

Before P.B. Bajanthri, J.

SURINDER KAUR—Petitioner

versus

**PRESIDING OFFICER, LABOUR COURT, BHATINDA AND
OTHERS—Respondents**

CWP No.15123 of 2005

May 25, 2016

Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947— S.10(1)—Punjab Civil Services (Punishment and Appeal) Rules, 1970—Rl.8—Dismissal from service on the charge of insubordination—Complete absence of material, like dates and events of allegations, charges held as vague—Petitioner not in position to give effective reply to charge memo—Petitioner denied principles of natural Justice—Inquiry Officer held that insubordination charge proved without documentary or oral evidence—Therefore, penalty of dismissal from service highly disproportionate—Evidence adduced by Vice Principal vague and not supported by reasons—Order of dismissal arbitrary and illegal—Reference of Labour Court set aside—Respondent/Institution directed to take back petitioner to duty with all service benefits including monetary benefits—Petition allowed.

Held, that learned counsel for the petitioner contended that charges are vague, charge of insubordination is the only charge which has been proved in the inquiry proceedings and the penalty of dismissal is disproportionate to the proved charge of insubordination. Perusal of the charge memo dated 24.2.1998, it is evident that none of the charge contains dates and events as on which date the alleged allegations/charges were committed by the petitioner. In the absence of materials like dates and events of the allegations, the charges are to be held as vague. If the charges are very vague, the petitioner is not in a position to give her effective reply to the charge memo. Thus, the petitioner had been denied principle of natural justice at the beginning itself. The Inquiry Officer held that insubordination charge has been proved. However, no documentary or oral evidence has been taken into consideration that insubordination charge has been proved. Charge of insubordination is by the Principal and who has not been examined or cross-examined, even though she is cited witness. The contention of disproportionate in imposing the penalty of dismissal from service is

concerned, it is to be appreciated that there is no corruption charge so as to dismiss the petitioner from service. Even though one of the charge is embezzlement of Institution money. However, the same has not been proved. Therefore, penalty of dismissal from service imposed on the petitioner is highly disproportionate. Learned counsel for respondent Nos.2 and 3 referred to the evidence adduced by the Vice Principal, Ms. J.K. Sidhu. Perusal of the same is very vague and it is only a conclusive not supported by any reasons. In view of these facts and circumstances, dismissal of the petitioner is highly arbitrary and illegal. Learned counsel for the petitioner pointed out that Inquiry Officer was appointed under Punjab Civil Services (Punishment and Appeal) Rules, 1970. When the respondent-Institution have not adopted 1970 Rules, question of invoking any provision under the aforesaid Statutory provision is impermissible. This shows that there is a total non-application of mind by the disciplinary authority – Chairman of the Institution in appointing the Inquiry Officer. Perused the records. The respondent-Institute at each and every stage have not complied the provision of law and given ample opportunity to the petitioner to substantiate the charges leveled against petitioner. The reference of the Labour Court dated 22.7.2005 Annexure P-15 is set aside. Consequently, order of dismissal dated 2.4.1999 is set aside. The respondent-Institution are directed to take back the petitioner to duty with all service benefits including monetary benefits, within a period of three months from today. Learned counsel for the petitioner submits that in the normal course had the petitioner is in service, she would have retired in the month of September, 2016. This factual aspect be taken into consideration to reinstate the petitioner at the earliest.

(Para 9)

Sanjay Majithia, Senior Advocate with Dr. G.S. Brar, Advocate,
for the petitioner.

Harkesh Manuja, Advocate, for respondent Nos.2 and 3.

P.B. BAJANTHRI, J.

(1) In the instant writ petition, the petitioner has assailed the award of Labour Court dated 22.7.2005 (Annexure P-15) whereby claim of the petitioner-workman in a reference sent by the Additional Labour Commissioner, Punjab for adjudication has been declined.

(2) Brief facts of the case are as follows:-

(3) The petitioner was appointed on 30.10.1982 as a Fee Clerk

on *ad hoc* basis. Her services were regularized on 20.4.1985. Her work was appraised by the respondent Institution. She was given special pay on 6.6.1989. However, the same was not implemented. She was pursuing the implementation of special pay issue from time to time. In this background, the petitioner was charge sheeted on 24.2.1998 on the allegations of insubordination to the Principal, misbehavior with the colleagues, absenteeism and embezzlement of money collected towards excess transport charges from the school children. The petitioner submitted her reply denying the alleged charges. The respondent-Institution dissatisfied with the reply of the petitioner appointed Inquiry Officer on 1.8.1998 (Annexure P-7) under Rule 8 of Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short '1970 Rules'). The Inquiry Officer in his finding has held that except insubordination, rest of the charges were not proved. Pursuant to the Inquiry Officer's report, the disciplinary authority dismissed the petitioner from service on 2.4.1999. The petitioner is stated to have exhausted each and every court including this court. For want of jurisdiction, Education Appellate Tribunal refused to entertain litigation of the petitioner and this Court refused to entertain petition on the ground of other remedial available. Ultimately she landed in Industrial Tribunal for her grievance. The same was disposed of on 22.7.2005 while reference has been held as failed. Thus, the petitioner is before this Court questioning the rejection of reference by the Labour Court dated 22.7.2005.

(4) The learned counsel for the petitioner submitted that the charges are very vague. Not even a single charge contains ingredients to be called as a charge. In other words, dates and events are not forthcoming in the charges. It is further submitted that charge of insubordination has been dealt by the Inquiry Officer on imaginary basis. Extract of Inquiry Officer's report reads as follows:-

“on hearing these persons personally, it is found that there is no complaint against Surinder Kaur regarding her work and being corrupt. Whereas, question of paying respect to her present Principal Officer and good behaviour towards her colleagues by Surinder Kaur is concerned, there is a clear glimpse of insubordination. Not doing of fee work in time by Surinder Kaur, is a question of her working capability which shows her incapability. Attitude of Surinder towards Principal is rude and wrong. Surinder Kaur should not do so. Consequently, charge of

insubordination is proved in this case against Surinder Kaur. Statement recorded by both the parties and photocopies are being sent for appropriate action”.

(5) The Inquiry Officer held that the charge of insubordination has been proved only on imaginary basis. In the absence of documentary or oral evidence, insubordination has not been proved. It was further contended that assuming that insubordination charge is proved, penalty of dismissal from service is highly disproportionate. Hence, order of the Labour Court is to be set aside and the petitioner is to be reinstated with all service benefits.

(6) On the other hand, learned counsel for respondent Nos.2 and 3 submitted that charges are not vague. In fact the charges were supported by one of the witness – Ms. J.K. Sidhu, Vice Principal of the Institution. Learned counsel for respondent Nos.2 and 3 refers to the Inquiry Officer's report wherein it was held as under:-

“Miss J.K. Sidhu, Vice Principal, Dasmesh Girls Senior has stated in her statement that Surinder Kaur, Clerks' attitude towards her senior is not good. Surinder Kaur insulted her personally. Surinder Kaur also interferes in the matters, in which she ought notto interfere. Attitude of Surinder Kaur towards Principal is not good. Surinder Kaur was provided opportunity of cross-examining her and Surinder Kaur cross examined her.”

(7) In view of the above statement made by the Vice Principal, charge of insubordination is very much proved. Therefore, there is no infirmity in the order of disciplinary authority and consequential orders passed in the matter. Learned counsel for respondent Nos.2 and 3 submitted that scope of judicial review in respect of disciplinary proceedings is concerned, it is limited. Therefore, this Court cannot interfere in respect of findings given in a disciplinary proceedings.

(8) Heard learned counsel for the parties.

(9) Learned counsel for the petitioner contended that charges are vague, charge of insubordination is the only charge which has been proved in the inquiry proceedings and the penalty of dismissal is disproportionate to the proved charge of insubordination. Perusal of the charge memo dated 24.2.1998, it is evident that none of the charge contains dates and events as on which date the alleged allegations/charges were committed by the petitioner. In the absence of materials like dates and events of the allegations, the charges are to be

held as vague. If the charges are very vague, the petitioner is not in a position to give her effective reply to the charge memo. Thus, the petitioner had been denied principle of natural justice at the beginning itself. The Inquiry Officer held that insubordination charge has been proved. However, no documentary or oral evidence has been taken into consideration that insubordination charge has been proved. Charge of insubordination is by the Principal and who has not been examined or cross-examined, even though she is cited witness. The contention of disproportionate in imposing the penalty of dismissal from service is concerned, it is to be appreciated that there is no corruption charge so as to dismiss the petitioner from service. Even though one of the charge is embezzlement of Institution money. However, the same has not been proved. Therefore, penalty of dismissal from service imposed on the petitioner is highly disproportionate. Learned counsel for respondent Nos.2 and 3 referred to the evidence adduced by the Vice Principal, Ms. J.K. Sidhu. Perusal of the same is very vague and it is only a conclusive not supported by any reasons. In view of these facts and circumstances, dismissal of the petitioner is highly arbitrary and illegal. Learned counsel for the petitioner pointed out that Inquiry Officer was appointed under Punjab Civil Services (Punishment and Appeal) Rules, 1970. When the respondent-Institution have not adopted 1970 Rules, question of invoking any provision under the aforesaid Statutory provision is impermissible. This shows that there is a total non-application of mind by the disciplinary authority – Chairman of the Institution in appointing the Inquiry Officer. Perused the records. The respondent-Institute at each and every stage have not complied the provision of law and given ample opportunity to the petitioner to substantiate the charges leveled against petitioner. The reference of the Labour Court dated 22.7.2005 Annexure P-15 is set aside. Consequently, order of dismissal dated 2.4.1999 is set aside. The respondent-Institution are directed to take back the petitioner to duty with all service benefits including monetary benefits, within a period of three months from today. Learned counsel for the petitioner submits that in the normal course had the petitioner is in service, she would have retired in the month of September, 2016. This factual aspect be taken into consideration to reinstate the petitioner at the earliest.

(10) Civil Writ Petition stands allowed.

Dr. Payel Mehta