

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

Date of decision: 16.03.2016

CWP No.10048 of 2014 (O&M)

Suraj Parkash

...Petitioner

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

Mr. Inqulab Nagpal, AAG, Punjab.

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

RAJIV NARAIN RAINA, J.

1. Challenge in this petition filed under Article 226 of the Constitution is to the enquiry report dated 22.08.2012 (Annex P-7) and impugned order dated 24.02.2014 (Annex P-11) vide which punishment has been awarded to the petitioner imposing 25% cut in pension for three years.

2. The petitioner retired from service on 31.03.2009, but has not been paid gratuity till date and is paid only 75% of provisional pension. The reason given for withholding the amount is that there were two charge-sheets pending against the petitioner at the time of retirement but no punishment was proposed. The prayer is for release of gratuity and for payment of full pension with interest on the unpaid arrears and for setting aside of the departmental proceedings.

3. The brief facts of the case are that when the petitioner was posted in Municipal Council, Kapurthala, one Sahibzada Ajit Singh Education Trust (for short 'the Trust') submitted building plans in September, 2007 for construction of a school. The petitioner forwarded the plans to the Town & Country Planning Department for its No Objection, as the property fell on the scheduled road and road reservation with reference to the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963. The Trust was informed to desist from construction till the sanction of the building plans. On 23.10.2007, the petitioner issued notice to the Trust on coming to know that it had started illegal construction at site. The Trust was directed to stop construction. The following day, the Trust filed its reply and undertook not to carry out construction. In November, 2007, the Vigilance Cell visited the premises of the Trust and found no work in progress. A report in this regard was submitted by the Vigilance Cell a week thereafter. The Trust made a request in January, 2008 that it is ready to deposit composition fees as per rules.

4. On 23.01.2008, the services of the petitioner were placed under suspension. He was served with two charge-sheets on 30.01.2008 i.e. (i) with regard to building plans (No. 176) of the Trust, & (ii) with regard to building plans (No. 168) of one Mr. Nem Kumar Jain. Similarly charge-sheets were issued to two officials of the Municipal Council namely Avtar Singh, Junior Engineer and Tejinder Singh, Assistant Municipal Engineer, as they were the main persons as In-charge of the Building Branch.

5. On 06.11.2008, Municipal Council, Kapurthala sanctioned the building plans of the Trust after compounding deviations as per rules. Not only this, the Department had allowed further construction in excess of building plan No.176, which is clear from site plan Annex P-13. This was done on

03.05.2013. Co-delinquent Tejinder Singh, Assistant Municipal Engineer, superannuated from municipal service on 31.03.2012. He was given full gratuity as well as was granted pension. Delinquent Avtar Singh, Junior Engineer, also under charge-sheet was given further promotion to the post of Assistant Municipal Engineer.

6. The enquiry report submitted with regard to the first charge-sheet was conveyed to the punishing authority on 22.08.2012. The five charges against the petitioner were as follows:

- “1. *Extending benefit to constructor by not complying with the instructions issued by D.T.P., Kapurthala;*
2. *Disturbing Town Planning of Kapurthala City;*
3. *Not taking any concrete action for stopping or demolishing illegal construction at the spot while extending benefit to constructor;*
4. *Causing financial loss to the State due to non-receipt of fee received from change of land use etc.; &*
5. *Extending financial benefit to constructor by misusing his official position and causing financial loss to the Government.”*

7. To prove the charges, the prosecution examined as many as four witnesses. Their statements in summary are as follows:

“PW-1 Satbhushan Sachdeva, Vigilance Officer, has deposed that he submitted his report on 13.11.2007 after conducting inspection of the area on 05/06.11.2007. In his cross-examination by the delinquent official, he admitted that at the time of conducting inspection of the site, the construction was stopped. He also stated that it is a matter of record as to in which approved Town Planning, the site in question falls and clarification was sought regarding change of land use. He further stated that it is also a matter of record that delinquent official had issued notice for demolition of unauthorized construction on 23.10.2007.

PW-2 and PW-3 namely Rajinder Singh and Suresh Kumar, Vigilance Officers, deposed in the same lines and reiterated

the version of PW-1 Satbhushan Sachdeva, Vigilance Officer. However, PW-3 Suresh Kumar stated that the Director vide letter dated 21.08.2008 had stated that in case site plan is not falling under any scheme, then land CLU is not required. He further stated that the delinquent had rejected site plan of School vide letter dated 16.11.2007 and had spent a case to Town Planning on 07.12.2007 for approval of CLU.

PW-4 Rajnish Wadhwa, Planning Officer, stated that the Director vide letter dated 21.08.2008 had stated that in case site plan is not falling under any scheme, then CLU is not required. Thus, the petitioner has not caused any financial loss. Moreover, the site plan had been approved on 04.11.2008 without taking CLU.”

8. The summary of reply submitted to Charges 1, 3 & 5 by the petitioner is as follows:

“Charge-1: That on 27.09.2007, the Trust submitted site plan and Junior Engineer made a report on 08.10.2007 that site falls on Scheduled road. The delinquent wrote a letter dated 08.10.2007 to Town Country Planning for issue No Objection Certificate. The Town & Country Planning forwarded that approval has to be taken from PUDA. M.C. wrote a letter to Secretary dated 07.12.2007 asking for rate of CLU. The Director wrote a letter dated 14.12.2007 to stop the construction and take advice from the Chief Town Planner, Local Government. The delinquent had already written to Chief Town Planner letter dated 07.12.2007 seeking advice. Meanwhile, delinquent was suspended on 23.01.2008.

Charge-3: The witnesses have admitted that no construction as going on and also admitted that the delinquent issued notice dated 23.10.2007 to the Education Trust. The Trust had also given an undertaking dated 24.10.2007 and later on 04.01.2008 they have agreed that they

will not construct further and construction be compound as per building bye-laws.

Charge-5: The witness admitted that the delinquent has not mis-used his official position neither put any loss to the Government.”

9. The relevant extract from the findings recorded on all the charges was as follows:

“Charge-1: Proved against the delinquent by relying upon Vigilance report that construction was being carried out.

Charge-2: Not proved against the delinquent, as the same does not fall under Town Planning Scheme.

Charge-3: Proved against the delinquent by stating that the delinquent had only issued notice dated 23.10.2007 to stop/demolish the unauthorized construction and apart from it nothing was done to demolish the said unauthorized construction.

Charge-4: Not proved against the delinquent in view of letter dated 21.08.2008 passed by the Director, Local Government.

Charge-5: Proved against the delinquent by stating that since Charge No.1 & 3 is being proved against the delinquent.”

10. On 03.04.2013, the petitioner filed a detailed reply to the enquiry report pleading innocence. On 27.05.2013, the petitioner was informed that he had been exonerated by the Enquiry officer with respect to Plan No.168 subject matter of 2nd enquiry involving Nem Chand Jain. The petitioner has been making numerous representations from time to time for release of his gratuity and for payment of full pension, one of which is dated 10.02.2014 (Annex P-10).

11. On 24.02.2014, the respondents issued order of punishment of 25% cut in pension of the petitioner for 3 years. Avtar Singh, Junior Engineer,

has been inflicted minor punishment of stoppage of two increments without cumulative effect. The punishing authority has relied upon the Assistant Municipal Engineer and Assistant Town Planner, who were not within the list of witnesses and still were heard at the back of the petitioner. The punishing authority has stated in the order that Charge-2 is proven against the petitioner, whereas in the enquiry report it was not so proved.

12. Before this Court, Mr. Vivek Sharma argues on the following lines:-

- (i) A bare perusal of facts clearly shows that the petitioner stopped the construction by issuing warning dated 08.10.2007 (Annex P-1), notice dated 23.10.2007 (Annex P-2). The Trust submitted undertaking not to start construction (Annex P-3). Inspection was carried out by the Junior Engineer and as per his report, no construction was going on. Vigilance Team also certified the same after visiting the site. The petitioner rejected the site plan vide letter dated 16.11.2007. Meanwhile, the petitioner was suspended from service on 23.01.2008. It clearly shows that the petitioner remained posted at station for only three months and he was actually the whistle blower against the Trust and thus, he was removed from site and thereafter construction was legalized and approved on 04.11.2008 by the Trust.
- (ii) A bare perusal of enquiry report clearly shows that once the Director Local Government, Punjab vide letter dated 21.08.2008 has himself clarified that if site does not fall under any notified scheme, then Change of Land Use is not

required. It clearly shows that the petitioner has not put Government to any financial loss. Moreover, witnesses have also stated in favour of the petitioner. Besides, the aforesaid charge has also been dropped by the Enquiry Officer as of no avail.

- (iii) The charges proved against the petitioner is that he had not taken any step to stop the illegal construction and extended benefit to the constructor which fact has not been proved even by the witnesses. Moreover, the Department has also not demolished the said construction and on the other hand, have rather compounded the same vide order dated 04.11.2008.
- (iv) The main dealing hand Junior Engineer was visited with minor punishment of stoppage of two increments without cumulative effect, whereas the petitioner who was not directly involved as been dealt with harshly in the matter of punishment of deduction of 25% in pension for 3 years. Moreover, the Assistant Municipal Engineer, who had been issued charge-sheet along with the petitioner, has been given full gratuity and pension at the time of his retirement.
- (v) The petitioner retired on 31.03.2009 and is being deprived of gratuity and full pension for almost 5 years by the department. The first charge-sheet was concluded before the Enquiry Officer in the year 2011, but no action was taken on it. The other charge-sheet has already been concluded in the year 2011. Thus, the department is liable to pay gratuity with full pension with penal interest.

(vi) The Punishing authority had summoned two persons, who were not in the list of witnesses and thus were heard against the petitioner at his back and relying upon them has caused grave prejudice to him worsened by the passing of the impugned order. Moreover, there is a charge of disturbing Town planning which is stated to be proved against the petitioner, but in the Enquiry report said charge has not been proven. It clearly shows the punishing authority has passed the order without due application of mind.

13. It would not be out of place to mention that co-accused Avtar Singh was awarded minor punishment of stoppage of two annual increments without future effect vide order dated 24.02.2014.

14. The Department of Local Government – respondent No.1 has filed a written statement. The pith of substance of the defense of the action and the operative reason for taking adverse action is that the petitioner and his co-accused had issued notice as a mere formality, but they did not take conclusive steps to stop unauthorized construction and they failed to take the notices to their logical conclusion, which has led to proof of the charge of misconduct. The respondent in the impugned order records that since the petitioner has retired, therefore a lenient view has been taken of cutting his pension by 25% for a period of three years and for these reasons, the report submitted by the Enquiry Officer is justified and consequently the order dated 24.02.2014 (Annex P-11) passed by the answering respondent is legal and valid. There is substantial merit in the submissions of Mr. Vivek Sharma with which I agree to be the material reasons and the address where relief can be posted. Consequently, the writ petition deserves to be dismissed.

15. It is not disputed that the constructions, at whatever stage they were, after notice was issued have not been ordered to be demolished. It would have been another matter and a material circumstance had the Council not compounded the construction and refused to sanction the building plans and check unauthorized construction. But it is not disputed that whatever constructions were dug or raised, they have been compounded and composition fee has been levied and paid by the defaulting Trust which to the mind of this Court effectively removes the basis of the charge. The defence of the State in the written statement is not a good one to uphold. There has been much ado about nothing. The petitioner has been harassed relentlessly since he retired from 2009. No financial loss has been caused to the Municipal Council, Kapurthala by any of the acts of the petitioner and on the other hand he did what was required of him and within his power to issue notice promptly to the Trust to stop construction. Moreover, the Trust gave its assurance that it would not carry out any further construction. Even the Team of Vigilance Cell visited the site and found no effective construction [which might disturb the mind as gross violation] and Trust undertook to carry out construction only after the site plan was sanctioned.

16. Mr. Sharma points out from his C.M.No.1925 of 2016, the noting-sheet at Annex P-12/Pg.18 of the application supplied to him, which are clearly in his client's favour to remove doubts on his role in the episode. It is recorded in the notings that Trust/School after digging the foundations at the site had raised construction of some pillars at a higher level from plinth, but had stopped the work at the site, which site falls on land situated on the Jalandhar-Makhu Road, which is a scheduled road. The noting-sheet records the conditions to be satisfied, if approved, to compound the constructions. The noting is dated 31.10.2008. There is an approval by Tejinder Singh, co-

accused, dated 31.10.2008 recommending passing of the site plan. The noting-sheet discloses that a sum of Rs.1,41,416/- had been deposited vide G8000 by the defaulting party-the school Trust. The plan was allowed as proposed and sanction was made subject to NOC/conditions specified as above.

17. This Court has perused with the assistance of the counsel the replication filed by the petitioner. Its stands affirmed that the department not only sanctioned the building plans, but also took composition fee vide letter dated 06.10.2008. Not only this, the department had later on allowed the construction by ex post facto sanction accorded in terms of the old construction carried out partially in the year 2013 at site upon which the notice to desist were issued by the petitioner. Hence the petitioner had hardly any perceptible major role to play in the episode and the main persons involved i.e. Avtar Singh and Tejinder Singh, co-delinquents who were the engineers in-charge heading the Building Branch of the respondent Council. They were instrumental in getting the building plan sanctioned, which fact is proved from entry dated 31.10.2008 (Annex P-12). These persons have been visited with minor punishment, whereas the petitioner, who is neither responsible nor attached directly, has been awarded major punishment of cut of 25% of pension and that too without affording him an opportunity of hearing which was in breach of principles of natural justice. Once the building plan has been sanctioned and construction allowed to be raised between the scheduled road and the old building, one should think nothing further remains to be examined to criticize the petitioner. Harm far greater than the role played has been attributed to the petitioner. The petitioner was made a scapegoat and inflicted with grievous injury more than he deserved.

18. For the foregoing reasons, the present petition is allowed and impugned enquiry report dated 22.08.2012 (Annex P-7) and impugned order

dated 24.02.2014 (Annex P-11) imposing cut in pension are quashed. The respondents are directed to release the due amount of gratuity to the petitioner and pay him his full pension. Gratuity would earn interest at the statutory rate not exceeding the rate of interest on long term deposits notified by the competent authority in the Central Government [see S.7 (3A) of the Payment of Gratuity Act, 1972 as reasonable indicator of rate of interest] from the date of retirement in 2009 being due and payable on the date of superannuation and the arrears of difference of pension will be paid together with the same rate of interest till realization. The amounts be calculated and paid to the petitioner within six weeks from the receipt of certified copy of this order.

16.03.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE