

(2024) 01 SHI CK 0060

High Court Of Himachal Pradesh

Case No: Civil Writ Petition No. 2944 Of 2018

State Of Himachal Pradesh &
Others

APPELLANT

Vs

Hoshiar Singh

RESPONDENT

Date of Decision: Jan. 12, 2024

Acts Referred:

- Central Civil Services (Pension) Rules, 1972 - Rule 9, 9(2)(a)

Hon'ble Judges: M.S. Ramachandra Rao, CJ; Jyotsna Rewal Dua, J

Bench: Division Bench

Advocate: Anup Rattan, Rakesh Dhaulta, Pranay Pratap Singh, Arsh Rattan, Sidharth Jalta, Ajay Sharma, Atharv Sharma

Final Decision: Allowed

Judgement

M.S. Ramachandra Rao, CJ

1. The respondent, while working as TGT(A) in Government Senior Secondary School, Bathu Tipri, District Kangra, was served a Charge- Sheet under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, on charges of molesting a minor girl student on 03.02.2001, who was studying in 7th standard.
- 2) An inquiry was conducted against him and the Inquiry Officer, in his report dt. 07.05.2004, found him guilty of such charge and gave reasons for the same.
- 3) On the basis of inquiry report submitted by the Inquiry Officer, on 17.06.2004, penalty of removal from service was imposed on the respondent.
- 4) Respondent filed O.A.no.1754 of 2004 before the erstwhile Himachal Pradesh State Administrative Tribunal (in short "the Tribunal").
- 5) During the pendency of the said case, he retired from service on 31.01.2007.
- 6) The Tribunal allowed the O.A. no.1754 of 2004 on 19.3.2007 on the ground that copy of the inquiry report of the disciplinary inquiry had not been served on the respondent and directed his reinstatement into service. But he had retired from service on 31.1.2007.
- 7) Accordingly, the petitioners-State reinstated him into service w.e.f. 23.12.2002.
- 8) After evading to receive it for considerable time, ultimately, the inquiry report was served on him on 14.5.2010. He gave an application on 17.05.2010 requesting extension of time upto 15.06.2010 to submit reply to the inquiry report, but he did not file any reply thereto.

9) On 28.12.2010, the Director of Elementary Education, Himachal Pradesh, wrote to the Principal Secretary (Education) to the Government, requesting the latter to take further action under Rule 9 of the CCS (Pension) Rules, 1972 (in short "the Rules"), as the same were attracted in the matter.

10) Thereafter, on 18.07.2011, the Government of Himachal Pradesh passed an order under Rule 9, referred to supra, in the name of His Excellency the Governor of Himachal Pradesh, imposing penalty of withholding of full pension of the respondent for 20 years with immediate effect.

11) Challenging the same, the respondent filed CWP no.6822 of 2011 before this Court.

12) It was later transferred to the H.P. Administrative Tribunal and was registered as T.A. no.3938 of 2015.

13) On 20.07.2017, T.A. no.3938 of 2015 was allowed by the Tribunal stating:

(a). That findings had not been recorded in the departmental inquiry that the respondent had committed grave misconduct while in office, which was subject matter of the charge;

(b). In the absence of such finding, the Governor was without authority of law to impose penalty of withholding of pension as a measure of punishment, either in whole or in part, permanently or for a specified period, from the pension of the employee; &

(c). As per the Rule 9 of the said Rules, unless a case of grave misconduct and negligence is established, recovery from pension cannot be made from a pensioner or pension cannot be withheld.

14) Challenging the same, the instant Writ petition has been filed by the petitioners/State.

15) Heard the learned Additional Advocate General for the petitioners/State and Shri Ajay Sharma, Senior Counsel for the respondent.

Consideration by the Court

16) We shall first examine whether there is a finding recorded in the inquiry report as to the respondent being guilty of grave misconduct or not.

17) In Page-1 of the Inquiry Report dt. 07.05.2004 (Annexure P-4), a finding is recorded that the charge of misbehavior and molesting the girl student of 7th Class against respondent is proved.

18) It was noted in the inquiry report that the girl in question had fallen unconscious in the toilet and had to be given first aid by the teachers in the Science Laboratory and students had stated in the preliminary inquiry that the respondent had outraged her modesty. It was also recorded that the respondent had even denied being present in the Lab which was disproved by the evidence of another teacher, who stated that the girl cried loudly on seeing the respondent and she was badly frightened and fell unconscious again. It was also noted that the girl and her mother reported the matter to the Panchayat Pradhan, in whose jurisdiction the school falls on 03.02.2001 in the evening, and demanded justice and the Panchayat Pradhans from the adjoining Panchayats also raised vigorous demand for strong action against the respondent. It has also come on record that the girl got frightened and stopped her education after the incident.

19) Though the word "grave misconduct" has not been specifically used in the inquiry report, the tone and tenor of the inquiry report, indicates that the Inquiry Officer found

the respondent guilty of misconduct of molesting the girl, a student of 7th Class. No reasonable man would say that the act of molesting of a girl student by her teacher, is not a grave misconduct.

20) In Apparel Export Promotion Council v. A.K. Chopra (1999) 1 SCC 759 , the Supreme court held:

“28. ... In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or the dictionary meaning of the expression “molestation”. They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, as is the position in the instant case, the courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the superior officer is wholly misplaced and mercy has no relevance. ..”

21) The Administrative Tribunal in the impugned order ought to have looked at the matter in this perspective and applied common sense and come to a reasonable conclusion instead of taking a perverse view that there is no specific finding of grave misconduct against the respondent.

22) Counsel for the respondent sought to contend that the evidence in the inquiry did not prove the charge against the respondent.

23) In our opinion, the Inquiry Officer, on the basis of circumstantial evidence, found the respondent guilty of the misconduct, and if the respondent had any grievance about the said finding after receipt of the inquiry report on 14.05.2010, he ought to have filed a reply thereto questioning the findings, but in spite of being granted time of one month to file such a reply on 17.05.2010, he did not choose to file any reply. It is not open to the respondent to raise such a plea in this Writ petition filed by the petitioners/State challenging the order of the Tribunal.

24) The other contention canvassed by the counsel for the respondent, is based on Rule 9 (2)(a) of the CCS (Pension) Rules, 1972, which states as under:-

“2(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.”

25) It is the contention of the counsel for the respondent that the departmental proceedings, which had been instituted, were not continued and concluded by the authority by which they were commenced, and that no report had been submitted to the Governor by the said authority recording its findings to the precedent.

26) Both these contentions are devoid of merit in view of the proceeding Annexure P-1 dt. 28.12.2010 issued by the Director of Elementary Education, Himachal Pradesh to the Principal Secretary (Education) filed in this Writ petition. The said proceeding indicates that the Director accepted the findings of the inquiry report, having been made on the basis of documentary evidence adduced, and had clearly opined that conduct of the

respondent had led to putting a blot on the sacred relationship between the teacher and the taught, so much so, that the aggrieved girl had to quit her studies forever. He noted that teacher, i.e. respondent, had managed to escape himself from the clutches of law after entering into compromise with the parents of minor girl and ultimately, the innocent minor girl was the worst sufferer, who had to quit her studies forever.

27) He also noted that appropriate punishment be imposed on the respondent because pension is subject to maintaining a good conduct, while the respondent had committed a heinous act.

28) In our opinion, there is clearly a compliance with Rule 9 (2)(a) of the CCS (Pension) Rules, 1972, in all respects.

29) The other plea raised by counsel for respondent that consent of the Himachal Pradesh Public Service Commission is concerned, it is not the case of the respondent that the respondent was recruited through the said agency. So the said requirement in Rule 9 has no application to him.

30) In this view of the matter, the Writ petition is allowed; the order dt. 20.07.2017 in T.A. no.3938 of 2015 passed by the erstwhile H.P. Administrative Tribunal, is set-aside; and the order dt. 18.07.2011 passed by the petitioners/State, is sustained. Recovery be effected from the respondent of the amount which he had received as pension till date.

31) Pending miscellaneous application(s), if any, shall also stand disposed of.