*Before Rameshwar Singh Malik , J.*

**CHANDER BHAN SINGHAL**–*Petitioner*

*versus*

**STATE OF HARYANA AND OTHERS**–*Respondents*

**CWP No. 4275 of 1995**

February 11, 2015

***Constitution of India, 1950 – Art.226 – Termination of service – Departmental enquiry – Petitioner Lecturer – Fell ill and sent application for medical leave along with a medical certificate – When he reported for duty, he was not allowed to join – Management of college passed order of termination on ground of wilful long absence from duty - No departmental enquiry was conducted – State submitted that since termination order was passed during probation period, no regular departmental enquiry was to be conducted – Held, that since petitioner was serving on regular basis, college management would have no jurisdiction to pass termination order without conducting a regular departmental enquiry as termination order was stigmatic in nature, having been passed due to alleged wilful long absence from duty – Further; orders passed in appeals upholding termination was non-speaking and cryptic – All orders set aside – Petitioner directed to be reinstated in service.***

*Held*, that once the petitioner was serving *the respondent-college as Lecturer in Military Science on regular basis, the* management of the respondent-college would have no jurisdiction to pass the impugned termination order dated 5-9-1989 (Annexure P-6),without conducting a regular departmental enquiry. It is so said, because the termination order is stigmatic in nature, having been passed due to alleged wilful long absence from duty. Having said that, this Court feels no hesitation to conclude that the management of the respondent-college proceeded on a most arbitrary approach, while passing the impugned termination order and the same cannot be sustained.

(Para 7)

*Further held,* that Mandatory provisions of law contained in Section 7(1) and 7(2) of the Haryana Affiliated Colleges (Security of

Service) Act, 1979 ('the Act' for short) also come to the rescue of the petitioner.

(Para 8)

*Further held,* that admittedly, no approval was sought by the respondent-management from respondent No. 2, before passing the impugned termination order. This has been so argued by the learned counsel for the State as well. When the petitioner genuinely felt aggrieved against the impugned termination order (Annexure P-6), he filed his appeal *vide* Annexure P-7 before respondent No. 2. However, respondent No. 2 misdirected himself, while passing the totally non-speaking and cryptic order dated 27-2-1990 (Annexure P-8), dismissing the appeal of the petitioner. It was least expected from respondent No. 2 to assign the reason, whichever was available with him, but he failed to do so.

(Para 9)

*Further held*, that further, respondent No. 1 also rejected the appeal of the petitioner again by totally non-speaking and cryptic order dated 27-5-1994 (Annexure P-11). Since the impugned orders passed by respondents No. 1 and 2 were going to visit the petitioner with civil consequences, they were under legal obligation to pass reasoned and speaking orders. However, in the present case, respondent No. 1 as well as respondent No. 2 have failed in their duty to pass the appropriate orders, in accordance with law, because of which the impugned orders (Annexures P-8 and P-11) also cannot be sustained.

(Para 10)

*Further held,* that similarly, argument raised by the learned counsel for the State that the impugned termination order was passed during probation period and therefore, no departmental enquiry was required to be conducted, is to be noted to be rejected. Had it been a simple order of termination, the learned counsel for the State might be justified in saying so, but in the present case, the impugned termination order was clearly a stigmatic order and the same could not have been passed without conducting a regular departmental enquiry, thus, cannot be sustained.

(Para 12)

*Further held,* that considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the

impugned termination order dated 5-9-1989 (Annexure P-6) has been found to be a patently illegal and an order without jurisdiction, the same cannot be sustained. Similarly, the impugned appellate order dated 27-2-1990 (Annexure P) passed by respondent No. 2 as well as the order dated 27-5-1994 (Annexure P-11) passed by respondent No.1, being totally non-speaking and cryptic orders, cannot be sustained, all the three impugned orders are hereby set aside.

(Para 16)

*Further held*, that consequently, petitioner is directed to be reinstated in service with all consequential service benefits.

(Para 17)

Sandeep Singal, Advocate *for the petitioner.*

A.S.Chaudhary, Addl.A.G., Haryana.

R.K.Malik, Sr. Advocate with Samrat Malik, Advocate for respondents No. 3 and 4.

**RAMESHWAR SINGH MALIK, J. (Oral)**

(1) Present writ petition is directed against the termination order dated 5.9.1989 (Annexure P-6) appellate order dated 27.2.1990 (Annexure P-8) and also the order dated 27.5.1994 (Annexure P-11), whereby the management of the respondent-college terminated the services of the petitioner, a regular Lecturer in Military Science, without conducting a regular departmental enquiry.

(2) Notice of motion was issued and pursuant thereto, written statement was filed only on behalf of respondents No.3 and 4.

(3) Learned counsel for the petitioner submits that earlier the petitioner was working as Lecturer-in-Military Science, on ad hoc basis from 19.8.1988 to 7.7.1989. Thereafter, petitioner was appointed on regular basis vide appointment order dated 8.7.1989 (Annexure P-2). He further submits that pursuant to the appointment order (Annexure P-2), petitioner was permitted to join by the respondent-college on 31.7.1989 and he worked up to 8.8.1989. Thereafter, petitioner fell ill and sent a medical certificate with application to respondents No. 3 and 4 for medical leave. The medical fitness certificate is Annexure P-4 and on basis thereof, petitioner reported for duty on 4.9.1989 but was not allowed to join. On the very next day, i.e. 5.9.1989, he moved an

application to the Director, Higher Education, Haryana-respondent No.2 vide Annexure P-5, but the Management of the respondent-college passed the impugned order of termination on 5.9.1989 itself (Annexure P-6), due to alleged willful long absence from duty, but without conducting any departmental enquiry. Feeling aggrieved, petitioner filed his appeal (Annexure P-7) before respondent No.2 who dismissed the same vide impugned order dated 27.2.1990 (Annexure P-8). Petitioner approached the State Government by way of his appeal (Annexure P-9) but it was also rejected by the State Government vide impugned order dated 27.5.1994 (Annexure P-11). He also submits that so far as Civil Suit No. 589 of 1990 is concerned that was a suit for declaration only to the extent of claiming salary for the period he worked with respondent-management. Petitioner did not challenge the impugned termination order before the civil court for the reason that his appeal before respondent No.2 was pending decision. He concluded by submitting that since the impugned termination order has been passed without conducting regular departmental enquiry and the appellate orders were non-speaking, the same are liable to be set aside. He prays for allowing the instant writ petition, by setting aside the impugned orders.

(4) Per contra, learned senior counsel for respondents No. 3 and 4 submits that it was a case of willful absence on the part of the petitioner, he was never interested in serving with the respondent-college. Enough opportunities were granted to the petitioner for joining duty but he did not turn up for the reasons best known to him. He further submits that the writ petition was also suffering from delay and laches, having been filed after about six years of passing of the impugned termination order. He next contended that the civil court judgment dated 30.8.1993 (Annexure P-12) would amount to constructive res judicata against the petitioner and present writ petition would not be maintainable. He also submits that since the petitioner has opened a private school in Village Kahanaur, District Rohtak, it was the specific reason with the petitioner for not joining his duty. He prays for dismissal of the writ petition.

(5) Similarly, learned counsel for the State submits that the fault lies with the petitioner only. He has never shown inclination to render service with the respondent-college. He further submits that since the termination order was passed during probation period, no regular departmental enquiry was required to be conducted. He next contended that since the respondent-management did not seek any approval from

the Director, Higher Education, Haryana-respondent No.2, the State authorities were not at fault in this regard. He also prays for dismissal of the writ petition.

(6) Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

(7) It is undisputed on record that petitioner was appointed on regular basis vide appointment order dated 8.7.1989 (Annexure P-2). The specific averment taken by the petitioner in para 5 of the writ petition that he was permitted to join as Lecturer on 31.7.1989, has also gone undisputed on record. Once the petitioner was serving the respondent-college as Lecturer in Military Science on regular basis, the management of the respondent-college would have no jurisdiction to pass the impugned termination order dated 5.9.1989 (Annexure P-6), without conducting a regular departmental enquiry. It is so said, because the termination order is stigmatic in nature, having been passed due to alleged willful long absence from duty. Having said that, this Court feels no hesitation to conclude that the management of the respondent-college proceeded on a most arbitrary approach, while passing the impugned termination order and the same cannot be sustained.

(8) Mandatory provisions of law contained in Section 7(1) and (2) of the Haryana Affiliated Colleges (Security of Service) Act, 1979 (`the Act' for short) also come to the rescue of the petitioner. The relevant part of Section 7 of the Act, reads as under:-

> "7(1)No employee shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges;
>
> (2) The penalty of dismissal or removal from service or reduction in rank shall not be imposed unless the same is approved by the Director."

(9) Admittedly, no approval was sought by the respondent-management from respondent No.2, before passing the impugned termination order. This has been so argued by the learned counsel for the State as well. When the petitioner genuinely felt aggrieved against the impugned termination order (Annexure P-6), he filed his appeal vide Annexure P-7 before respondent No.2. However, respondent No.2 misdirected himself, while passing the totally non-speaking and cryptic order dated 27.2.1990 (Annexure P-8), dismissing the appeal of the petitioner. It was least expected from respondent No.2 to assign the reason, whichever was available with him, but he failed to do so.

(10) Further, respondent No.1 also rejected the appeal of the petitioner again by totally non-speaking and cryptic order dated 27.5.1994 (Annexure P-11). Since the impugned orders passed by respondents No. 1 and 2 were going to visit the petitioner with civil consequences, they were under legal obligation to pass reasoned and speaking orders. However, in the present case, respondent No.1 as well as respondent No.2 have failed in their duty to pass the appropriate orders, in accordance with law, because of which the impugned orders (Annexure P-8 and P-11) also cannot be sustained.

(11) Coming to the argument raised by learned senior counsel for respondents No. 3 and 4 regarding alleged delay and laches, the same has been duly considered but found without any substance. It is so said because petitioner was pursuing his cause before respondents No.1 and 2. Finally, the order was passed by respondent No.1 only on 27.5.1994 (Annexure P-11) and petitioner approached this Court in the month of March 1995, because of which, instant writ petition cannot be said to be suffering from delay and laches.

(12) Similarly, argument raised by the learned counsel for the State that the impugned termination order was passed during probation period and therefore, no departmental enquiry was required to be conducted, is to be noted to be rejected. Had it been a simple order of termination, the learned counsel for the State might be justified in saying so, but in the present case, the impugned termination order was clearly a stigmatic order and the same could not have been passed without conducting a regular departmental enquiry, thus, cannot be sustained.

(13) The view taken by this Court also finds support from the numerous judgments of the Hon'ble Supreme Court. The development

of law relating to the applicability of the rule of Audi Alteram Partem to administrative actions, can be traced right from ***A.K. Kraipak*** *versus* ***Union of India,***[1] ***Ridge*** *versus* ***Baldwin,***[2] ***Sayeedur Rehman*** *versus* ***State of Bihar***[3] ***State of Orissa*** *versus* ***Dr. (Miss) Binapani Dei,***[4] ***Menaka Gandhi*** *versus* ***Union of India***[5]***and Mohinder Singh Gill Vs. Chief Election Commissioner***[6]**.**

(14) The law laid down in all these judgments has been consistently followed by Hon'ble Supreme Court in catena of judgments and the recent are ***Sri Radhy Shyam (dead) through L.Rs and others*** *versus* ***State of U.P. and others,***[7]***Darshan Lal Nagpal (dead)L.Rs*** *versus* ***Government of NCT of Dehli and others,*** [8]

(15) No other argument was raised.

(16) Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned termination order dated 5.9.1989 (Annexure P-6) has been found to be a patently illegal and an order without jurisdiction, the same cannot be sustained. Similarly, the impugned appellate order dated 27.2.1990 (Annexure P-8) passed by respondent No.2 as well as the order dated 27.5.1994 (Annexure P-11) passed by respondent No.1, being totally non-speaking and cryptic orders, cannot be sustained, all the three impugned orders are hereby set aside.

(17) Consequently, petitioner is directed to be reinstated in service with all consequential service benefits. Let respondent authorities do the needful within a period of three months from the date of receipt of a certified copy of this order.

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[1] (1962) 2 SCC 262
[2] 1964 A.C. 40
[3] (1973) 3 SCC 333
[4] AIR 1976 SC 1269
[5] (1978) 1 SCC 248
[6] (1978)1 SCC 405
[7] (2011) 5 SCC 553
[8] (2012) 2 SCC 327

(18) Resultantly, with the above-said observations made and directions issued, instant writ petition stands allowed, however, with no order as to costs.

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*A. Aggarwal*

***Before Rajiv Narain Raina, J.***

**SUBHASH PADAM** ─*Petitioner*

*versus*

**STATE OF PUNJAB** ─ *Respondents*

CWP No.6322 of 2012

February 18, 2015

***Constitution of India, 1950 – Art. 311 – Punjab Civil Services (Punishment & Appeal) Rules, 1970 – Rls. 9 & 24 – Disciplinary proceedings – Dismissal – Proportionality of punishment - Dismissal protected by principles of uberrima fides – Quasi judicial orders are always open to correction either by the author on review or by a superior authority. However, officers do not enjoy blanket protection while passing quasi judicial orders – A mere error by an officer in making an order is not misconduct unless it is founded on oblique motive of making private profit from public office – Petitioner, a Tehsildar, was charge-sheeted for misusing his power and sanctioning mutation of provincial corpus land to a Church while land in revenue record stood in name of Provincial Government – However, there was no allegation of bribe or corrupt practice – There was also no repeated act proving incorrigibility, nor was there any financial loss caused to Government exchequer – Charges of commission of offences under the Indian Penal Code, 1860 and Prevention of Corruption Act, 1988 failed against him – It was found that proper enquiry on FIR was conducted, specific charge of corruption or bribe was not leveled in charge sheet – Held, that there could be at best carelessness or lack of good advice or foolhardiness or a blind dependence of other instances in other cities without due reflection - Petitioners past and subsequent work and conduct could not be vanquished so lightly – Therefore, severest punishment of dismissal being excessive, was set aside – Civil Writ Petition allowed.***