

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

CWP No.12500 of 2013 (O&M)

Date of Decision: May 8, 2017

Jaswant Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. J.S. Gill, Advocate
for the petitioner.

Mr. L.S. Virk, AAG Punjab.

JAISHREE THAKUR, J. (Oral)

1. The instant writ petition has been filed under Article 226/227 of the Constitution of India seeking issuance of a writ in the nature of certiorari to quash impugned order dated 29.09.2008 (Annexure P-9) by which the petitioner has been reverted from the post of District Development and Panchayat Officer to the post of Block Development and Panchayat Officer as well as to set aside order dated 12.09.2011 dismissing the review filed, further for issuance of a writ of nature of mandamus directing respondents No.2 to grant the petitioner all the benefits accruing to the petitioner before the passing of the impugned order of reversion.

2. In brief, the facts are that the petitioner was appointed as Block Development and Panchayat Officer on 22.08.1984 and thereafter promoted

as District Development and Panchayat Officer on 22.02.1990. The previous District Development and Panchayat Officer at Hoshiapur already initiated proceedings for getting assessment of trees done from the Forest Department, which were to be auctioned for cutting in Gram Panchayat Kothi in District Hoshiapur. On the assessment report being made available, an auction of 586 trees of Khair and 2008 other trees was fixed for 24.02.2000. The auction was held in the presence of a committee constituted under the Punjab Village Common Lands (Regulations) Rules 1964. In terms of the Rules, in case the value of the trees exceeds Rs.2,00,000/-, then the auction has to be held in the presence of the Additional Deputy Commissioner (Development), the Divisional Deputy Director, Rural Development and Panchayat and the Sarpanch of the village concerned. The auction was finalized in favour of the highest bidder, who offered Rs.13,65,000/-. After deposit of 25% of the bid amount, the highest bidder Sh. Yashpal entered into compromise with another bidder Sh. Shaminder Singh to take over the sale of trees confirmed in favour of Sh. Yashpal. As this was agreeable to the Panchayat, an application was moved to the petitioner to transfer the said auction in the name of Sh. Shaminder Singh. The petitioner effected the transfer in favour of Shaminder Singh on 29.02.2000. The selling of the trees was stayed by the Financial Commissioner (Rural Development and Panchayat Department) on 1.3.2000 with a direction for sending the record along with the Sarpanch and the Block Development Panchayat Officer. The record was submitted and thereafter by order dated 09.03.2000, the petitioner was suspended. On suspension of the petitioner, charge was given to Sh. Kuldeep Singh,

District Development and Panchayat Officer, Ropar. The suspension orders were revoked on 26.09.2000 and he was posted as the DDPO at Nawanshahr. The petitioner was served with a charge sheet dated 18.10.2000, in which, two charges were levelled against the petitioner. The petitioner submitted his reply, which was not agreed to and a regular enquiry was initiated against him. The enquiry officer submitted his report dated 07.06.2006 holding the petitioner guilty of both charges. The petitioner was asked to submit his reply to the regular enquiry report and thereafter, permission was sought from the Punjab Public Service Commission, Patiala, to revert the petitioner to the post of Block Development Panchayat Officer. Aggrieved against the reversion order the petitioner challenged the same by filing Civil Writ Petition No.18621 of 2008, which was disposed of, by directing the petitioner to file a review application. The review was rejected, which has led to the filing of the instant writ petition.

3. Mr. J.S Gill, learned counsel appearing on behalf of the petitioner contends that the auction of the respondents in passing impugned orders is not sustainable. It is contended that the petitioner herein was posted as the DDPO at Hoshiarpur, after the initiation of the auction by the previous DDPO. The value of the trees was assessed by the Forest Department and only thereafter, the auction was held and the value of the trees was not disclosed at the time of the auction. After the auction has held, the Forest Department issues permit in the name of the Panchayat for cutting the trees. The Panchayat duly gives in writing that the whole amount has been recovered. It is contended that the auction was held in the

presence of the Committee constituted under Section 6(6-A)(b)(iii) of the Punjab Village Common Lands (Regulation) Rules, 1964. The petitioner was not a part of the Committee, which conducted the auction and therefore, could not be held guilty of non-compliance of duties by not putting signatures in the proceeding register and auction register. It is argued that no loss has been incurred by the Panchayat, since the tress had been assessed by the Forest Department to be valued at Rs.8,29,500/- and the bid was confirmed at Rs.13,65,000/-. Learned counsel for the petitioner further submits that an application was filed before the petitioner by the highest bidder Sh. Yashpal son of Ram Singh for transferring the bid in favour of Sh. Shaminder Singh son of Parminder Singh. The petitioner, while exercising powers of Collector, a quasi-judicial authority, allowed the said application in good faith, since the Sarpanch of the Panchayat also supported the said transfer of the auction. It is contended that the order allowing the transfer was stayed as well as felling of the trees. The petitioner was thereafter suspended and one Sh. Kuldeep Singh, took over the charge as DDPO and eventually transferee of the auction was allowed to cut the trees. It is contended that without taking note of any of the contentions raised by the petitioner, he has been reverted from the post of DDPO to BDPO, just before his retirement. Learned counsel for the petitioner also urges that after the cutting of the trees was stayed by order dated 01.03.2000, a sum of Rs.1,50,000/- was accepted as payment from Sh. Shaminder Singh, the transferee of the auction and an another sum of Rs.1,00,000/- was accepted on 15.04.2000. Therefore, it cannot be argued that the petitioner herein had caused any loss to the Department, while

further arguing that in case, the Department was of the opinion that there was any irregularity on the part of the petitioner in transferring the auction, it should not have accepted the above-said amounts from the transferee. By accepting the above-said amounts, it has condoned the transfer of the auction from the highest bidder Sh. Yashpal to Sh. Shaminder Singh. It is also argued that after the matter had been remanded back by the High Court, the reviewing authority has simply accepted the report of the enquiry officer, without any independent application of mind, therefore, the same is not sustainable.

4. Per contra, Mr. L.S. Virk, learned AAG Punjab appearing on behalf of the respondents-State urges that the petitioner was given ample opportunity of raising his defence, after the charge-sheet had been issued and that there was no irregularity in the proceedings. The petitioner herein was DDPO, at the time when the auction was conducted and illegally allowed the transfer of the bid to a third party. It is submitted that the Department has suffered a loss, on account of the fact that transferee Sh. Shaminder Singh, did not deposit the entire bid amount. It is also submitted that the petitioner was rightly charge-sheeted, on account of non-compliance of duties by not putting signatures in the proceedings and the auction register.

5. I have heard learned counsel for the parties and with their assistance, perused the record of the case.

6. The petitioner, who was working as DDPO at Hoshiarpur, when the auction was conducted of 586 trees of Khair and 2008 other trees. After the auction was conducted, the higher bidder Sh. Yashpal deposited

the earnest amount. On the next date, an application was preferred before the petitioner in his capacity of District Development and Panchayat Officer-cum-Collector, Hoshiarpur, seeking to transfer the bid in favour of Sh. Shaminder Singh. The said application was supported by the Sarpanch of the village, who stated in the said proceedings that he had no objection if the said contract of cutting of trees would be transferred in the name of Sh. Shaminder Singh and that directions be issued to Sh. Shaminder Singh, for depositing the amount of auction in time. A quasi-judicial order was passed by the petitioner, wherein, he allowed the transfer of the auction in favour of Sh. Shaminder Singh. On 01.03.2000, the District Development and Panchayat Officer, Hoshiarpur, addressed a letter to Block Development and Panchayat Officer, stating that cutting of the trees should not be done till further orders and asked for the record of the case to be made available on 02.03.2000. The petitioner was immediately placed under suspension and the charge was handed over to Sh. Kuldip Singh, DDPO, Ropar. The petitioner was served with the charge-sheet on 18.10.2000. Two charges as leveled against the petitioner are reproduced as under:-

“Charge No.1:- In connection with the auction of the trees of Gram Panchayat Kothi on 24.02.2000, causing loss to the interest of the Panchayat and the Govt. by misusing the powers, ignoring the rules and by conducting proceedings in an arbitrary manner. Non-compliance of duties by not putting signatures in the proceedings register and auction register.

Charge No.2:- Transfer of bid at his own level from the name of contractor in whose favour bid was announced to the name

of some other person and dereliction in recovering the amount, as per the conditions mentioned in the auction.

Any other irregularity, relevant with the above said case.”

7. After reply was filed to the charge-sheet, the enquiry officer upheld the Charge No.1, holding that it was the duty of the DDPO to notice, as to whether there has been compliance of the rules, while conducting the auction. During inquiry, it was found that the signatures of the Sarpanch were available in the register, but the signatures of the DDPO, BDPO were not available, despite the fact that they were present there and the inquiry officer held that petitioner had allowed the auction to be conducted in violation of the rules. The auction is to be conducted in terms of Rule 6(6-A)(b)(iii) of the Punjab Village Common Lands (Regulation) Rules, 1964 and Rule 6(6-A) is reproduced as under:-

“6 (6-A)(a) the approximate value of the surplus and useless trees to be auctioned by the Panchayat shall be got determined by it by the Forest Department.

(b) The auction of the trees shall be held in the presence of a Committee consisting of:-

(i) The Sub Divisional Officer (Civil) the Block Development and Panchayat Officer and the Sarpanch concerned where the value of the said trees does not exceed fifty thousand rupees;

(ii) The District Development and Panchayat Officer, the Sarpanch concerned and any officer from the Headquarters of the Department, where the value of the trees exceed fifty thousand rupees, but does not exceed two lac rupees; and

(iii) The Additional Deputy Commissioner (Development), the Divisional Deputy Director, Rural

Development and Panchayat and the Sarpanch concerned, where the value of the said trees exceeds two lac rupees.”

The above-said Rule specified that in case the value of the auction is more than Rs.2,00,000/-, a committee has to be constituted, comprising of the Additional Deputy Commissioner (Development), the Divisional Deputy Director, Rural Development and Panchayat and the Sarpanch concerned .

8. As accepted by the inquiry officer, the DDPO is not a member of the committee, constituted for conducting the auction. The auction proceedings were carried on by the committee in the presence of two persons, excluding the ADC and that is why, the petitioner was held guilty for allowing the auction to proceed. In this regard, the reply of the petitioner was that he was a junior person and it was the seniors, who had conducted the auction and therefore, he was not in a position either to stay the auction or ask them to sign the minutes of the meeting. It is also worthwhile to mention that proceedings had been initiated for conducting auction of the trees, prior to the petitioner being posted at Hoshiarpur. It is to be noted that once the petitioner was not a member of the committee constituted to conduct an auction, he would have no role in the proceedings, meaning thereby, it was not incumbent upon him to insist that the proceedings be signed. It is the committee that conducted the auction and if not a party to the proceedings, cannot be held that he had caused loss to the *'interest of the Panchayat and the Govt. by misusing the powers, ignoring the rules and by conducting proceedings in an arbitrary manner'*. At best, it

can be an irregularity on the part of the committee itself, but no negligence in this regard can be attributed to the petitioner.

9. Moreover, if the cutting of the trees had been stayed by the order dated 01.03.2000, there is no explanation forthcoming as to under what circumstances, the stay was vacated and permission was given to Sh. Shaminder Singh, to fell the trees. If the transfer of the auction was unacceptable, the higher authorities who were already seized of the matter, ought to have set aside the auction, instead of accepting the bid amount from the transferee. Moreover the extent of loss the Gram Panchayat has suffered is also not borne out.

10. The second charge reads as *'Transfer of bid at his own level from the name of contractor in whose favour bid was announced to the name of some other person and dereliction in recovering the amount, as per the conditions mentioned in the auction.'* In this regard after the bid was transferred in favour of Shaminder Singh, an order was received in the office on 01.03.2000 and the cutting of trees was banned and the petitioner was placed under suspension vide order dated 09.03.2000. The trees were cut, after the charge of the area was taken over from him and handed over to one Sh. Kuldip Singh DDPO. The Gram Panchayat, Village Koti, Tehsil Garhshankar, accepted the bid amount from Sh. Shaminder Singh by challan dated 10.04.2000 and 15.04.2000 i.e. after the petitioner stood suspended. Once the charge is with another officer, there would be no occasion for the petitioner to make a recovery of the auction amount.

11. An argument has also been raised that petitioner had acted in his quasi-judicial capacity on application that was moved by the auction

purchaser himself, which application was duly supported by the Sarpanch of the village, who suffered a statement in court that he would have no objection, in case, the said transfer is permitted. In the opinion of this court, if the State was aggrieved against the said transfer of auction in favour of Sh. Shaminder Singh , it could have filed an appeal against the orders, so passed, since the same had been issued by the petitioner in his quasi-judicial capacity, as a Collector. In this regard reference can be made to the judgment rendered by the Apex Court in “**Anowar Hussain vs. Ajoy Kumar Mukherjee and others,**” AIR 1965 SC 1651, wherein, it has been held that no enquiry or cases should be initiated against Judges, Magistrates etc. who worked in the capacity of quasi-judicial authority.

12. This court is conscious of the fact that it should not interfere in disciplinary proceedings or when a charge-sheet has been issued or in the quantum of punishment invoked. In the instant case, after consideration of the matter, the petitioner herein has been reverted to the post of BDPO. In **B.C. Chaturvedi v. Union of India (1995) 6 SCC 749**, it has been held that the Court/Tribunal cannot interfere with the findings of fact based on evidence and substitute its own independent findings and that where the findings of the disciplinary authority or the Appellate Authority are based on some evidence the Court/Tribunal cannot re-appreciate the evidence and substitute its own findings. It was further held:-

“When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or

conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the Appellate Authority has coextensive power to reappreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mold the relief so as to make it appropriate to the facts of that case.

Interference would not be warranted, if the order passed are

reasoned and based upon evidence. However, there are catena of judgments available, which permits the court to interfere, especially when the decision making process of the punishing authority is not sustainable in the eyes of law. The petitioner herein had urged before the enquiry officer that he was not part of the committee that was constituted under Rule 6(6-A)(b)(iii) of the Punjab Village Common Lands (Regulations) Rules, 1964, to conduct the auction and being a junior person, would not be in a position to either defer the auction proceedings, on account of the fact that ADC was not present and not being a person conducting the auction, he could have insisted that the proceedings register or the auction register be signed. The contention raised that he had been suspended after the stay of auction, has also not been dealt with. Further, the matter was remanded back by this High Court and it was expected of the reviewing authority to take note of all the issues raised. Annexure P-10, which is the order passed by the reviewing authority on 12.09.2011, has been passed summarily. The reviewing authority, while taking note of the orders passed by the High Court, noted that a regular enquiry had been conducted by an IAS Officer (Retd.), and that both the charges have been proved against this officer and on this basis decide the review to be unsustainable. Under normal circumstances, when the matter is remanded back with the direction that the review application be decided on merits, it would necessarily mean that evidences and the defenses as raised in the application/appeal should be considered independently, in its entirety, which consideration is wholly lacking.

13. In a recent judgment in “**Allahabad Bank v. Krishna Narayan**

Tewari”, (2017) 2 SCC 308 it has been held:-

*7. We have given our anxious consideration to the submissions at the Bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a departmental authority on the basis of evidence available on record. But it is equally true that in a case where the disciplinary authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty-bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. **Non-application of mind by the enquiry officer or the disciplinary authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment.** The High Court has, in the case at hand, found all these infirmities in the order passed by the disciplinary authority and the appellate authority. The respondent's case that the enquiry was conducted without giving a fair and reasonable opportunity for leading evidence in defence has not been effectively rebutted by the appellant. More importantly the disciplinary authority does not appear to have properly appreciated the evidence nor recorded reasons in support of his conclusion. **To add insult to injury the appellate authority instead of recording its***

own reasons and independently appreciating the material on record, simply reproduced the findings of the disciplinary authority. All told, the enquiry officer, the disciplinary authority and the appellate authority have faltered in the discharge of their duties resulting in miscarriage of justice. The High Court was in that view right in interfering with the orders passed by the disciplinary authority and the appellate authority.”(emphasis supplied).

14. Since this court is of the opinion that the impugned orders are not sustainable, on the ground of non-consideration or cogent reasoning, the case normally ought to be remitted back to the authorities concerned for a fresh consideration. However, this exercise was already done on an earlier occasion when directions were given by this High Court in Civil Writ Petition No.18621 of 2008, but to no effect. The petitioner has already superannuated and it would be too harsh to direct a fresh enquiry or fresh order by the competent authority.

15. Therefore, in view of the discussion held herein above, this matter warrants interference by this court in writ jurisdiction. The writ petition is allowed and the impugned orders passed are hereby set aside being unreasoned , arbitrary , further with a direction that the petitioner will be entitled to all consequential benefits thereafter. Let the needful be done within a period of three months on receipt of certified copy of this order.

May 8, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No