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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-404-2018

Date of decision-11.01.2018

Anu Kalra

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Vivek K.Thakur, Advocate for the petitioner.

JITENDRA CHAUHAN, J. (Oral)

This writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of certiorari for quashing the order dated 02.12.2013 (Annexure P-11) passed by respondent No.5 whereby the petitioner has been removed from service under Rule 5 (viii) of the Punjab Civil Service (Punishment and Appeal) Rules, 1970.

Learned counsel contends that the impugned order of removal (Annexure P-11) of the petitioner from service is illegal, perverse and arbitrary inasmuch as the same has been passed behind her back without issuing any notice to her. Further, the leave was applied much prior to the date of departure i.e. six months in advance and all the documents i.e. copies of the passport and visa were submitted in requisite manner. Neither any legal notice was served upon the petitioner before removal from service nor any opportunity was given to her to explain.

I have heard learned counsel for the petitioner and have gone through the case file.

It is the case of the petitioner that she was appointed as Audit Inspector in the Punjab Agricultural Development Bank Ltd., Phagwara on 20.12.2001 where she continued to serve till 2012. As the husband of the petitioner is settled in Canada, she applied for Extraordinary Leave i.e. leave without pay for a period of 05 years on 01.08.2011 (Annexure P-2). In response thereto the District Audit Officer, Cooperative Societies, Kapurthala-respondent No.6 issued a letter dated 20.09.2011 asking the petitioner to submit the No Dues Certificate (Annexure P-3). Thereafter, she received another letter dated 24.10.2011 from the Audit Officer asking her to furnish the copies of passport and visa so that her case for grant of leave could be processed. Similar letters were again issued in the months of November and December 2011 as well. Thereafter, the petitioner submitted the requisite documents i.e. photocopy of passport and visa and also gave the requisite undertaking (Annexure P-7). Thus, after completing all the necessary formalities the petitioner left the country on 06.02.2012. Thereafter, the petitioner came back to India on 18.11.2016 and approached the respondent-Department to allow her to join duties vide a application Annexure P-8. When the petitioner was not allowed to join her duties, she served the respondent with a legal notice dated 23.01.2017 (Annexure P-9). Vide letter dated 16.03.2017 (Annexure P-10) she was informed of her removal from service vide an order dated 02.12.2013 (Annexure P-11) in continuation of the order dated 18.11.2013 wherein expression used was

dismissal instead of removal. The letter dated 18.11.2013 has not been brought on record by the petitioner.

As per record petitioner moved abroad without getting the leave sanctioned from the competent authority, in violation of the terms and conditions of Government Service. On account of her absence from duty without sanctioned leave, a charge-sheet was issued to her vide letter No.Audit/ATA5/143 dated 07.01.2013. The inquiry was conducted as per the instructions of the Government of Punjab and the allegations levelled against the petitioner stood proved. Public notices were also published in different newspapers but the petitioner did not respond back. Therefore, the contention of learned counsel for the petitioner that due procedure was not followed before passing the impugned order is unfounded.

Hon'ble the Supreme Court in “***State of Uttar Pradesh and others Vs. J.P.Saraswat***” 2011 (4) SCC 545 has held as under:-

“10. We are completely unable to appreciate the manner in which the High Court proceeded in the matter and, in our view, the High Court grievously erred in assuming the role of the employer. Having come to the finding that the charges against the respondent were duly established, the High Court ought to have simply dismissed the writ petition. Any interference on the question of punishment is permissible in very rare cases where the punishment is so disproportionate to the established charge that it would appear unconscionable and actuated by malice. In the facts of the case, the punishment given to the respondent was quite moderate and there was not even a whisper of any malice, etc. The

respondent went to the USA and overstayed his leave for over a year and a half on the first occasion and on the second occasion, he went to the USA without even caring to obtain leave and remained there for over four years. In those circumstances, the punishment of termination of service that would not debar from future employment was a perfectly reasonable and fair punishment and there was no occasion for the High Court to interfere with that order. The High Court was equally wrong in setting aside the punishment order passed against the respondent on the ground that the State Government had not responded to his applications for extension/grant of leave or that during the long period of his absence the government had not sent him any notice asking to resume duties by a certain date. These could never be the grounds for the High Court to set aside the punishment order passed by the State Government and to replace it by its own set of directions.”

Thus, in view of the discussion and the case law cited above, this Court does not feel any ground to interfere in the impugned order.

Dismissed.

(JITENDRA CHAUHAN)
JUDGE

11.01.2018
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No