

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

LPA No.173 of 2014 (O&M)
Date of decision: 04.05.2015

Jagmail Singh

...Appellant

Versus

State of Punjab and another

...Respondents

Coram: Hon'ble Mr. Justice Satish Kumar Mittal
Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.K.S.Dhillon, Advocate for the appellant.

Mr.K.K.Gupta, Addl. A.G., Punjab.

HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the orders of the Learned Single Judge dated 31.1.2011 whereby CWP No.1692 of 2011 filed by the appellant for quashing the order dated 29.4.2005 awarding him punishment of stoppage of two annual increments with cumulative effect, besides fine of Rs.25,000/- as well as the order dated 17.8.2009 dismissing his appeal against the aforesaid punishment order was dismissed. He has also challenged the order dated 30.8.2013 whereby the review petition filed by him seeking review of the earlier order dated 31.1.2011, was dismissed.

The appellant is Junior Engineer with Estate Office, Punjab Urban Development Authority (PUDA). On 13.6.2000, he was ordered to look after the work of Sectors 48 to 58, SAS Nagar, Mohali

and the maintenance of the swimming pool. During the period, when the said duties were assigned to him, on 2.8.2001, one Master Karanveer Singh drowned in Swimming Pool in Phase-VI, Mohali. Departmental action was initiated against the appellant on the allegation that he was careless and negligent and had not adopted all requisite safety measures, which resulted in the death of an innocent child. A regular enquiry was conducted by Sh.Sohan Singh Superintending Engineer of PUDA, who submitted his enquiry report on 24.2.2003 (Annexure P-2), exonerating him of all the charges. Thereafter, vide order dated 26.3.2003 (Annexure P-2A), Shri Joginder Pal Singh Puri, IAS (Retd.) was appointed as Enquiry officer and asked to submit his report within two months. This was done for the reason that the previous inquiry officer did not elaborate the charges against the appellant and the Presenting officer also played a limited role. Sh. Joginder Pal Singh Puri after conducting inquiry as per rules submitted his enquiry report on 23.7.2003 as per which the charges against the appellant were proved. After following proper procedure of issuing show cause notice and supplying of enquiry report, punishment of stoppage of two increments with cumulative effect and recovery of Rs.25,000/- was imposed upon the appellant. The statutory appeal filed by him against the said order was dismissed vide order 17.8.2009 (Annexure P-4) by the Secretary, Housing Building and Urban Development Department, Government of Punjab.

The appellant filed CWP No.1692 of 2011, which was

dismissed. It was noted that the Disciplinary as also the Appellate Authority had duly considered the enquiry report. The appellant had been given an opportunity of hearing. It was held that the appellant could not be absolved of the responsibility for the death of the child Karanveer Singh, which could have been avoided, had proper safety measures been taken. His contention that he was not present at the spot when the occurrence took place was held to be inconsequential for the reason that he being In-charge of the swimming pool, was under an obligation to ensure that the coach/ trainer/ guard remained at the spot to ensure that no untoward incident took place. In the review petition, the appellant specifically argued that he had been exonerated by the Enquiry Officer vide report dated 24.2.2003 (Annexure P-2) and the second de-novo enquiry which was ordered by the Disciplinary Authority was totally illegal and contrary to Rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. Learned Single Judge dismissed the review petition holding that the appellant had never challenged the order for appointment of second enquiry officer. He participated in the enquiry and having taken his chances before the Enquiry Officer, he could not raise that point at a later stage. Additionally, it was held that in the facts and circumstances of the case, the order dated 26.3.2003 (Annexure P-2A) for second enquiry could be considered to be a 'further enquiry' and the first enquiry could be taken to be in the nature of 'preliminary enquiry'. Accordingly, the Review Petition was dismissed.

We have heard Ld. Counsel for the appellant and are of

the view that there is no merit in the appeal.

The Ld. Single Judge has rightly dismissed the writ petition by holding that there was no ground to interfere with the findings of the disciplinary authority and the appellate authority that the death of the minor child could have been avoided if the petitioner as In-charge of the swimming pool had taken proper safety measures. Further the Ld. Single Judge rightly dismissed the review petition filed by the appellant by holding that he never challenged the order dated 26.03.2003 appointing Sh. Joginder Pal Singh Puri IAS (Retd.) as the inquiry officer, he participated in the inquiry and took his chance of exoneration therein. Thereafter, he could not be permitted to raise any challenge to the action based on the said inquiry report.

We agree with the findings of the Ld. Single Judge on both counts. It having been established that the death of the minor child could have been avoided if the appellant, who was In-charge of the swimming pool had adopted the necessary safety measures, we find that there is no merit in this appeal and the same is dismissed.

(SATISH KUMAR MITTAL) (HARINDER SINGH SIDHU)
JUDGE JUDGE

May 04, 2015
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