

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

CWP No. 11202 of 2015

Date of Decision: 19.10.2016

KEHAR SINGH PANNU

... Petitioner

V/s

STATE OF PUNJAB AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. R.K. Arora, Advocate,
for the petitioner.

Mr. Rajat Bansal, AAG, Punjab.

KULDIP SINGH, J (ORAL)

Kehar Singh Pannu-petitioner has preferred the present petition filed under Article 226/227 of the Constitution of India for the issuance of a writ of mandamus/certiorari quashing the order dated 23.07.2002 (*Annexure P-4*) and order dated 16.07.2012 (*Annexure P-9*).

Brief facts of the case are that the petitioner was working as Junior Engineer in department of Public Health, Punjab since 15.07.1971. He retired from service on 30.04.2005 on attaining the age of superannuation. During his service, he was issued charge sheet on 28.01.1993 on the allegation of misappropriation of ₹ 6,86,393.98, on account of not obeying the orders of the superiors and for not taking interest in his duties. Ultimately, in the inquiry, he was held guilty and punishment authority i.e. the Chief Engineer (RWS-North), Punjab Public Health Department, Patiala vide order dated 29.09.2000 (*Annexure P-2*) has passed order whereby punishment and censure and recovery of ₹ 1,18,312/- for causing financial loss was imposed upon the petitioner.

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It comes out that the petitioner then filed a representation before the same authority i.e. the Chief Engineer (RWS-North), Punjab Public Health Department, Patiala. The said Chief Engineer vide office order dated 23.07.2002 (*Annexure P-4*) noticed that in addition to present petitioner, Kehar Singh Pannu, Junior Engineer, one Daljit Singh Bains were equally responsible for causing loss to the Government. Therefore, the said order dated 29.09.2000 imposing punishment upon the petitioner was withdrawn and it was ordered that the charge-sheet against him is dropped and at the same time the Superintendent Engineer, Hoshiarpur was ordered to issue common charge-sheet under common proceedings against Daljit Singh Bains and the present petitioner Kehar Singh Pannu, Junior Engineer. But in pursuance thereto, no charge sheet was issued and the petitioner ultimately retired on 30.04.2005. It also comes out that when the retiral benefits of the petitioner were not released, he filed *CWP No. 23604 of 2011* before this Court for directing the respondents to release his pension and gratuity with interest. The State in the reply to the said petition annexed the order dated 16.07.2012 (*Annexure P-9*) in which the Government took the view that the order dated 23.07.2002 passed by the Chief Engineer tantamounts to review the order and Chief Engineer has no power to review his own order when the appeal was to be preferred before the Administrative Secretary and as such, the second order is *ab initio*, void and is not valid. Consequently, the petitioner withdrew the petition with liberty to file fresh petition challenging the said order and hence, the present petition was filed. The Superintending Engineer, Water Supply and Sanitation Circle, Hoshiarpur addressed a communication dated 27.07.2007 (*Annexure P-8*) i.e. after the retirement of

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the petitioner wherein he requested the Chief Engineer (North), Punjab, Water Supply and Sanitation Department, Patiala that Sub Divisional Engineer/Junior Engineer may kindly be exonerated and recovery of ₹ 25,314 /- be effected from Kehar Singh Pannu, Junior Engineer (Retd.). However, thereafter the matter rested there and the Chief Engineer did not pass any order withdrawing the earlier order dated 23.07.2007.

I have learned counsel for both the parties.

The plea of the respondents is that the order dated 23.07.2002 (*Annexure P-4*) passed by the Chief Engineer is without jurisdiction as there was no power to review his own order under the Punjab Civil Service (Punishment and Appeal) Rules, 1970. Therefore, the said order is illegal and was rightly held so vide impugned order 16.07.2012 (*Annexure P-9*). It was further asserted that out of the sum of ₹ 1,18,312/-, a sum of ₹ 1,06,709/-, which was interest on the late payment of DCRG, has been recovered by way of withholding the same and a sum of ₹ 11,603/- is still pending against the petitioner and petitioner be issued direction to pay the said amount. It would mean that the State want to enforce the initial order of punishment dated 29.09.2000 (*Annexure P-2*).

Now the question would arise whether the Government could *suo moto* set aside the order passed by the Chief Engineer on 23.07.2002 i.e. after the lapse of about 10 years and that too without hearing the petitioner who had already retired from service.

I am of the view that when the punishment authority passed the order and the delinquent employee requests for review of the same, the punishing authority exercised the power of review even without any specific

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provisions or Rules, then the said order cannot be called void *ab initio* itself. The department did not issue any charge-sheet in terms of the order dated 23.07.2002 (*Annexure P-4*) and the matter rested there. The Department did not file any appeal against the said order and it was only when a writ petition was filed by the petitioner, the State Government woke up to set aside the said order in the year 2012 and that too without hearing the petitioner.

I am of the view that the said order dated 16.07.2012 (*Annexure P-9*) is not sustainable in the eyes of law on the ground that it was passed without hearing the petitioner and secondly it was passed merely to put-up defence to the non-release of the retiral benefits of the petitioner.

In view of the foregoing discussion, order dated 16.07.2012 (*Annexure P-9*) is hereby quashed. The petition is accordingly allowed and the respondents are directed to release all the withheld benefits to the petitioner alongwith interest @ 9% per annum within three months from the date of receipt of certified copy of this order.

October 19, 2016
Suresh Kumar

(KULDIP SINGH)
JUDGE

	✓	
<i>Whether speaking / reasoned</i>	<i>Yes</i>	<i>No</i>
		✓
<i>Whether Reportable</i>	<i>Yes</i>	<i>No</i>