

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

CWP No.10296 of 2013 (O&M)
Date of Decision: March 29, 2017

J.P. Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Gagandeep Singh, Advocate for
Mr. Arvind Moudgil, Advocate
for the petitioner.

Mr. Rupam Aggarwal, DAG Punjab.

JAISHREE THAKUR, J. (Oral)

The petitioner herein is seeking a writ in the nature of certiorari to quash the impugned order dated 22.08.2012 (Annexure P-1) imposing punishment of stoppage of one future increment with cumulative effect and also to quash charge sheet (Annexure P-6) and enquiry report (Annexure P-9).

2. In brief, the petitioner joined services as PCS Officer (Executive Branch) with the Government of Punjab on 24.05.1991. While discharging duties as SDM Rampura Phul, District Bhatinda, he was also discharging the quasi-judicial activities under the provisions of Punjab Land Revenue Act 1887, as Assistant Collector Grade-I. A petition was filed in his court by S/Sh. Sher Singh, Thana Singh sons of Iswar Singh, resident of Village Dhapali, District Bhatinda that Sh. Puran Singh son of Chatter

Singh son of Ram Singh, seeking mutation of land measuring 31 acres reflected in the name of their great grand father, who was not traceable. A prayer was made that the said land measuring 31 acres reflected in the name of Sh. Puran Singh situated in Hadbast No. 444 in the Village Dhapali, Tehsil Rampur Phul, Bathinda, be mutated in their name, since their great grandfather was missing from the village for the last 50-60 years and had not been heard of. Objections were filed in the mutation proceedings by one Smt. Manjit Kaur. On recording of evidence and hearing the parties concerned, mutation was sanctioned by order dated 02.11.2005. The Deputy Commissioner of Bhatinda made a complaint by way of demi-official letter to the Chief Secretary Punjab alleging that the petitioner had sanctioned the mutation wrongly without giving sufficient opportunity to the objector, and at the same time recommended disciplinary action against the petitioner by letter dated 02.06.2006. The petitioner was also transferred and the newly appointed SDM was asked by the Deputy Commissioner to review the order dated 02.11.2005. The matter was reviewed by the SDM and it was held that the mutation had wrongly been sanctioned. Against the order of the Deputy Commissioner calling for a review of the mutation proceedings, the beneficiary filed an appeal before the Commissioner of Faridkot Division and the same was allowed holding that the order passed by the Deputy Commissioner is illegal and mutation upheld. Eventually, a charge sheet dated 22.11.2006 was issued to the petitioner and an enquiry officer was appointed, who held the petitioner guilty. The enquiry report was sent to the then Chief Secretary, who forwarded the same to the petitioner for comments. The Chief Secretary gave a personal hearing to the petitioner and

closed the case by order dated 21.07.2011. The Chief Minister ordered continuation of the charge-sheet and the Chief Secretary issued the impugned order imposing the punishment of stoppage of one future increment with cumulative effect under Rule 5 of the Punjab Civil Service (Punishment and Appeal) Rules 1970. Aggrieved the instant writ petition has been filed.

3. Mr. Gagandeep Singh learned counsel appearing on behalf of the petitioner contends that the petitioner performed his quasi-judicial functions in a fair manner and after dealing with the objections filed by Manjit Kaur and giving full opportunity of hearing, the mutation was sanctioned in favour of the applicants. In case Manjit Kaur had any grievance, she had a remedy of invoking provisions of revision or appeal, which was never invoked. It is also submitted that once the Chief Secretary had looked into the enquiry report and come to the conclusion that the petitioner had acted in a quasi-judicial manner and decided to dropped the proceedings, there was no power of review by the Chief Secretary being an officer of the same rank .

4. Per contra, Mr. Rupam Aggarwal, learned counsel appearing on behalf of the respondents-State submits that the petitioner had acted in great haste in sanctioning mutation, without following due procedure. The land in question instead of being mutated in the name of the applicants, ought to have been escheat in favour of the State and in fact, great loss has been occurred to the State exchequer. It is further pleaded that a revision petition is pending before the Financial Commissioner. It is contended that after the matter was looked at by the Chief Secretary, the Chief Minister directed the

proceedings under the charge-sheet to continue and it was on that basis that the impugned order of stoppage of one increment was imposed upon the petitioner.

5. I have heard both the counsel for the parties and with their assistance gone through the record of the case.

6. The question for consideration would be, whether punishment could be imposed upon the petitioner, once the proceedings itself have been closed by the Chief Secretary and that too, without affording any opportunity of hearing to the petitioner?

7. By order dated 21.07.2011, the then Chief Secretary, after going through the enquiry report, reply of the petitioner regarding the disciplinary proceedings held against him, gave a personal hearing to the petitioner, while at the same time also called for the comments of Financial Commissioner Revenue and came to the conclusion that whenever a Government employee takes a quasi-judicial decision, then the aggrieved party has a right to go for appeal/revision or can challenge the same before the Civil Court and a departmental enquiry is not appropriate. The proceedings were closed. This order was reviewed by another order dated 22/08/2012 by the Chief secretary by noting that the Chief secretary on 21/07/2001 had reached a conclusion that the mutation was wrongly sanctioned and held that this was a case of gross negligence and ordered imposition of penalty of stoppage of one increment with cumulative affect. This order is factually incorrect, since order dated 21.07.2011 noted that the order passed was quasi-judicial and aggrieved person would have a right to challenge the same in a higher court of law which was done.

8. Rule 21 of the **The Punjab Civil Services (Punishment and Appeal) Rules, 1970** provided for review of any order, which is reproduced hereunder:

- “21. (1) Notwithstanding anything contained in these Rules;-
- (i) the Governor; or
 - (ii) the appellate authority, within six months of the date of the orders proposed to be reviewed; or
 - (iii) any other authority, specified in this behalf by the Governor by a general or special orders, and within such time as may be prescribed in such general or special orders;

May at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any order made under these Rules or under the Rules repealed by Rule 25 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may;-

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit;

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government employee concerned has been given a reasonable

opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the specified in clauses (v) to (ix) or Rule 5 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 8 and except after consultation with the Commission, where such consultation is necessary"

9. The impugned order has been issued in gross violation of Rule 21 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. Rule 21 lays down the procedure for confirming, modifying or setting aside an order passed. The Governor or the appellate authority or any other authority specified in this behalf by the Governor, may review an order within a period of 6 months of the same having being passed. There is a proviso added to the said rule, which clearly specifies that no such order will be modified, confirmed or set aside, unless the Government employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) or Rule 5. There is no provision in the Rule 21 for reviewing an order passed by the officer of the same rank as has been done in the instant case. The proceedings initiated under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules 1970 were closed by an order dated 21.07.2011 and the file was consigned, however the impugned order came to be passed by an officer of the same rank that is by the Chief secretary on a premise that was factually incorrect. Moreover the said order was reviewed after a lapse of more than 6 months. Rule 21 further specifies that no order can be issued without

issuing notice to the government employee which has not been done in the instant case. Once the proceedings initiated had been consigned, the respondents should have issued notice to the government employee, the petitioner herein, in case, the order was to be reviewed. In any case, such order could have been reviewed only by the Governor and that too after putting the petitioner on notice.

10. The argument raised that the order of punishment is valid on account of the fact that a revision petition has been filed against the order of the Commissioner of Farikot, which had set aside the order of the Deputy Commissioner and the SDM reviewing the order dated 02.11.2005, is not sustainable. First and foremost, it is noted that the revision petition has been filed after an inordinate delay of almost 7 years and the filing of the said petition would not cover the violation of Rule 21 of the Rules of 1970.

11 Therefore, in view of the fact that there is gross violation of Rule 21 of the Punjab Civil Services (Punishment & Appeal) Rules 1970 insofar as, no review is maintainable by an officer of the same rank and that too without putting the petitioner on notice or following the rules of natural justice, the impugned order is hereby set aside.

12. The petition stands allowed accordingly.

March 29, 2017

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No