
(2014) 11 P&H CK 0096
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1503 of 2014

Santosh Saini

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 04-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2015) 1 SCT 170

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : S.S. Shekhawat, Advocates for the Appellant; Sunil Nehra, Sr. Deputy Advocate General, Advocates for the Respondent

Judgement

Tejinder Singh Dhindsa, J.—Challenge in the instant writ petition is to the order dated 09.12.2009 (Annexure P-6) passed by the Commissioner and Director General, School Education, Haryana, whereby a punishment of stoppage of one increment without cumulative effect was inflicted upon the petitioner while she was serving as Principal, Govt. Girls Senior Secondary School, Jakhal Mandi, Fatehabad. Further challenge is to the order dated 22.07.2010 (Annexure P-8) passed by the Financial Commissioner and Principal Secretary to Government of Haryana in terms of which the appeal preferred by the petitioner against the order of punishment has been rejected. Brief facts that would require notice are that the petitioner was served with a charge memo dated 12.06.2009 (Annexure P-5) under Rule 8 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 formulating the following statement of allegations:

"Smt. Santosh Saini has committed omissions given below while working on post of Principal Govt. Girls Senior Secondary School Jakhal Mandi (Fatehabad), from dated 23.08.2007 till date:--

That on dated 18.03.2009 Block Education Officers Jakhal conducted surprise inspection of Govt. Girls Senior Secondary School Jakhal Mandi (Fatehabad). During inspection Smt. Santosh Saini was found absent from school on dated

18.03.2009. In addition on 18.03.2009 evening a meeting, related to accounts of S.C. students, was called by District Education Officers Fatehabad. Smt. Santosh Saini was informed of telephonically many times by Block Education Officers Jakhal to participate in this meeting but she remaining absent from meeting.

That non maintaining of headquarter at Fatehabad by Smt. Santosh Saini and to operate daily from Hissar and due to this faced problem in supplying information.

Like this while remaining absent from school and defying order of Senior Officers and by leaving Headquarter daily have violated Employees (conduct) Rule 3, (I) (II) and (III)."

2. The petitioner responded to the charge memo by submitting a reply dated 25.06.2009. However, vide impugned order dated 09.12.2009, punishment of one increment without cumulative effect was imposed upon the petitioner. Petitioner preferred an appeal dated 21.01.2010 and the same has been rejected vide impugned order dated 22.07.2010 at Annexure P-8.

3. Counsel for the parties have been heard at length and the case file has been perused.

4. At the very outset, this Court is of the considered view that there has been a non-compliance of one of the facets of natural justice namely recording of reasons by the Punishing Authority as well as the Appellate Authority. The petitioner having been served with a charge memo dated 12.06.2009 had submitted a detailed reply dated 25.06.2009 and the same has been placed on record at Annexure P-11. The submission of such reply is not disputed. In such reply, the petitioner had furnished her explanation as regards having fallen ill in the morning of 18.03.2009 and having submitted medical certificate of illness seeking leave for the day and the same having been dispatched to the Leave Sanctioning Authority on 18.03.2009 and the Block Education Officer, Jakhal having been duly informed in regard thereto. In the reply, the petitioner had even furnished documentary proof as regards residence at Jakhal itself. It had further been submitted that the Block Education Officer had visited the school on 18.03.2009 at 8 PM inspite of being in knowledge that she would not have been present in the school premises.

5. The Punishing Authority has dealt with the matter in the following terms:

"I on full consideration of reply of Principal and on perusal of related documents of this case did not found fully satisfactory inspite of this considering the matter sympathetically I order a Punishment of stoppage of one increment without cumulative effect on her."

6. The petitioner thereafter availed of the statutory remedy of filing a appeal dated 21.01.2010 at Annexure P-7 in which number of grounds were raised including that of the order of Punishing Authority being non-speaking. The Appellate Authority had rejected the appeal vide order dated 22.07.2010 at Annexure P-8 by observing as under:

"An opportunity of personal hearing was given to her on 13.04.2010. After hearing her personally and after going through the arguments advanced by her in her written request, I have found that there is no reasons to interfere in the orders passed by the then Commissioner & Director General School Education vide order No. 5/49-09 HRG-T (1) dated 09.12.2009. Thus appeal of the appellant is hereby rejected."

7. Suffice it to observe that no reasons whatsoever have been recorded which in turn would reflect application of mind by the Punishing Authority as also by the Appellate Authority.

8. The requirement of recording of reasons by the Punishing Authority is an important safeguard to ensure observance of the rule of law. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and minimizes arbitrariness in the decision making process.

9. A Full Bench of Gujarat High Court in *Testeels Ltd. Vs. N.M. Desai and Another*, has enunciated the law on the subject and observed as under:

"The necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of the Indian Constitutional set-up. The administrative authorities having a duty to act judicially cannot therefore decide on considerations of policy or expediency. They must decide the matter solely on the facts of the particular case, solely on the material before them and apart from any extraneous considerations by applying preexisting legal norms to factual situations. Now the necessity of giving reasons is an important safeguard to ensure observance of the duty to act judicially. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and excludes or, at any rate, minimizes arbitrariness in the decision-making process.

Another reason which compels making of such an order is based on the power of judicial review which is possessed by the High Court under Article 226 and the Supreme Court under Article 32 of the Constitution. These Courts have the power under the said provisions to quash by certiorari a quasi judicial order made by an Administrative Officer and this power of review can be effectively exercised only if the order is a speaking order. In the absence of any reasons in support of the order, the said courts cannot examine the correctness of the order under review. The High Court and the Supreme Court would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. If this requirement is insisted upon, then, they will be subject to judicial scrutiny and correction."

10. The impugned orders dated 09.12.2009 passed by the Punishing Authority and 22.07.2010 by the Appellate Authority are completely bereft of reasons. These orders do not disclose the basis that would justify the imposition of punishment of stoppage of one increment without cumulative effect upon the

petitioner. Both the orders are totally non speaking cryptic orders. The impugned orders furnish a classic instance whereby quasi-judicial authorities have stultified the powers of judicial review of this Court simply by not recording reasons in support thereof. For the reasons recorded above and without making any observations as regards the merits of the controversy, the impugned orders dated 09.12.2009 and 22.07.2010 at Annexures P-6 and P-8 respectively are set aside. It is, however, observed that setting aside of the order passed by the Punishing Authority as also that passed by the Appellate Authority would not preclude the respondent-authorities from proceeding afresh if so advised but after strict adherence to the principles of natural justice as also due procedure as per law.

Petition allowed in the aforesaid terms.