IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No. 13794 of 1995

Balwinder Singh ...Petitioner

Versus

State of Punjab & others ...Respondents

2. CWP No. 14374 of 2004

Darbari Lal & Another ...Petitioners

Versus

State of Punjab & others ...Respondents

Date of decision: May 17, 2017

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- None for the petitioner in CWP No. 13794 of 1995.

Mr. G. S. Virk, Advocate for
Mr. G. S. Nagra, Advocate
for the petitioners in CWP No. 14374 of 2004.

Mr. T. N. Sarup, Additional Advocate General, Punjab
for respondents No. 1 to 3 (in both cases).

Mr. M. S. Bedi, Senior Advocate with
Ms. Shubreet Kaur, Advocate
for respondent No. 4 (in both cases).

JAISHREE THAKUR, J.

1. By this common order, this Court proposes to dispose of two writ petitions which have been filed seeking to challenge the promotion of respondent No. 4 as Kanungo with a prayer that the relaxation given while promoting respondent as Kanungo be set-aside.

2. The petitioner was working as a Patwari in Gurdaspur District from date of appointment i.e 11.01.1983. Respondent No. 4 was also

working as Patwari in the same district and appointed w.e.f. 01.04.1985. The petitioner and respondent No. 4 belong to the Scheduled Caste as notified in the State of Punjab and as per seniority list the name of the petitioner stood at Sr. No. 47 and that of the respondent at Sr. No. 101. Next avenue of promotion for the Patwari is to the post of Kanungo and appointment to the post is regulated by ***Punjab Kanungo (Class III) Service Rules 1994***. As per Rule 8 (1) of the Rules, 85% of the seats of Kanungo are to be filled up by promotion from amongst Patwaris who have a work experience of 10 years in a district and have undergone refresher course as specified in Appendix 'B' of the Rules. These Rules can be relaxed by invoking Rule 20. By order dated 07.06.1995, respondent No. 4 was promoted as Kanungo. The petitioner represented against the said promotion being an affected party since a person, junior to him, was being promoted. Aggrieved against the promotion given to respondent No. 4 *dehors* the Rules, the ***CWP No 13794 of 1995*** has been filed. Thereafter, private respondent No. 4-Yash Pal made a representation for granting him promotion from the date when a similarly situated candidate, Mr. Bawa Singh, had been given promotion by invoking Rule 20 of the Rules of 1994. This was allowed by the impugned order dated 10.08.2004 and which is the subject matter of ***CWP No.13474 of 2004***.

3. Learned counsel appearing on behalf of the petitioners contends that the Rule 8 (1) of 1994 Rules provides for promotion as Kanungo and it is mandatory that the incumbent must have undergone a refresher course as specified thereunder, which course has not been done by respondent No. 4. It is also argued that the power of relaxation by invoking

Rule 20 vests with the Government and not the Financial Commissioner Revenue while further submitting that before any Rule is relaxed, the Government is to form an opinion that it is necessary or expedient to do so which conscious decision was not taken. It is submitted that the order dated 07.06.1995 has been reviewed and by order dated 20.07.2004 a decision has been taken to promote the petitioner on the post of Kanungo w.e.f. 25.01.1994 and as such the order is illegal as there is no provision for review under the Rules of 1994. It is also argued that the Rule 20 further provides that there will be no relaxation as far as educational qualification and experience is concerned, and respondent No. 4 had not completed his refresher course.

4. Per contra, Ld. counsel appearing on behalf of the respondents urges that the instant writ petition is not maintainable as the petitioner had a remedy of an appeal. It is also argued that the Financial Commissioner Revenue, being the Head of the Department, on behalf of the State Government, was the competent person to relax the rules and give accelerated promotion.

5. I have heard the counsel for the parities and have also gone through the record of the case.

6. Admittedly, respondent No. 4, though junior to the petitioners, came to be promoted to the post of Kanungo by an order dated 19.05.1995. This order was issued giving him accelerated promotion on account of highly commendable work done him in rescuing persons during 1988 floods. As per the order, it was in exercise of the powers conferred under Rule 20 of the ***Punjab Kanungos (Class-III) Service Rules, 1994*** that the

Financial Commissioner Revenue relaxed the provision of Rule 8(3) of the Rules and gave promotion to respondent No. 4. It is argued that the Financial Commissioner Revenue was not competent to relax the rules as it would be the State Government only who could do so. Rule 20 of the said rules is reproduced herein below:

> ***"20. Power to relax.***
> ***Where the Government is of the opinion that it is necessary or expedient so to do, it may, by order for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons:***
> ***Provided that the provisions relating to educational qualifications and experience shall not be relaxed."***

7. Earlier Rule 19 of the ***Punjab Kanungos (Class-III) Service Rules, 1976*** permitted the Financial Commissioner to relax the Rules. Thereafter amendment in the ***Punjab Kanungos (Class-III) Service Rules, 1994*** were notified on 09.11.1994, in which, the term 'Financial Commissioner' has been defined under Section 2(e) and the term 'Government' under Section 2(f). Financial Commissioner means the 'Financial Commissioner Revenue', or any other officer authorized by general or special order by the Government to perform the functions of the Financial Commissioner under these rules, whereas, the Government means 'the Government of Punjab in the Department of Revenue and Rehabilitation'. Rule 20 of 1994 Rules provides for relaxation in rules by the State Government if it is necessary or expedient to do so by giving reasons to be recorded in writing as to why the rules have been relaxed in respect of any class or category of persons, provided that the provisions relating to educational qualifications and experience shall not be relaxed.

The reason for relaxing the rules and giving accelerated promotion to respondent No. 4 is on account of the extraordinary work that he did while rescuing persons during 1988 floods. However the power to relax the Rules of 1994 vested with the State Government i.e with the Minister or Council of Ministers and not with the Financial Commissioner as has been done in the instant case. Rule 19 of the ***Punjab Kanungos (Class-III) Service Rules, 1976*** permitted the Financial Commissioner to relax the Rules but not under Rule 20 of the Rules of 1994 . The accelerated promotion given to respondent No. 4 is *dehors* the rules and can not be sustained.

8. A writ petition bearing ***CWP No. 14374 of 2004*** has been filed by the Patwaris who were affected by a subsequent orders dated 29.07.2004 and 10.08.2004 by which the promotion of respondent No. 4 to the post of Kanungo was made effective from the date when his colleague one Sh. Bawa Singh, Patwari had been promoted on the same grounds. The arguments raised that there was no power vested in the Financial Commissioner for review of the order passed on 19.05.1995 under the rules has merit. Respondent No. 4 was given accelerated promotion by relaxing rules in the year 1995 and on an application made after a gap of ten years that his case should be considered at par with Sh. Bawa Singh, Patwari, who was promoted as Kanungo w.e.f. 25.01.1994, (again on account of relaxing the Rule 20 on account of commendable work), cannot sustain. Law in this regard is well settled that a successor in office would have no power to review an order passed by its predecessor. The Revenue Officer has not been vested with the jurisdiction to review or modify the order passed by his predecessor in office. Review is the creature of statute. Unless the review

jurisdiction is vested with an authority under the Act and/or a statute, no authority can review its earlier order. In ***Vinod Kumar vs. State of Haryana and others, (2013) 16 SCC 293***, the Apex Court has held as under:

> ***"We would like to make certain comments, at this juncture, on the powers of the successor DGP, Haryana in over turning the decision of his predecessor who had accepted the representation and expunged the adverse remarks in a petition which was not maintainable and wholly unwarranted. The general principle is that merely because there is a change in the regime or when the successor assumes the office, he would not be entitled to review and reopen the cases decided by his predecessor. That would apply in those cases where the predecessor had passed the orders which he was empowered to pass under the Rules and had exercised his discretion in taking a particular view. Therefore, this proposition applies in a situation where order of the predecessor resulted in legal, binding and conclusive decision. However, the position would be different when it is found that the order of the predecessor was without jurisdiction or when a palpably illegal order was passed disregarding all the cannons of administrative law viz. when the predecessor's decision was without jurisdiction or ultra vires or when it was ex-facie an act of favoritism.***
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> ***In the present case we find that not only the order passed by earlier DGP, Haryana was ultra vires, as that was not backed by any authority vested in it under the Rules as the representation/ mercy petition was not maintainable, even while exercising its discretion in passing that order, the alleged reasons are abhorrent to the good administration/ governance and in fact there was no valid reason or justification shown in exercise of the non existent power. It was, thus, not a case of mere discretion which the DGP was empowered to exercise or the exercise of power on rational basis. Undue sympathy, that too without stating any such sympathetic grounds would be anathema to fairness. There has to be fairness in the administrative action and it should be free from vice of arbitrariness."***

9. Even otherwise, it is to be noted that the respondent No. 4 kept silent for a period of ten years after accelerated promotion had been given to him and on having accepted it, he would be estopped from claiming it on

par with Mr. Bawa Singh. There was no occasion for the Financial Commissioner, at that point in time, to have ante dated the promotion already given since it would be amounting a review of the order that was already passed.

10. Therefore, in view of the above, it is held in **CWP No. 13794 of 1995** that the Financial Commissioner was not competent to relax the rules and give accelerated promotion to respondent No. 4, and also held in **CWP No. 14374 of 2004** that Financial Commissioner could not have exercised the power of review in giving further accelerated promotion to respondent No. 4 and bringing him at par with Sh. Bawa Singh.

11. Thus, in view of the above, both the writ petitions are allowed and the promotion orders of respondent No. 4 are hereby set aside.

May 17, 2017 **(JAISHREE THAKUR)**
Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*