(2012) 05 P&H CK 0097

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 10483 of 2012 (O and M)

Manjusha Sharma		APPELLANT
	Vs	
State of Haryana and others		RESPONDENT

Date of Decision: May 31, 2012

Acts Referred:

- Haryana Affiliated Colleges (Security of Service) Act, 1979 - Section 7, 7(1), 7(2)

Citation: (2012) 05 P&H CK 0097

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Parveen Gupta, for the Appellant;

Final Decision: Dismissed

Judgement

K. Kannan, J.

The petitioner challenges the order passed by the Financial Commissioner allowing the appeal filed by the Management in the proceedings under Haryana Affiliated Colleges (Security of Services) Act, 1979 (for short, "the Act"). The Financial Commissioner was setting aside the order passed by the Director General of Higher Education directing reinstatement of the petitioner on the ground that the order issued by the Management of the College that the petitioner had vacated her post on failure to join the post within the stipulated time, was contrary to the provision of the Act, as one was passed without necessary sanction from the Director. The Director General of Higher Education had found that there had been violation of Section 7(1) of the Act insofar as the termination resulted without any form of inquiry and that no approval of the Director had been obtained in the manner contemplated u/s 7(2) of the Act. In allowing for the appeal filed by the Management, the Financial Commissioner was considering an extraordinary case of an extraordinary situation. The Commissioner found that the absence of the petitioner was for as long as a period of 10 years and the periodical extensions which the petitioner was getting, was always conditional that she must rejoin. The medical certificates which

she had been sending from USA for the last 10 years at sporadic intervals, did not show any hospitalization or a medical condition that disabled her from work. It recorded merely some chronic ailments like hypertension, ulcers etc. The Financial Commissioner, therefore, found that when the Management was giving her a last chance to rejoin within a particular time failing which it would be taken that her post had become vacant, was actually acting with reasonable restraint. The Financial Commissioner also found fault with the petitioner who had literally no interest in the welfare of the students and had blocked an effective usage of the sanctioned strength of the College. The Financial Commissioner took notice of the fact that the petitioner was literally on extraordinary leave from 07.04.2000 to 07.04.2010, even when Rule 26 of the Conduct Rules provided no more than a limit of 5 years as extraordinary leave under the Kurukshetra University Calendar.

2. The Financial Commissioner was, therefore, under the peculiar circumstances where the Management was doubting the bona fides of the petitioner that she had been leaving away from India in USA after securing gainful employment, required the petitioner to give her consent to obtain appropriate information from USA agencies about the nature of stay, employment treatment etc. The petitioner was not willing to give such consent and she claimed a privilege not to divulge any such information. Under such a situation, the Financial Commissioner held that the Management could not be faulted and denied to the petitioner a right of reinstatement and allowed the appeal filed by the Management.

3. Before me, the learned counsel appearing on behalf of the petitioner refers to a judgment of a Division Bench of this Court in Guru Nank University, Amritsar and others v. Jaspal Singh, 2011(2) SCR 584 where the Court was considering that in a case of removal from service on the allegation of over-stayed leave, an inquiry is mandated by law despite the fact that the Service Regulation provided for automatic termination. The learned counsel relies on this judgment to bring home the point that a mere absence from the College for a period of 10 years when she had secured permission various times, could not result in the post being vacated for the only reason that in the last spell she was not able to join within the time stipulated by the Management. The over-stayed leave must have been a cause for constituting an inquiry u/s 7(1) of the Act and without a sanction from the Director as contemplated u/s 7(2) of the Act her services could not have been terminated. The learned counsel also relies on a judgment rendered by this Court in Dr. Bimla Malik v. State of Haryana and others in CWP No. 6789 of 2010 in which I have held that a termination of service could not be effected without undertaking the procedure established by law. According to the learned counsel for the petitioner, the procedure as prescribed by law had not been followed and, therefore, the order passed by the Commissioner was erroneous.

4. I must notice that in this case presence a unique situation of a teacher going to a foreign country and staying away for 10 years with request for leave periodically. The reason for the leave trotted out by the petitioner was on health grounds but the medical certificates that have been produced did not indicate any medical condition that required

her hospitalization. The medical certificates merely showed the petitioner as having been under the professional care for a few years by the doctor. Evidently, the petitioner was creating a lame excuse for not coming back to India to report for duty. If the petitioner was found to have stayed out of India, the Management must have served a notice to constitute an inquiry and then removed her from service after sanction. The inquiry in any given situation could have been to elicit a particular fact by an offer of an opportunity to charged officer to explain the conduct. The procedural safeguards are invariably a means to an end to secure what is true. If the employee indulges in tissues of falsehood and attempts to hoodwink the Management to cause detriment of student community then, the issue is not merely that there had been a procedural violation but also whether there has been any gross injustice which would require to be quelled by suitable judicial intervention. In this case, the Management had an employee''s post unutilized for the last 10 years. She had been giving trail excuses with medical certificates that did not support her justification for not joining duty. The Management had a justification to elicit a consent from the petitioner to make an inquiry on the nature of activity that she was engaged during her stay in USA. The petitioner did not have the courage to allow for such inquiry into a conduct. The presumption of innocence or a right against self-incrimination which are necessary safeguards in any jurisprudential approach cannot be extended even to a situation where the Management was asking the petitioner to give a clear information about her employment status in USA. If the petitioner did not herself volunteer to give information and the Management''s action, I will not find any justification for interference.

5. The petitioner''s approach to Court itself is unjustified. An interference in a writ petition ought to be for a just cause. The order cannot be passed only because it is lawful to do so. A misconduct of an undeserving person must be shown the door only for the reason that she is attempting to secure legal redress that she least deserves. I refuse to make any intervention in the ultimate dispensation that has meted out to her by refusing to extend judicial assistance to a person who subverts public interest. If the orders were to be treated as a conduct of the Management to be proactive order of termination, it would require a procedure u/s 7 of the Act to be followed. On the other hand, if the Management was merely recording a fact of the petitioner that extending her extraordinary leave for more than 5 years'' period and failing to report within the stipulated period on the pain of vacating her post, it should only be seen as a person abandoning a job which does not require the procedure u/s 7 of the Act. The expression used in the proceedings before the Commissioner may not obtain legal finesse that there was a case of abandonment but that surely was the effect of the petitioner''s own conduct. Not just an unmerited claim for reinstatement but being the instance of a person who wasted the resources of the college that could not gain any advantage by keeping the post vacating for nearly a decade, the petitioner''s challenge ought to fail and writ petition is dismissed.