

Before G. R. Majithia, J.

JOGINDER SINGH, INSPECTOR, HARYANA ROADWAYS,
KARNAL,—Petitioner.

versus

STATE OF HARYANA & OTHERS,—Respondent.

C.W.P. 13344 of 1990

28th May, 1991.

Constitution of India, 1950—Article 226—Enquiry proceedings concluding after 14 years—Enquiry Officer exonerated petitioner of all charges—Disciplinary authority disagreeing with finding on a charge and issuing show-cause—That suspension period would be restricted to subsistence allowance already paid—No reasons given for differing with findings in the enquiry—Mere expression of opinion of dissent is inconsequential—Such dissent must be based on material on record—Show-Cause notice and consequent proceedings liable to be quashed and petitioner held entitled to full salary and allowance for the period of suspension—Way of functioning of public servants deprecated—Direction issued to convey concern of Court on the callous attitude of public servants.

(Para 4, 6 and 7).

Held, that the least which is expected of public servants is that apparently their action should look unbiased, although in law they are expected to act fairly and justly and every action of theirs must have a legal sanction behind it. But, in the present case, the circumstances indicate that the functionaries of the State acted to the contrary.

Held, that the punishing authority did not opine on what ground he was differing with the well considered report of the Enquiry Officer under all the charges. The reasons for differing with the Enquiry Officer's report have to be supported by the material on record. Merely expressing an opinion of dissent is inconsequential.

Held, that it will meet the ends of justice if the show-cause notice and follow-up action are quashed.

Held that the petitioner will be entitled to full salary and allowances for the period he remained under suspension. If not already considered for future promotion, he will be entitled to consideration, after ignoring the suspension order and the show-cause notice, within three months from today. He will be entitled to all the benefits accruing therefrom. If the petitioner faces reprisal at the hands of the respondents as a result of this judgement, he can move this Court for remedial action. The Registrar (Judicial) of this Court is directed to send a copy of this judgement to the Chief Secretary to Government, Haryana and also convey my concern

over the callous attitude of respondent No. 2 in this case and also my expectation that in future there would be no recurrence of such a type.

Civil Writ petition under Articles 226/227 of the Constitution of India, praying that the following reliefs be granted :

- (a) *Record of the case be sent for and after perusal of the same, a writ, order or direction in the nature of certiorari and mandamus be issued quashing the annexures P/1, P/2 and P/5;*
- (b) *a writ, order or direction be issued, directing the respondents to make the entire payment of arrears so withheld by virtue of the orders Annexures P/1, P/2 and P/6 with compound interest at the rate of 18 per cent;*
- (c) *grant consequent benefits so withheld by virtue of the said annexures mentioned above;*
- (d) *filing of certified copies of annexures P/1 to P/13 and service of notices on respondents be exempted.*

Gopi Chand, Advocate, for the Petitioner.

Rameshwar Malik, Advocate, for A.G. Haryana, for the Respondent.

JUDGMENT

G. R. Majithia, J.

(1) The petitioner has sought a *mandamus* from this Court that his arrears of salary illegally withheld be released to him with interest, in this petition under Articles 226/227 of the Constitution of India.

(2) The Facts :

The petitioner while working as Inspector Incharge of Sub-Depot, Kalka of Haryana Roadways, Ambala, was placed under suspension by respondent No. 1,—*vide* order No. 154-EA5/E-II, dated April 20, 1973 and thereafter charge-sheet was served upon him,—*vide* letter No. 5060/EA5/E-II, dated July 3, 1973; that the petitioner filed reply to the charge-sheet denying the allegations made against him; that respondent No. 2 appointed Assistant Accounts Officer, Haryana Roadways, Ambala as Enquiry Officer,—*vide* order No. 482/AE5/EII, dated January 15, 1974; that the Enquiry Officer

submitted his report dated February 5, 1988, exonerated the petitioner of all the charges levelled against him; that the Enquiry Officer took more than 14 years to complete the enquiry although the petitioner had offered every possible assistance to the Enquiry Officer in conducting the enquiry; that the petitioner was paid only 50 per cent of the subsistence allowance whereas the rule envisages that if the suspension had continued for more than six months, the suspended official was entitled to subsistence allowance at the rate of 75 per cent of his salary, that the petitioner was reinstated in service pending departmental enquiry on May 16, 1978; that after receipt of the Enquiry Officer's report, respondent No. 2,—*vide* letter No. 17623-AE-1/E-II dated April 4/5, 1988, informed the petitioner that he had dissented with the Enquiry Officer's report and he was of the opinion that the suspension period be restricted to the subsistence allowance already paid to him and that the reason of dissent accompanying this letter reads thus :—

“With regard to Charge No. 5 against Shri Joginder Singh, Inspector, H.R. Ambala, the Enquiry Officer has come to the conclusion that it has not been proved because the Cashier did not make any statement regarding this. The statement of R.S.A. was already available. The Enquiry Officer ought to have relied on that. It is true, however, that the motive alleged in the charge-sheet has not been proved but for acting beyond his authority of receiving cash from parties, Shri Joginder Singh is liable to be punished.”

The petitioner submitted reply to the show-cause notice dated September 7, 1988; that he also submitted representations dated September 5, 1989 and January 6, 1990 to respondent No. 2 for taking early decision on his reply to the show-cause notice, but to no effect.

(3) The writ petition came up for motion hearing on October 12, 1990 and the Bench issued notice of motion for December 13, 1990. On the adjourned date, the following order was passed :—

“Present : Mr. Gopi Chand, Advocate, for the petitioner.
Mr. S. K. Sood, Advocate, for the State. Mr. Sood has tendered two drafts of Rs. 12,013 and Rs. 1,930 respectively to the counsel for the petitioner towards arrears of increment to the petitioner.”

“For arguments to come up on 14th February, 1991. The reply, if any, be filed by 7th February, 1991”.

The respondents were directed to file reply, if any, to the writ petition by February 7, 1991, but the order was not complied with. On February 14, 1991 the Bench passed the following orders :—

“Present : Mr. Gopi Chand, Advocate, for the petitioner.
Mr. S. K. Sood, A.A.G., Haryana.
Admitted for 6th May, 1991. High up in the list.

“Until the petitioner is found guilty in departmental enquiry, no decision be taken for restricting the payment of suspension allowance for the period under suspension.”

The writ petition came up for final hearing on May 7, 1991. Learned counsel for the State could not inform the Court with regard to the action taken by the respondents pursuant to the show-cause notice. The respondents failed to file written statement as directed by the Court. The defence of the respondents is struck off under Order VIII, rule 10, Civil Procedure Code. Resultantly, the averments made in the petition have to be treated as correct since these were not controverted despite opportunity afforded to the respondents.

(4) The instant case is one of the rarest instances revealing the callous and inhuman attitude of the functionaries of the State. The least which is expected of public servants is that apparently their action should look unbiased, although in law they are expected to act fairly and justly and every action of theirs must have a legal sanction behind it. But, in the present case, the circumstances indicate that the functionaries of the State acted to the contrary. The petitioner was suspended on April 20, 1973. Charge-sheet was served upon him on July 3, 1973. Reply to the Charge-sheet was filed by the petitioner immediately thereafter, but the Enquiry Officer was appointed on January 15, 1974. The Enquiry Officer submitted his report on February 5, 1988 exonerating the petitioner of all the charges. Respondent No. 2 did not feel satisfied with the Enquiry Officer's report and,—*vide* order dated April 4/5, 1988, he conveyed to the petitioner the reasons of dissent with the Enquiry Officer's report and also opined that the suspension period be restricted to the subsistence allowance already paid to him. The reason of dissent was only with regard to charge No. 5. Charge No. 5 reads thus :—

“That you had been receiving cash from parties by giving them temporary hand receipts without any authority. This was done by you with motive to misuse the Government money”.

The Enquiry Officer with regard to this charge observed that the petitioner issued temporary receipts to the parties in the absence of the Cashier, but no motive could be attributed to the petitioner for

issuing the temporary receipts in place of regular receipts, which could be issued by the Cashier. Respondent No. 2 did not point out the reasons for differing with the Enquiry Officer with regard to his conclusion under charge No. 5. Issuance of temporary receipts for booking vehicles does not indicate that the petitioner had acted with ulterior motive. There was no allegation that the money received by the petitioner had been misappropriated. The only allegation against him was that he issued temporary receipts under his own signatures and the Rules enjoined that a regular receipt ought to have been issued. Probably the petitioner may have been actuated like a dutiful employee to earn more money for his employer by booking vehicles and receiving advance payments. Unless there is an allegation or proof that the money was mis-appropriated, no fault can be found with the conduct of the petitioner. Respondent No. 2 was not justified in observing that the suspension period would be restricted to the subsistence allowance to the petitioner. The reason for differing with the conclusion of the Enquiry Officer under charge No. 5 was wholly unsustainable and was unwarranted by the facts proved on record. Respondent No. 2 did not opine on what ground he was differing with the well considered report of the Enquiry Officer under all the charges. The reasons for differing with the Enquiry Officer's report have to be supported by the material on record. Merely expressing an opinion of dissent is inconsequential.

(5) Apart from this, there was no justification for keeping the petitioner under suspension for more than 5 years and keeping the departmental enquiry alive for 15 years. The order of suspension had demoralising effect on the officer. The disciplinary proceedings ordered pursuant to the charge-sheet took 14 long years to conclude. The petitioner was exonerated of all the charges. Respondent No. 2 for wholly illegal reasons differed with the enquiry report under charge No. 5. The show cause notice was served upon the petitioner on April 4/5, 1988. The petitioner filed reply to the show cause notice immediately thereafter, but no action had been taken. It will meet the ends of justice if the show cause notice and the follow-up action are quashed. Similar course was adopted in *Manasaranjan Das v. State of Orrissa and others* (1), by a Division Bench of the Orissa High Court. R. N. Misra, J. (Now my Lord the Chief Justice of India) speaking for the Bench held thus :—

“It is conceded that once such criminal proceedings were taken the petitioner became liable to be suspended. But

we see no justification in the order of suspension made in 1964, to have kept alive until 1972. It was vexatious and inexpedient and had a demoralising effect on a public officer. The utter callousness shown by the Head of Office in keeping a public officer suspended almost for eight years without any justification (we say so because the proceeding was kept alive for such a long period without any excuse) justified the annulling of the order. Accordingly we quash the order of suspension as also the disciplinary proceeding.”

(6) In *Subrata Chaki and others v. State of West Bengal and others* (2), the Division Bench of the Calcutta High Court quashed the Enquiry proceedings since there was a long delay in concluding the enquiry and held thus :—

“In the instant case the charges framed in respect of the incident which allegedly occurred at the chamber of the collector of Calcutta, the respondent No. 2, on 3rd March, 1981. In substance, the charge against the appellants was that they, *inter-alia*, held a violent demonstration. The annexure of the charge-sheet indicated that the charges against the appellants were proposed to be sustained by oral evidence of eight persons. The charge-sheet did not mention any documentary evidence in support of the prosecution case. Presumably, on the basis of the oral evidence the respondents proposed to establish the said charges against the appellants. The appellants are likely to be seriously prejudiced if the disciplinary proceedings against them is now started. We are not prepared to allow the respondents further time to hold enquiry when they themselves have not explained why they did not hold the disciplinary proceedings for such a long time.”

(7) For the reasons aforesaid, the writ petition :—

The show cause notice contained in letter No. 17623-AE-1E-II, dated April 4/5, 1988 is quashed. The petitioner will be entitled to full salary and allowances for the period he remained under suspension. If not already considered for future promotion, he will be entitled to consideration, after ignoring the suspension order and

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the show cause notice, within three months from today. He will be entitled to all the benefits accruing therefrom. If the petitioner faces reprisal at the hands of the respondents as a result of this judgment, he can move this Court for remedial action. The Registrar (Judicial) of this Court is directed to send a copy of this judgment to the Chief Secretary to Government, Haryana and also convey my concern over the callous attitude of respondent No. 2 in this case and also my expectation that in future there would be no recurrence of such a type. In the circumstances of this case, I make no order as to costs.

R.N.R.

Before : G. R. Majithia & A. S. Nehra, JJ.

OM PARKASH ARORA,—Petitioner

versus

THE PRESIDING OFFICER, COLLEGE AND SCHOOL
TRIBUNAL AND OTHERS,—Respondents.

Civil Writ Petition No. 7512 of 1987.

September 28, 1992.

Constitution of India, 1950—Article 30(1)—Punjab Privately Managed Recognised School Employees (Security of Service) Act, 1979—Ss. 4(1), 4(2), 5, 6 & 7—Minority Institution—Right to administer Aided Privately Managed School—Validity of Provisions of Punjab Act, challenged as ultra vires Art. 30(1)—S. 4(2) providing for right of appeal to an employee who has been dismissed, removed or reduced in rank or time scale to the School Tribunal—S. 4(2) is constitutionally valid—S. 4(1) making prior approval of Director mandatory before imposition of order of penalty is ultra vires Art. 30(1)—Held, in view of striking down of S. 4(1), S. 4(3) is rendered redundant—No specific challenge laid to Ss. 11 & 12—Court however, holding the power conferred by Ss. 11 & 12 cannot be exercised in a manner which will impinge upon rights of a Minority Institution guaranteed under Art. 30(1).

(Paras 26, 27, 28, 29 & 30)

Held, that a right of appeal provided for under sub-section (2) of section 4 of the Punjab Act to an employee who has been dismissed, removed or reduced either in rank or within a time scale to the School Tribunal is upheld on the same parity of the reasoning as given by the apex Court in Frank Anthony Public School Employees' Association v. Union of India and others, A.I.R. 1987, S.C. 311.