister as he is looking towards her with "Hasrat Eyes". On feeling surprise Shri Ravi Kant asked you that you are under misunderstanding regarding him, you hearing this, in a very angry manner, spit on his face and used filthy language by saying "Aa kachha utar kar aaja dekhon tere....mein kitna dam hai" and went away abusing him.

2. That you in your reply tried to use indecent language against Shri Ravi Kant, Advocate and instead of giving specific reply to the allegations chose to reply in a strange manner and tried to hurt the male ego of the complainant Ravi Kant.

3. That your previous conduct also shows to be an unbecoming official as on 02.05.2005 when you were not found in proper dress and your explanation was called, the language used by you in reply thereto was shown to be that of insubordination.

4. That on 28.07.2005 at 12.35 p.m. while Shri Gulab Singh, Civil Judge (Sr. Divn.) Panchkula was sitting on the dais he saw you roaming in the compound in between the court complex and Lawyers'' chamber and thus you were absent from your seat without intimation or permission.

5. That on 06.09.2005 at 1.45 p.m. while Shri Gulab Singh, Civil Judge (Sr. Divn.), Panchkula you were found absent from your seat and were only seen going to her seat at 2.45 p.m. and thus you remained absent from your seat from 1.45 p.m. to 2.45 p.m. without permission or intimation.

2. Thereafter, an Inquiry Officer was appointed for conducting a regular departmental inquiry. Inquiry report dated 8.12.2009 was furnished holding charge no. 1 as partly proved, charges no. 2, 3 and 5 as proved and charge no. 4 was held to be not proved. The disciplinary authority upon agreeing with the findings returned by the Inquiry Officer served a show cause notice upon the petitioner under the Haryana Civil Services (Punishment & Appeal) Rules, 1987 (herein after to be referred as 1987 Rules) contemplating the imposition of the extreme penalty of dismissal. The petitioner submitted a reply to such show cause notice. On 17.10.2010 petitioner was afforded an opportunity of personal hearing by the disciplinary authority and thereafter, vide impugned order dated 27.9.2010 (Annexure P-1) the penalty of withholding of five increments of pay with cumulative effect was imposed. In continuation of such proceedings, vide separate order dated 13.11.2010 (Annexure P-1A) the suspension period of the petitioner w.e.f. 12.9.2005 to 7.4.2009 was directed to be treated as period not spent on duty and her allowances for such period were restricted to the extent of amount already paid to her towards subsistence allowance. The service appeal preferred by the petitioner has been dismissed vide order dated 5.5.2012 (Annexure P-2).

3. Learned counsel appearing for the petitioner would vehemently argue that there was no material before the Inquiry Officer on the basis of which an opinion could have been formed so as to sustain the charges levelled against the petitioner. Counsel would urge that the petitioner has been punished on account of the fact that she was the whistle blower in the Traffic Challan Scandal pertaining to FIR No. 288 dated 17.4.2003 registered in Police Station Sector 5, Panchkula. It has been contended that a number of employees of the District Courts, Panchkula were involved in such Scandal and it is only to teach the petitioner a lesson that the entire disciplinary proceedings were initiated against her and which have finally culminated in the passing of the order of penalty. Counsel would also strenuously argue that the charge levelled against the petitioner is with regard to hurting of male ego and which in itself would be contrary to Article 14 of the Constitution of India as no discrimination would be permissible between males and females as regards hurting of ego. It has also been argued on behalf of the petitioner that the order of penalty cannot sustain as the same has been passed in relation to a private complaint and does not relate to her conduct while discharge of official duty. Learned counsel would further submit that in the service appeal, this Court on the administrative side has absolved the petitioner of two charges in which the petitioner had been held guilty by the Inquiry Officer and as such, the major penalty of withholding of five annual increments with cumulative effect is grossly disproportionate.

4. Per contra, Mr. Rajesh Garg, Advocate appearing for the respondents would state that the petitioner has been awarded the penalty after following the due procedure provided under Rule 7 of the 1987 Rules and she was associated at each and every stage of the departmental inquiry. On behalf of the respondents, it has been argued that the instant writ petition cannot be treated as a second appeal on merits of the matter as no procedural flaw in the departmental proceedings conducted against the petitioner has been pointed out. It has also been stated that the matter relating to FIR No. 288 dated 17.4.2003 has no relation whatsoever with regard to the proven misconduct of the petitioner. Mr. Garg would submit that against the backdrop of the charges levelled against the petitioner and the same having been duly proved, no interference is called for as the punishing authority has already taken a lenient view and has awarded the penalty of stoppage of five annual increments with cumulative effect as opposed to the contemplated penalty of dismissal from service.

5. Learned counsel for the parties have been heard at length and pleadings on record have been perused.

6. The scope of judicial review in dealing with departmental inquiries and while examining the orders passed by the competent authority in culmination of departmental proceedings has been considered by the Hon''ble Apex Court repeatedly. In case of State of Andhra Pradesh and Others Vs. Chitra Venkata Rao, the Hon''ble Apex Court has held as follows:-

21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of Andhra Pradesh v. S. Sree Rama Rao. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic Tribunal o(sic) Inquiry the High Court in a petition under Article- 226 of the Constitution is not competent to declare the order of the authorities holding a departmental inquiry invalid. The High Court is not a Court of Appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concern ed to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authorities entrusted with the duty to hold the enquiry has accepted and which evidence may reason ably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High A Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

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23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an Appellate Court. The findings of fact reached by an inferior court or Tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of facts however grave it may appear to be. In regard to a finding of fact recorded by a Tribunal, a writ can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorary. A finding of fact

recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan & ors.

7. Such view holds the field even today. The High Court in exercise of its extraordinary writ jurisdiction under Article 226 of the Constitution of India is not competent to consider the question whether the evidence led before the Inquiry Officer and thereafter considered by the punishing authority was insufficient or unreliable to establish the charge against the delinquent. The only question to be considered is whether there was any evidence at all which, if, believed by the inquiring authority would establish the charge. Adequacy of evidence to sustain the charge is not a question for the High Court to go into. The power of judicial review is not directed against the decision but is confined to the decision making process. It is not open to the High Court to re-appreciate and re-appraise the evidence led before the Inquiry Officer and examine the findings recorded by the Inquiry Officer as a Court of Appeal and reach its own conclusions.

8. Adverting back to the facts of the present case, the principal charge for which the petitioner has been held guilty is of misbehaviour, using filthy language, spitting on a practicing Advocate and having abused him in the Court Complex and during duty hours. Even though, the language of the charge where the words hurting male ego have been used, may not have been happily worded but the same does not dilute the gravity of the allegation. This Court on the administrative side has considered and examined the evidence led before the Inquiry Officer while holding the petitioner guilty of such charge. In the service appeal the matter has been discussed threadbare and the evidence of EW-4 Sh. Sunil Narang, Advocate, EW-5 Sh. Satish Kadian, EW-6 Sh. Suresh Rohilla, Advocate, EW-7 Sh. Tarsem Kumar, Clerk of Sh. Ajay Mehta, Advocate, EW-8 Sh. Amit Singla, Advocate, EW-10 Sh. Vikram Chauhan, Advocate and EW-11 Sh. Sunil Sharma, Advocate have been found to have supported the version of the complainant, Sh. Ravi Kant, Advocate. On such basis, the findings recorded by the Inquiry Officer on charges no. 1 and 2 have been upheld. Likewise, the findings of the Inquiry Officer in relation to charges no. 3 and 5 have also been examined by this Court on the administrative side and have been weighed against the documentary and oral evidence adduced towards proving such charge. Upon such detailed examination the findings of the Inquiry Officer on charges no. 3 and 5 have been set aside.

9. Learned counsel for the petitioner is virtually calling upon this Court in terms of filing the instant writ petition to embark upon yet another exercise of re-appraisal and re-appreciation of evidence. The same is impermissible. In such matters this Court would not act as a Court of Appeal. In so far as the principal charge of having misbehaved, used filthy language and having spat on a practicing Advocate in the

Court Complex and during duty hours, it cannot be said that such charge has been held to be proved without there being any evidence at all. It is not even the case of the petitioner that the regular departmental proceedings suffered from any procedural irregularity or illegality. As such, I am of the considered view that no interference in the matter is warranted.

10. Even as regards the quantum of punishment there would be no scope for interference. The penalty imposed upon the petitioner in relation to the charge that stands proved, cannot be taken as grossly disproportionate and shocking.

11. For the reasons recorded above, there is no merit in the present writ petition and the same is, accordingly, dismissed. Petition dismissed.