(2014) 04 P&H CK 0073

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 6582 of 2011 (O&M)

Jaswinder Singh — APPELLANT

Vs

State of Punjab — RESPONDENT

Date of Decision: April 23, 2014

Acts Referred:

- Constitution of India, 1950 - Article 51A(j)

Citation: (2014) 175 PLR 214 : (2014) 3 SCT 762 : (2015) 1 SLJ 128

Hon'ble Judges: Rajesh Bindal, J

Bench: Single Bench

Advocate: R.K. Chopra, Senior Advocate and Maninder, Advocate for the Appellant; Monica Chhibber Sharma, Deputy Advocate General, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Rajesh Bindal, J.

Challenge in the present petition is to the order dated 30.12.2010 (Annexure P-9) vide which the services of the petitioner, who was working as Lecturer in Biology in the Education Department, were terminated. Learned counsel for the petitioner submitted that the petitioner was appointed as Lecturer in Biology on 16.8.1994 and he joined on 16.9.1994. He applied for leave to go abroad from 7.3.2008 to 6.6.2008. The same was duly sanctioned. The petitioner went to Canada to meet his wife. As she developed some medical problem while giving birth to a child, he could not apply for extension of leave. He came back and joined back on 4.5.2009. Ever since then, he continued serving the department. On account of absence from duty, the petitioner was issued a charge sheet on 7.7.2009 to which reply was filed. Enquiry Officer was appointed. After the submission of enquiry report, without supplying him copy of the enquiry report, he was called by the Secretary concerned through a telephonic message and after hearing the petitioner on 30.12.2010, the order terminating his services was passed.

2. In the aforesaid factual matrix, the submission of learned counsel for the petitioner is that the punishment awarded to the petitioner, without supplying him a copy of the enquiry report before imposition of punishment, cannot stand judicial scrutiny as it is violative of principles of natural justice. For the purpose, reliance was placed upon judgment of Hon''ble the Supreme Court in Union of India and others Vs. Mohd. Ramzan Khan, and judgments of this Court in Avtar Singh Kahlon v. The Presiding Officer, Labour Court, Amritsar, 1992 (2) S.C.T. 172 and Madan Lal Vs. The Registrar Cooperative Societies and Others,

3. He further submitted that in the charge sheet, period of absence was mentioned as 7.3.2009 onwards, whereas the same was from 7.6.2008 till 3.5.2009. There was no corrigendum or amendment of the charge sheet. Once the charge sheet was itself defective, all subsequent proceedings will fall flat. He further submitted that reliance is sought to be placed by the respondents on the affidavit dated 7.6.2010 (Annexure R-1) filed by the petitioner, however, the same is only with regard to the consideration of period of absence towards leave of the kind due and not for imposition of punishment in the enquiry. He further submitted that considering the past satisfactory record of the petitioner from the year 1994 till 2008 and from 4.5.2009 onwards till the services of the petitioner were terminated, he did not deserve to be awarded the punishment of termination as the intention of the petitioner was not to over stay. It was for the reasons beyond his control. He had produced the medical record in support of his claim. The same was totally ignored. The punishment is otherwise also disproportionate. For the purpose, reliance was placed upon judgment of this court in CWP No. 2073 of 1988, titled as Smt. Kailash Sharma (since deceased) through Shri Om Parkash Sharma (Husband) v. State of Punjab and others, decided on 7.1.2004.

4. On the other hand, learned counsel for the State submitted that it is not in dispute that the petitioner was afforded opportunity by the Secretary of the department concerned before imposition of punishment. At the time of hearing, the petitioner could raise whatever issues he wanted to raise. He did not raise the objection that unless the enquiry report is supplied to him, he will not be in a position to make reply to the same. Raising that issue at this stage is nothing else but an after-thought. Mentioning of a wrong date in the charge sheet was due to typographical error. The correct facts were even in the knowledge of the petitioner and he had himself mentioned that period in the reply. Once the petitioner knew about the case against him nothing hinges on the fact that due to typographical error a wrong date was mentioned in the charge sheet. The petitioner did not raise objection to the validity of the charge sheet on the aforesaid ground. He only prayed that period of absence from duty be treated as leave of the kind due.

5. Heard learned counsel for the parties and perused the paper book.

6. Firstly, learned counsel for the petitioner had sought to question the order of punishment on the ground that copy of the enquiry report having not been supplied

to the petitioner, the same vitiates all further proceedings. He had relied upon Mohd. Ramzan Khan; Avtar Singh Kahlon and Madan Lal''s cases (supra).

7. In Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, Hon''ble the Supreme Court opined that failure to supply the report of the enquiry officer to the delinquent would not ipso facto result in the proceedings being declared null and void and the order of punishment non-est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on this point, the punishment cannot automatically be set aside. The relevant paragraph thereof is extracted below:

21. From the ratio laid down in B. Karunkar, it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer''s report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside.

8. The same view was expressed in Sarv U.P. Gramin Bank Vs. Manoj Kumar Sinha,

9. In the case in hand, the petitioner has neither pleaded the theory of being prejudice having not been supplied the copy of the enquiry report nor even argued. His line of argument was based upon the judgment of Hon''ble the Supreme Court in Mohd. Ramzan Khan''s case (supra). However, considering the subsequent judgment of Hon''ble the Supreme Court on the same issue, where theory of prejudice has been put in place, in my opinion, none of the judgments, as referred to by learned counsel for the petitioner, is relevant and the punishment awarded to the petitioner cannot be set aside on that ground.

10. As far as the error pointed out in the charge-sheet where the period of absence was mentioned from 7.3.2009 onwards is concerned, in my opinion, the clerical error in mentioning the period, which was actually from 7.6.2008 till 3.5.2009, will not vitiate the proceedings for the reason that the petitioner very well knew the case against him and had even responded in terms of the actual period of absence, hence, the plea to that extent is also rejected.

11. As far as imposition of punishment is concerned, it is a case of unauthorised absence from duty from 7.6.2008 to 3.5.2009. A Government employee is expected to maintain discipline, act with responsibility, perform his duty with sincerity and serve the institution with honesty. Hon''ble the Supreme Court in Government of India and Anr Vs. George Philip, while referring to Article 51A(j) of the Constitution of

India, observed that excellence cannot be achieved unless the employees maintain discipline and devotion to duty. The Court should refrain from passing orders which instead of achieving the object have the tendency to negate or destroy the same. The relevant paragraph thereof is extracted below:

18.....In a case involving overstay of leave and absence from duty, granting six months'' time to join duty amounts to not only giving premium to indiscipline but is wholly subversive of the work culture in the organization. Article 51A(j) of the Constitution lays down that it shall be the duty of every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement. This cannot be achieved unless the employees maintain discipline and devotion to duty. Courts should not pass such orders which instead of achieving the underlying spirit and objects of Part IV-A of the Constitution have the tendency to negate or destroy the same.

12. The issue regarding unauthorised absence from duty has been gone into by Hon''ble the Supreme Court in State of Punjab Vs. Dr. P.L. Singla, wherein it was opined that no doubt it is an act of indiscipline, however, after the enquiry, there are two courses open considering the facts and circumstances of the case. The first is to condone the unauthorised absence and sanction the leave and second is to treat the same as a misconduct, hold an enquiry and impose, punishment. Regarding punishment, it was opined that considering the explanation offered, nature of service, the position held by the employee, the period of absence, the punishment may vary. Unauthorised absence as a misconduct cannot be put into a strait-jacket formula for imposition of punishment as the same depends on many factors. Relevant paragraphs of the judgment are extracted below:

11. Unauthorised absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorised absence by an employee, two courses are open to the employer. The first is to condone the unauthorized absence by accepting the explanation and sanctioning leave for the period of the unauthorized absence in which event the misconduct stood condoned. The second is to treat the unauthorized absence as a misconduct, hold an enquiry and impose punishment for the misconduct.

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14. Where the employee who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorized absence. Such disciplinary proceedings may lead to imposition of punishment, ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position

held by the employee, the period of absence and the cause/explanation for the absence.

13. The doctrine of proportionality is an aspect in imposition of punishment on an employee after conclusion of the disciplinary proceedings. Where the punishment imposed by the disciplinary authority shocks the conscience of the court, only then the aforesaid doctrine is attracted. Reference can be made to the judgment of Hon''ble the Supreme Court in Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora,

14. While examining the doctrine of proportionality, Hon''ble the Supreme Court in Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others, opined as under:

19. The doctrine of proportionality is, thus, well-recognised concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

15. Further, it has been opined that one of the tests to be applied while dealing with the question of quantum of punishment is whether any reasonable employer would have imposed such punishment while considering the misconduct and other relevant circumstances.

16. If the facts of the case are examined in the light of enunciation of law regarding imposition of punishment, it is a case in which the petitioner had proceeded on sanctioned leave to Canada from 7.3.2008 till 6.6.2008. Thereafter, he never applied for extension of leave. He came back at his own will and joined service on 4.5.2009 after seeking permission from the higher authorities. The period of unauthorised absence from duty is from 7.6.2008 till 3.5.2009. He was working as Lecturer in Biology. The ground raised for remaining absent from duty is that the petitioner had gone to Canada, where his wife was living. During his stay, his wife fell sick in the beginning of June, 2008 and gave birth to a child on 10.6.2008. As there was no one to help her, he was to take care of his wife as well as the child. Under these circumstances, he could not apply for extension. It has not come on record as to how the wife of the petitioner was living alone in Canada, whereas the petitioner was serving in India. Further, when the petitioner proceeded on leave from 7.3.2008 till 6.6.2008, he must be knowing that his wife was pregnant. Since when his wife was living in Canada has not come on record as the case set up by the petitioner is that he had gone to Canada for the first time. Meaning thereby, the wife of the petitioner may have gone before the petitioner proceeded on sanctioned leave as the delivery of the child was on 10.6.2008. If she had gone prior to the petitioner, it

must be on account of the fact that some of her close relations already settled in Canada, otherwise, she may not have gone alone to Canada. The wife of the petitioner could have gone along with him as well. The pleadings are silent on the aspect as to whether wife of the petitioner is a Canadian citizen/resident or not and as to when she had gone there. The expected date of delivery must be known to the petitioner. Still the petitioner got the leave sanctioned only upto 6.6.2008, meaning thereby from the very beginning, the intention of the petitioner was to over stay the leave. Under these circumstances, to claim that there was no one to take care the wife of the petitioner and the new born child, is a concocted story.

17. It has not been stated anywhere as to on account of what ailment, the wife of the petitioner was seriously sick. The delivery of a child for a woman is a normal biological process. Once the petitioner was in knowledge of the fact that his wife was pregnant and was to deliver a child, the leave should have been taken accordingly. To make excuse of medical complication to remain on unauthorised leave is just to avoid punishment in departmental proceedings. The petitioner, who was working as a teacher in the school, had an important duty to discharge. One of the main duty of the petitioner is to inculcate discipline in young students. A teacher is required to set an example. He is required to act with responsibility and sincerity. In the absence of a teacher, which are already short in the cadre, studies of the students always suffer, especially the Science subjects, which the petitioner was teaching, but the petitioner had taken this quite casually. This kind of conduct cannot be countenanced as it creates a concavity in the work culture and ushers indiscipline in an organization. Strict action is required. Undue compassion shown by the disciplinary authority or the courts many times lead to indiscipline. Example has to be set for other employees not to disturb the work culture in an organization. The period of absence in the present case is also not small.

18. In Andhra Kesari Educational Society Vs. Director of School Education and Others, Hon''ble the Supreme Court opined that though teaching is the last choice in the job market, the role of teachers is central to all processes of formal education. The teacher along could bring out the skills and intellectual capabilities of students. He is the ''engine'' of the educational system. He is a principal instrument in awakening the child to cultural values. He needs to be endowed and energised with needed potential to deliver enlightened service expected of him. His quality should be such as would inspire and motivate into action the benefiter. He must keep himself abreast of ever-changing conditions. He is not to perform in a wooden and unimaginative way. He must eliminate fissiparous tendencies and attitudes and infuse nobler and national ideas in younger minds. His involvement in national integration is more important, indeed indispensable. However, in the present case, the conduct of the petitioner was totally contrary thereto. He was not taking his job seriously. As a result of long absence from duty, the studies of the students suffered.

19. In Civil Appeal No. 1941 of 2014 - Chennai Metropolitan Water Supply and Sewerage Board and others v. T.T. Murali Babu, decided on 10.2.2014, Hon''ble the Supreme Court reversed the judgment of the High Court, which directed reinstatement of an employee, who remained absent from duty without any intimation to the employer and held that dismissal in such circumstance was not disproportionate. In view of my aforesaid discussion, I do not find that the punishment of termination of services of the petitioner on account of unauthorised absence from duty deserves any interference by this Court. Accordingly, the present petition is dismissed.