

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

CWP No. 24882 of 2015(O&M)

Date of decision: 26.4.2016

RK Talwar

... Petitioner

Versus

State of Punjab & ors.

... Respondents

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

Present: Mr. Sanjay Kaushal, Sr. Advocate, with
Mr. Arjun Shukla, Advocate,
for the petitioner.

Mr. Kamal Sehgal, Addl.A.G., Punjab.

Mr. Rajiv Atma Ram, Sr. Advocate, with
Mr. Mukand Gupta, Advocate,
for respondent No.4.

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. Having heard both the learned Senior counsel Mr. Sanjay Kaushal, appearing for the petitioner and Mr. Rajiv Atma Ram for respondent No.4 and Mr. Kamal Sehgal, learned Additional Advocate General, Punjab at length and having revisited my orders dated November 30, 2015 and January 11, 2016, and taking into account the full picture presented on all sides I do not find sufficient ground to continue the operation of the ad interim order dated January 11, 2016 when it directed that the 4th respondent to demit office forthwith till further orders. Not to talk of making the order absolute, I would on the other hand deem it appropriate to recall the same for the following

reasons:-

(i). The petitioner retired from service on reaching the age of superannuation on February 28, 2015. The 4th respondent superannuated on 31st July, 2014. 4th respondent was senior to the petitioner in the cadre of Superintending Engineers on which posts they both retired from service. This is the admitted position.

(ii). The challenge to the policy instructions dated October 30, 2015 whereby the Punjab Government decided not to grant promotion to employees on extension has been turned down by the Division Bench of this Court in CWP No.23811 of 2015(Ajaib Singh & ors. v. State of Punjab & ors.) on November 20, 2015. The Special Leave Petition filed against the orders of the Division Bench has failed before the Supreme Court vide order dated December 14, 2015 (Annex. R-4) when the petition was dismissed. While the Division Bench declared the law on November 20, 2015 with respect to the policy circular, the present writ petition was filed thereafter on November 27, 2015 challenging the same circular which deprived rights to promotion during extension.

(iii). The petitioner has not challenged the order dated August 21, 2015 (Annex. P-6) in the petition. That order gave to the 4th respondent the current duty charge of the post of Chief Engineer. The contention of Mr. Kaushal that the charge sheet issued to the 4th respondent was dropped after he had crossed the end of the first year of extension i.e. on August 5, 2015, cannot be accepted as a valid ground of invalidation of administrative action for the reason that the charge sheet was ordered to be filed on July 31, 2015 with the assent of the Chief Minister, Punjab

recorded on file on even date. Therefore, it became the final decision taken on file by the Chief Minister, Punjab removing the obstacle of pending charge sheet from the way to second extension in service declaring the rights of the 4th respondent in his favour. It is of no legal consequence that it took a few days in following office procedure in issuing formal orders in writing on August 5, 2015. The intervening days between July 31, 2015 to August 5, 2015 are merely ministerial acts in nature and effect which no longer involved an PUC/continuation of the decision making process which process had concluded on July 31, 2015 when the Chief Minister, Punjab himself approved dropping of the charge sheet and which his pen terminated the enquiry proceedings against the 4th respondent. Therefore he stands absolved of the alleged misconduct with nothing remaining adverse in his service record to deny him second extension in service in terms of policy circulars/2012 etc. and amendments carried out in Rule 3.26 of the Punjab Civil Service Rules, Vol. II. The rule relates to age of retirement of Government servants. In the scheme of extension in service for two years, extensions are granted one at a time available across board to all employees based on their options exercised and in the terms and conditions prescribed. Prior to the Circular dated October 30, 2015 Government Policy allowed promotions during extension against vacancies but that regime stands materially altered after coming into force of the executive instructions.

(iv) Moreover, after October 30, 2015, neither of the contesting parties [petitioner and 4th respondent] have any right to promotion and thus, if an arrangement has been made by the State Government in the

exigencies of administration handing over the current duty charge of the post of Chief Engineer to the 4th respondent there is nothing illegal in it warranting interference in writ jurisdiction. Government was within its authority to give extension to the 4th respondent assigning the charge of current duty and therefore the action cannot be faulted at the instance of the petitioner and much less by this Court, especially when the order of CDC has not been challenged in the petition.

(v) The first interim order proceeded on the basis that there was something seriously remiss in promoting a charge sheeted officer. The suspicion has been cleared by Mr. Kamal Sehgal on the strength of the averments made in the counter affidavit dated January 9, 2016 filed by the respondent State explaining that the decision to drop the charge sheet issued to the 4th respondent was effectively and conclusively taken by the highest repository of power and authority in Government before the first extension period had come to an end. This action taken on file concluded the enquiry proceedings in favour of the 4th respondent clearing the decks for his second extension. The position on the file was not known to the Court when the interim orders were passed because they were not known to the petitioner and could never be as they were not legally required to be conveyed to the petitioner who accordingly wove his case around the order dated August 5, 2015 which was issued four days after the first extension of the 4th respondent came to an end. The true facts are now available on the file in the counters filed.

(vi) Facts neither present in the mind of the Court nor in the mind of the petitioner which can materially alter the decision and interim

orders passed in ignorance are of no moment and thus pass sub silentio or as a mistake of fact. When revealed the axis of hearing and the appreciation of full range of facts disclosed in replies requires review of the decisions be they interim or final. Such a thing has happened here for no one's fault. The interim orders can no longer be maintained. It is informed that the State has complied with the interim orders dated January 11, 2016 and ordered the 4th respondent to demit office in compliance thereof.

2. In view of the foregoing reasons which go to the root of the matter, the respondents have amply demonstrated a case for recalling the interim orders as they have become oppressive to the respondents and therefore nothing survives in the main petition itself because the lengthy arguments heard at the interim stage cover the entire gamut of the case and therefore, I would not only deem it proper to recall my order dated January 11, 2016 but would dismiss the petition as one without merit. The Government will treat the orders passed against the 4th respondent in pursuance to the interim orders as cancelled and never passed in order to restore to the 4th respondent his status and consequential benefits as on one day before the compliance order was issued, so that the past stands repaired.

3. The petition is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

26.4.2016
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