

(2019) 12 P&H CK 0183

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18609 Of 2018 (O&M)

Gurpreet Singh

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

Date of Decision : 04-12-2019

Acts Referred:

Citation : (2019) 12 P&H CK 0183

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Gurminder Singh, J.S. Gill, Kanica Sachdeva, Anhad S. Miglani

Final Decision : Allowed

Judgement

1. Petitioner who was holding the post of Inspector Grade-II assails the action of the respondent Punjab State Civil Supplies Corporation Limited (PUNSUP) whereby his services have been terminated while under probation.

2. Brief facts pleaded in the petition are that in the year 2015 PUNSUP advertised posts of Inspector Grade-II on regular basis. Petitioner being eligible applied for the post and participated in a regular selection process. He was duly selected and issued appointment letter dated 10.06.2015. Services of the petitioner were governed by the PUNSUP Service Rules 1985 and he was placed on probation for a period of two years. Petitioner joined on the post of Inspector Grade-II on 24.06.2015. It has been averred that petitioner was suffering from a disease known as Benign Paroxysmal Positional Vertigo and as such had to undergo treatment. He applied for leave for a period of 15 days for the purpose of medical treatment and which was subsequently approved by the department vide letter dated 13.08.2015 (Annexure P-4). Petitioner performed the duties on his post diligently and even completed the Orientation Training Programme conducted from 10.08.2015 to 20.08.2015 at the institute of Food Security, Gurgaon. However, on account of his medical issue, petitioner submitted application for leave on 22.09.2015 alongwith medical certificate (Annexure P-6). He was

unable to attend office on account of continuous treatment at Indus Hospital Mohali and as such submitted applications periodically for extension of medical leave. Copies of the leave applications dated 03.10.2015, 16.10.2015, 01.11.2015, 16.11.2015, 02.12.2015 and 14.12.2015 have been appended alongwith the petition as Annexure P-7 (colly). Petitioner received a letter dated 23.10.2015 from the respondent-Corporation directing him to get a medical report from the Principal, Medical Officer, Government Hospital Sector 16, Chandigarh in relation to his disease. It has been pleaded that on account of health issues he could not appear before the Medical Officer at the relevant point of time but subsequently when he visited the Medical Officer, Government Hospital, Sector 16, Chandigarh for medical examination he was informed by the Superintendent (Medical) that he needs to get his photo attested from the competent authority of PUNSUP so as to facilitate such medical examination. However vide impugned order dated 18.12.2015 (Annexure P-9) services of the petitioner were terminated. Petitioner preferred an appeal dated 28.12.2015 and which stands rejected vide order dated 02.06.2016 endorsed on 27.07.2016 at Annexure P-11.

3. Learned Senior counsel has argued that the respondent-corporation has terminated the services of the petitioner in an arbitrary and illegal manner. No opportunity of hearing was afforded to the petitioner and thereby the principles of natural justice have been violated. It is urged that the petitioner was suffering from a medical issue namely Benign Paroxysmal Positional Vertigo and on account of which he had applied for medical leave. Such medical leave was neither approved nor rejected and without giving any notice, the order of termination has been passed. It has been vehemently contended that even a probationer like a temporary servant, is entitled to certain protection and his services cannot be terminated arbitrarily and without complying with the principles of natural justice. Further argued that even though the impugned order on the face of it has been passed in innocuous terms yet it is actually stigmatic and punitive as would be discernible if the same was to be read alongwith the order passed by the Appellate Authority.

4. Per contra learned counsel representing respondents-corporation would justify the impugned order of termination by submitting that it has been passed in accordance with the explicit condition contained in the petitioner's appointment letter and which read as follow:-

"2. You shall remain on probation period initially for 2 years under PUNSUP Service Rules 1985, which can further be extended for one year by 6-6 months. In case during your probation period your work/conduct is not found satisfactory, your services shall be terminated without issuing any notice or show cause. In such situation condition No. 3 shall not be applicable."

5. Further submitted that a reading of the impugned order of termination would in itself show that it is neither stigmatic nor punitive in any manner. Counsel has vehemently stressed that in law there is no requirement of any advance notice to

be given to a probationer and neither he/she is entitled to an opportunity of hearing. Counsel prays for dismissal of the writ petition.

6. Counsel for the parties have been heard at length and the pleadings on record have been perused.

7. The impugned order of termination dated 18.12.2015 (Annexure P-9) merely recites that as per offer of appointment and terms/conditions contained therein the services of the petitioner have been terminated. In the order passed by the Appellate Authority dated 02.06.2016/27.7.2016 (Annexure P-11) it has been recorded that Manager (HR) has reported that the appellant (present petitioner) was terminated as he mostly remained on leave during his short span of service. The actual basis for termination of the services of the petitioner stands disclosed in the written statement filed on behalf of the corporation wherein in Para 7 it has been averred as follows:-

"The petitioner was transferred from Chandigarh, where he was resident of, to Ludhiana on 21.09.2015 and he immediately proceeded on leave from the very next day i.e. 22.09.2015. It is submitted that the timing of the same cast a grave doubt on the intentions of the petitioner. It may also be pertinent to note in this regard that as per Clause 17 of the conditions of appointment of the petitioner, he was liable to be posted at any office of the respondent corporation within or outside the State of Punjab, but he continued malingering till he was finally terminated."

8. Even though there would be no quarrel with the proposition that validity of an order should be judged by the reasons mentioned in the order and the same cannot be supplemented by fresh reasons set out in a reply/affidavit yet in the present case the basis as disclosed in the written statement ought to have led the employer to seek at least an explanation from the employee concerned. It has weighed with the competent authority that the petitioner's absence from duty by citing medical reasons is not bona fide as he was just trying to evade a transfer order. In such a situation the matter could have been set to rest by calling upon the petitioner to furnish cogent evidence as regards his disease/medical treatment to justify absence from duty. Rather than adopting such course of action and which would have otherwise been inconsonance with the principles of natural justice, equity and fair-play, the respondent-corporation has chosen a mechanical approach of citing a particular condition contained in the appointment letter to impose the extreme penalty of termination.

9. In the considered view of this court a case for remand and reconsideration at the hands of the Appellate Authority is made out. At this stage, counsel for the respondent-corporation would interject to contend that since the petitioner was on probation there was no statutory remedy of appeal available against the order of termination. Be that as it may, the petitioner against his order of termination did prefer an appeal and which came up for consideration before an Appellate Committee leading to the passing of the impugned order dated 2.6.2016

endorsed on 27.07.2016 (Annexure P-11). Perusal of the such order makes it clear that the appeal has not been dismissed holding the same to be not maintainable but has been dealt with on merits. Even though the contention raised by counsel for the corporation that a statutory remedy of appeal against an order of termination is not available to a probationer but at the same time there would be no embargo for a higher authority to examine the validity of an order passed by the Punishing Authority. In the present case the Appellate Committee has chosen to examine the order passed by the Punishing Authority on merits and has affirmed the same. However the aspect as to whether the absence from duty of the petitioner was deliberate to avoid a transfer order or on account of valid medical reasons has not been gone into.

10. In view of the above, the instant writ petition is partly allowed. Order dated 02.06.2016 endorsed on 27.07.2016 by the Appellate Committee at Annexure P-11 is set aside. Matter is remanded back to the Appellate Committee to take a decision afresh. Liberty is granted to the petitioner to supplement his appeal in terms of any additional ground/submission as also to tender documents in support thereof within a period of two weeks from today.

11. The Appellate Committee/Authority is directed to take a final decision in the matter within a period of two months from the date of receipt of certified copy of this order and after affording to the petitioner an opportunity of personal hearing.

12. Writ petition is allowed in the aforesaid terms.