

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

**CWP No.8973 of 1994**

**Date of decision: 15.2.2016**

Thakur Dutt Madan

... Petitioner

Versus

The State of Punjab & ors.

... Respondents

**CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. Sanjeev Sharma, Advocate,  
for the petitioner.

Mr. Harkesh Manuja, Addl. A.G., Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

**RAJIV NARAIN RAINA, J.(Oral)**

1. The petitioner was imposed punishment of withholding of one increment with cumulative effect on two charges; one that he had submitted a false affidavit swearing that neither he nor his wife had drawn loan from the Government for construction, purchase or repair of a house and purchase of plot under any “scheme/rule” in India in the past. He also swore therein that neither he nor his wife or any member of his family owned a house/plot anywhere in India and he wanted to purchase the house/plot for construction of house thereon for his bona fide personal reason. The petitioner and his wife are both Government servants. The charge is not without any basis but the question is somewhat different as explained and examined below. The second charge was that the delinquent petitioner was responsible for loss of file described in charge B lying in the Secretariat Administration where the

papers of the loan case in dispute rested.

2. The evidence on the first charge was the photocopy of the affidavit. The original has not seen the light of day and was attributed to be lying in the file which constituted charge B. In the domestic inquiry held, charge B was not proven. The Inquiry Officer not only found the petitioner innocent of charge B but went on to hold that the inference of loss of file was adverse against the officials/officers of Accounts Branch-I and the Establishment Branch-I, which imputation was not subject matter of the inquiry proceedings. It is axiomatic that if the petitioner is innocent of charge B then the first charge must fail for the reason that the primary evidence is not available on the inquiry file being the incriminating and false affidavit as his wife had drawn construction loan against their common property. If the photocopy of the affidavit was used against the petitioner then the photocopy was only secondary evidence and could not have been used against the petitioner as primary evidence of tendering of a false affidavit even in a domestic inquiry setting where standard of proof is on preponderance of probabilities.

3. It is well settled in law that suspicion however strong cannot take the place of proof. When charge B fails the substratum of charge A renders itself non-existent and matter falls in the realm of doubt of presentation of the moot affidavit in order to secure an advance for the construction of a house. When both charges do not hold water it follows *ex facie* that punishment cannot hold nor could it be imposed, major or minor. The issues in the charge sheet remain unsubstantiated by direct and primary evidence, the original, when the affidavit is disputed as not

an admitted document by the delinquent. The doubt must go in favour of the petitioner. And therefore the major punishment inflicted cannot sustain in the eyes of law. It may be noted that the petitioner is by now a retired person.

4. As a result of the above discussion, this writ petition is allowed and the impugned order dated September 16, 1993, Annex P-12, is set aside. The financial consequences of setting aside of the impugned order will follow as a natural fallout and thereby a writ of mandamus is issued to the State to calculate the arrears of difference of pay and grant the same and other benefits as may become due as a result of this order i.e. with all consequential effects including right to enhancement of pension and pensionary benefits. The monetary benefits are directed to be quantified in a calculation sheet duly supplied to the petitioner for his satisfaction and the exact amount computed be paid within three months from the date of receipt of a certified copy of this order. Fresh last pay certificate be issued accordingly. The petitioner is also held entitled to 6% interest on the principal amount calculated from the date of passing of the impugned order till realization, to be paid within the same time frame of three months, failing which the outstanding dues will earn interest @ 9% till payment.

**(RAJIV NARAIN RAINA)**  
**JUDGE**

**15.2.2016**  
**monika**