

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 11704 of 2015
Date of decision : May 28, 2015

Partap Singh

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arvind Singh, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The petitioner who was posted as Block Development and Panchayat Officer, Radaur District Yamuna Nagar from 1.6.2004 to 16.12.2004., while performing his duties, found that some misappropriation has been done by the Sarpanch-respondent No.3 and in this regard submitted a complaint dated 21.10.2004 (Annexure P-1) to the Deputy Commissioner, Yamuna Nagar.

It is submitted that the Deputy Commissioner vide letter dated 4.5.2007 (Annexure P-2) asked BDPO for recovery of the amount and sent a report in that regard and the BDPO vide letter dated 24.8.2007 informed respondent No.3-Labh Singh about the

pendency of recovery against him and for recovery of the amount from him. Thereafter the successor of the petitioner had given a notice to respondent No.3 for recovery of the aforementioned amount and vide order dated 14.9.2003 respondent No.3 was directed to deposit the amount in view of the receipt of enquiry report dated 21.10.2004, thereafter respondent No.3 preferred an appeal before the appellate authority i.e. Deputy Commissioner by challenging both the orders dated 21.10.2004 (Annexure P-1) and 14.9.2007 (Annexure P-4).

The Deputy Commissioner dismissed the appeal filed by respondent No.3 by holding that an enquiry and recovery proceedings were initiated within a period of two years from the date of cessation of the office of Sarpanch.

The aforementioned order was assailed by respondent No.3 by filing a revision before the Financial Commissioner who allowed the same vide order dated 9.3.2010 (Annexure P-6).

The said order was assailed before this Court and the matter was again remanded back to the Financial Commissioner to pass a fresh order. The Financial Commissioner vide impugned order dated 5.10.2010 (Annexure P-7) has allowed the revision of respondent No.3. While doing so, observed as under:-

Before parting with this, it will be appropriate to observe that the Block Development and Panchayat officer, Radaur had submitted his report to the Deputy Commissioner, vide his letter dated 24.10.2004 i.e. well within the prescribed period,

but neither the then Block Development and Panchayat Officer, being the competent authority, issued a show cause notice to the petitioner nor the office of Deputy Commissioner took necessary action on the enquiry report within the period prescribed under the law. Rather, after expiry of the prescribed period the Deputy Commissioner, Yamuna Nagar, vide his letter date 4.5.2007, had asked the Block Development and Panchayat Officer, Radaur to recover the amount of loss from the petitioner. Thus, the responsibility of the delinquent officers and official is required to be fixed for not performing their duties diligently causing loss to the Gram Panchayat. Therefore, the Deputy Commissioner, Yamuna Nagar is directed to take necessary disciplinary action against the delinquent officers and other officials including recovery of the amount of loss, after affording adequate opportunity of hearing.”

Learned counsel for the petitioner submits that the aforementioned observations are in defiance to the principles of natural justice nor the petitioner has been given an opportunity, much less show cause notice.

He further submitted that a similar order was passed viz-a-viz some other BDPO and the said order was set aside by remanding the matter back to the Financial Commissioner and direction was issued to pass a detailed order, after giving an opportunity of hearing.

It is submitted that vide order dated 21.5.2015 the petitioner has been served with Memo under Rule 7 of the Haryana

Civil Services (Punishment and Appeal) Rules, 1987 by attaching the article of charges and therefore cause of action has accrued to impugn the same.

I have heard learned counsel for the petitioner and do not deem it appropriate to issue notice at this stage, for the simple reason that the finding of the Financial Commissioner though, apparently is in complete derogation and defiance to the principles of natural justice as the petitioner has not been heard nor given any opportunity. The cause of action to impugn the said order accrued after the petitioner on receipt of memo dated 21.5.2015 (Annexure P-10). This Court vide order dated 28.03.2012 passed following order:-

Counsel for the petitioner, after arguing for some time, prays for withdrawal of the writ petition with liberty to challenge, if any order adverse to interest of the petitioner is passed as a consequence of the impugned order dated 5.10.2010 (Annexure P-7).

I deem it appropriate to set aside the impugned finding viz-a-viz petitioner and remand the matter to the Financial Commissioner-cum- Principal Secretary to Government, Haryana, Development and Panchayats Department, Chandigarh with a direction to decide the case of the petitioner by passing a detailed and speaking order after hearing the petitioner, much less, in accordance with law.

In the meantime, the proceedings initiated under Rule 7 shall be kept in abeyance.

With the aforementioned directions, the writ petition is disposed of.

The Financial Commissioner shall be at liberty to decide the matter after hearing the petitioner, within a period of four months from the date of receipt of copy of this order.

(AMIT RAWAL)
JUDGE

May 28 , 2015
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The part of the impugned order dated 5.10.2010 vide which the aforementioned finding was challenged by the petitioner in CWP No. 20801 of 2010 and this Court while withdrawing the aforementioned writ petition had granted liberty to the petitioner to challenge the order and as and when any adverse order to the interest of the petitioner was contemplated to be passed.