

(2012) 09 P&H CK 0348
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 21801 of 2011 (O and M)

Satwinder Kaur

APPELLANT

Vs

Punjabi University and Another

RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2013) 1 SCT 327

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Manish Kumar Singla, for the Appellant; Vipul Jindal, for the Respondent

Judgement

Rajesh Bindal, J.—The petitioner, who was working as Salesman in the Information Centre in Punjabi University, Patiala, has filed the present petition impugning the orders dated 30.11.2010 (Annexure P-2) and 27.6.2011 (Annexure P-4). Vide impugned orders, punishment of stoppage of three increments with cumulative effect has been imposed and recovery of Rs. 2,82,000/-, the embezzled amount, has been ordered to be made from her. Further grievance is that though the enquiry, during the pendency of which the petitioner was placed under suspension, has been concluded and punishment has also been inflicted on her, but still she has not been reinstated back in service. Learned counsel for the petitioner submitted that the petitioner was placed under suspension for alleged embezzlement of amount collected on account of sale of forms, syllabus and prospectus at the sales counter. The enquiry was concluded and ultimately the petitioner was awarded punishment of stoppage of three increments with cumulative effect. Recovery of Rs. 2,82,000/- was also directed to be made from her. Placing reliance upon a judgment of Hon'ble the Supreme Court in Union of India and another v. S.C. Parashar, 2006 (1) SCT 804, it was submitted that at the same time major and minor punishments could not be imposed for the same charge. Recovery of the alleged pecuniary loss to the government is one of the minor penalties, whereas stoppage of increments with

cumulative effect is major penalty.

2. Learned counsel further submitted that once the enquiry, during the pendency of which the petitioner was placed under suspension, had been concluded and the punishment was imposed on the petitioner, she was entitled to be reinstated back in service, however, she is still continuing under suspension. The explanation given by the authorities was that some other enquiry was pending against her, whereas the fact is that no order suspending the petitioner in the second enquiry has been passed. He further submitted that even though in the alleged case of embezzlement, other officers were also involved, but no action has been taken against them. The petitioner has been isolated.

3. On the other hand, learned counsel for the respondents submitted that considering the enquiry report dated 16.3.2010, vide order dated 30.11.2010, the petitioner was inflicted punishment of stoppage of three increments with cumulative effect and was directed to deposit the embezzled amount of Rs. 2,82,000/-, which though was received by her on account of sale of publications of the university but was not deposited. The aforesaid order of punishment was challenged by the petitioner before this court by filing C.W.P. No. 9162 of 2011, where the only prayer was that the amount is sought to be recovered in lump sum, which the petitioner was unable to pay being a low paid employee. The request for payment of the amount in installments was not considered. The grievance regarding continuance of suspension of the petitioner despite conclusion of the enquiry, during the pendency of which she was suspended, was also raised praying for either reinstatement or increase of suspension allowance from 40% to 80%, however, learned counsel for the petitioner at that stage stated that he would be satisfied in case the authorities consider her representations. The petition was disposed of with a direction to the authorities to consider the representation dated 3.2.2011 filed by the petitioner, wherein a prayer had been made for recovery of the amount in two installments and also the representation dated 2.12.2010, whereby the petitioner had made a prayer for reinstatement or for enhancement of suspension allowance. In view of the aforesaid writ petition filed by the petitioner, she cannot be allowed to challenge the order of punishment again. Such a plea would be barred in law.

4. He further submitted that vide order dated 27.6.2011, the representations made by the petitioner were decided. She was granted permission to pay the embezzled amount in four equal installments after every two months. The suspension of the petitioner was continued for the reason that another enquiry was pending against her for embezzlement of the amount received by her on account of sale of publications. It was further clarified in the aforesaid order that the rules permit for payment of suspension allowance only to the extent of 50%, which is being paid to the petitioner. It cannot be increased any further.

5. It is not disputed by learned counsel for the respondents that no fresh suspension order was passed immediately after the conclusion of the first enquiry, for placing the petitioner under suspension in the pending second

enquiry. He further submitted that enquiry in the second charge-sheet issued against the petitioner is nearing completion and may be concluded within next couple of weeks. He further submitted that the enquiry against other officials/officers is also at the conclusion stage. Whosoever is found guilty, will be punished.

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

7. The first issue raised by learned counsel for the petitioner is pertaining to imposition of minor and major punishments in the same enquiry. The major punishment being stoppage of three increments with cumulative effect and the minor being recovery of the embezzled amount. In support, reliance was placed upon S.C. Parashar's case (supra). However, in my opinion, the claim made by the petitioner to that effect cannot be considered at this stage for the reason that earlier the petitioner had filed C.W.P. No. 9162 of 2011. The prayer made therein was as under:

Civil Writ Petition under Articles 226/ 227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing the impugned order dated 30.11.2010 passed by Respondent No. 1 and 2 (Annexure P-5) vide which three annual increments have been stopped with cumulative effect and the recovery of alleged embezzled amount of Rs. 2,82,000/- which has been imposed upon the present petitioner.

AND

For the issuance of a writ in the nature of mandamus for directing the Respondent No. 1 and 2 to allow the present petitioner to do her duties on the place of her posting.

AND

For the issuance of any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case. It is further prayed that during the pendency of the present writ petition, the alleged recovery of an amount amounting to Rs. 2,82,000/- imposed vide Annexure P-5 may kindly be stayed.

8. The aforesaid writ petition was disposed of by this court on 25.5.2011 by passing the following order:

It is the contention of the counsel for the petitioner that the petitioner has been imposed with punishment of stoppage of three annual increments with cumulative effect with a further order of recovery of Rs. 2,82,000/-, which the respondent-University is insisting upon lump-sum payment and the petitioner being a petty employee is unable to do so.

He further contends that the petitioner had already moved a representation to the Vice Chancellor, Punjabi University, Patiala dated 3.2.2011 (Annexure P-7) making such a request but no decision thereon has been taken.

His further contention is that despite passing of the order of punishment dated 30.11.2010 the suspension of the petitioner, which was pending disciplinary proceedings, has yet not been revoked and she has not been allowed to rejoin despite the submission of a representation dated 2.12.2010 (Annexure P-6) to the Deputy Registrar, Punjabi University, Patiala nor has the suspension allowance been increased from 40% to 80% per month as per the rules applicable to the petitioner. He at this stage prays that directions may be issued to the respondents to consider the representations of the petitioner and pass necessary appropriate orders at an early date.

In view of the submissions made by the counsel for the petitioner, the present writ petition is disposed of with directions to the respondents to consider the representations dated 3.2.2011 (Annexure P-7) wherein a prayer has been made for recovering the amount in installments sympathetically, and further in view of the practical difficulties which the petitioner is likely to face, a further direction is issued to the respondents to consider and decide the representation dated 2.12.2010 (Annexure P-6) wherein the petitioner is claiming reinstatement in service after the issuance of the punishment order and for further enhancement of the suspension allowance, which she is entitled to as per the rules, within a period of three weeks from the date of receipt of certified copy of this order. The order so passed on the representations of the petitioner be conveyed to the petitioner forthwith.

9. A perusal of the prayer made by the petitioner in the writ petition earlier filed and also the contentions raised at the time of hearing shows that though the order dated 30.11.2010 inflicting punishment on the petitioner was impugned but no contentions were raised on merits thereof, as are sought to be raised now. The only prayer made was that the amount is sought to be recovered in lump-sum and the petitioner being a low paid employee will not be able to comply with such an order and the representation made by her for payment of the amount in installments was not being considered. In the light of the aforesaid contentions raised, this court directed the authorities to consider the representation made by the petitioner to that effect. The request was acceded to by the authorities and the petitioner was given liberty to pay the amount in four installments after every two months. No contention was raised regarding imposition of punishment of stoppage of three increments with cumulative effect, hence, the petitioner cannot be permitted to challenge the order dated 30.11.2010 again by raising new pleas, which though were available to her at the time when the earlier petition was filed, but were not raised.

10. As far as the contention raised by learned counsel for the petitioner regarding her reinstatement back in service after the conclusion of enquiry during the pendency of which she was placed under suspension is concerned, it is not in dispute that after conclusion of the first enquiry, the petitioner was not permitted to join back in service and there was no specific order for placing her under suspension during the pendency of second enquiry, where also the

allegations are regarding embezzlement of sale proceeds received by the petitioner for sale of various publications of the University, while performing the duties at the sale counter. An employee can be deemed to be suspended only if he remains in custody for more than 48 hours, otherwise a specific order is required to be passed. Life of the earlier order suspending the petitioner during the pendency of an enquiry expired, the moment the enquiry was concluded. Immediately thereafter, the petitioner had made a request vide letter dated 2.12.2010 for reinstatement in service. As no action was taken, the petitioner had to approach this court whereby a direction was given for decision of the representation. In terms of the directions issued by this court, vide order dated 27.6.2011, the petitioner was informed that her suspension was kept intact due to enquiry pending in one more case, whereas no such order in writing was conveyed to her. She cannot be deemed to be suspended after the conclusion of earlier enquiry. But in order dated 27.6.2011, vide which the petitioner was conveyed decision on her representation, it has specifically been mentioned that she has been kept under suspension pending second enquiry. It can be taken that the petitioner was suspended from the date the order was passed. Once for the intervening period the petitioner was neither under suspension nor she had been permitted to work though she had offered to work, she would be entitled to get benefit thereof. The respondents are directed to pay full salary to the petitioner for the period from 2.12.2010 till 26.6.2011, the date of her suspension being 27.6.2011. The petition stands disposed of accordingly.