

(2014) 07 P&H CK 0235

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 22151 of 2010

Daler Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: July 14, 2014

Hon'ble Judges: Rameshwar Singh Malik, J

Bench: Single Bench

Advocate: Surmukh Singh, Advocate for the Appellant; Sudeepti Sharma, DAG, Advocate for the Respondent

Final Decision: Allowed

Judgement

Rameshwar Singh Malik, J.

Petitioner impugns the order dated 15.10.2010 (Annexure P-20) whereby his services were terminated.

2. When the case was taken up on 15.3.2013, following order was passed:-

Counsel for the respondents prays for an adjournment to file an affidavit showing therein that after receipt of reply to the charge sheet issued to the petitioner on 12.3.2010, a regular departmental inquiry was held against the petitioner and thereafter a show cause notice was issued and on receipt of reply to the said show cause notice, the competent authority had proceeded to terminate the services of the petitioner. The said affidavit be filed within a period of six weeks

3. In compliance of the abovesaid order passed by this Court, affidavit dated 13.8.2013 of Roop Lal, District Education Officer, (S.D.), Kapurthala was filed and the stand taken in para 5 thereof, reads as under:-

That it is admitted that after the receipt of reply to the charge sheet from the petitioner, neither a regular departmental inquiry was conducted against him nor a show cause notice was issued before inflicting the punishment of termination from service. However, before taking a conscious decision on the charges leveled against

the petitioner in charge sheet, as already stated in para No. 4 (supra), the petitioner was given proper opportunity to defend his case by affording him two personal hearings. As such, the principle of natural justice was taken in view while deciding the charge sheet of the petitioner.

4. Learned counsel for the petitioner has raised twin arguments. Firstly, he submits that admittedly, no regular departmental enquiry was conducted against the petitioner before terminating his services and the impugned order of termination was illegal on the face of it. Secondly, he submits that impugned order was passed by an authority, who did not have any jurisdiction to pass the impugned order. He relies on the statutory rules known as Punjab State Education (Class III) (School Cadre) Service Rules 1978, to contend that it was the Director Public Instructions (S.E.), who was competent to pass the impugned order and against the order passed by the Director, an appeal would lie before respondent No. 1, who has passed the impugned order. Thus, even the statutory right of appeal of the petitioner was taken away.

5. On the other hand, learned counsel for the State could not dispute the factual aspect of the matter as well as statement made by learned counsel for the petitioner and rightly so, because it was a matter of record.

6. Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that the impugned order cannot be sustained and the present writ petition deserves to be allowed for the following more than one reasons.

7. It is an admitted fact on record that impugned order of termination was passed without holding any regular departmental enquiry, which was mandatory for the respondent authorities. Similarly, it is also not disputed that impugned order of termination has been passed by the appellate authority and not by the authority having jurisdiction to pass the impugned order. Thus, it has caused serious prejudice to the petitioner.

8. No other argument was raised.

9. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that impugned order dated 15.10.2010 (Annexure P-20) is illegal on the face of it and the same is hereby set aside. However, liberty is granted to the respondent authorities to pass a fresh order, in accordance with law.

10. Resultantly, with the observations made and directions issued, hereinabove, instant writ petition stands allowed, however, with no order as to costs.