

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 16298 of 2012 (O&M)
Reserved on: September 27, 2017

Date of Decision: October 6th, 2017

Satinder Singh Bajwa

... Petitioner

Versus

Punjab and Haryana High Court, Chandigarh

... Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Dinesh Kumar and Mr. S.S. Narula, Advocates,
for the petitioner.

Mr. Raman B. Garg, Advocate,
for the respondent.

P.B. Bajanthri, J.

1. In the instant writ petition, petitioner has challenged the following orders:-

- i) Inquiring Officer's report dated 30.06.2005 (Annexure P/7);
- ii) Compulsory retirement (penalty) dated 07.05.2009 (Annexure P/12);
- iii) Rejection of service appeal dated 14.03.2011 (Annexure P/16).

2. Petitioner while working as Court Officer during the period from 14.04.1982 to 24.11.1988 and while working as Deputy Registrar (Administration) in the year 1989-90, he has alleged to have committed

various misdeeds in respect of purchase of articles like furniture, geysers, air conditioners, woolen carpets, foam, suit cases, sofa sets, garden umbrellas, emergency lights, tapestry cloth, dinning chairs and other articles and so also in getting repair and polishing work of the furniture and other articles. He alleged to have manipulated number of articles. While purchasing he has shown more articles and while handing over the articles, there were lesser than the purchase. Thus, he has not given account according to the purchase and recorded articles with reference to record. These misdeeds stated to have been committed mostly in respect of former Hon'ble Chief Justice Mr. V. Ramaswamy's tenure and while he was relinquished the charge and when the account relating to articles it was found that there were shortage of articles, inferior articles, actual quality articles were replaced by inferior articles etc. Arising out of these allegations, petitioner was subjected to disciplinary proceedings by framing 41 articles of charges on 08.10.1990 for which he had submitted his reply on 24.10.1991. The Inquiring Officer submitted his report on 30.06.2005. Consequently, show cause notice was issued to the petitioner seeking his explanation / comments on the Inquiring Officer's report for which petitioner had submitted his reply on 15.10.2005. The disciplinary authority after receipt of petitioner's explanation / comments, inquiry records were forwarded to the High Court Establishment-III Committee consists of three Judges, they were assigned the General Supervision and all matters pertaining to selection, seniority, promotion, reimbursement of claims, retention of service and enquiries of Superintendent Grade-II, Revisers, Assistants, Translators, Stenographers, Supervisors of Drivers.

Such formation of Committee was notified on 11.05.2007 and 06.01.2009 under Rules for the Disposal of Executive and Administrative Business (Chapter 9) (Punjab & Haryana High Court Rules and Orders, Vol. 5). Part A of Chapter 9 relates to Rules for the Disposal of Executive and Administrative Business. Rule 2 relates to matters which shall be disposed of at a Judges' meeting, Item from (i) to (viii) relates to various issues. Item No. (ix) relates to Miscellaneous which is reproduced herein:-

“Any other matter which may be referred by the Hon'ble Chief Justice or not less than three Hon'ble Judges to a meeting of Hon'ble Judges.”

Under the above clause, the inquiry papers are stated to have been forwarded to the Committee of High Court Establishment-III. The Committee of High Court Establishment-III, perused the inquiry records read with petitioner's explanation on the inquiry report, proceeded to recommend to impose pre-mature retirement penalty. Recommendation was perused by the then Hon'ble Chief Justice and noticed that pre-mature retirement is not one of the authorized punishment under the High Court Establishment (Appointment and Conditions of Service) Rules, 1973 (hereinafter referred to as “Rules, 1973”), therefore, matter was once again referred to Committee for fresh consideration. Consequently, on 30.04.2009 Committee recommended for imposing the penalty of compulsory retirement on both the delinquents (petitioner and one Sh. S.S. Dogra). Thereafter, the disciplinary authority imposed the penalty of compulsory retirement on the petitioner on 07.05.2009. Feeling aggrieved by the order of compulsory retirement, petitioner preferred a service

appeal in the month of July 2009 and it was rejected by the appellate authority on 14.03.2011. Hence, the present petition in challenging the Inquiring Officer's report, disciplinary and appellate authorities orders.

3. Learned counsel for the petitioner submitted that in the inquiry, there were no legal admissible evidence. The Inquiring Officer exceeded his jurisdiction to prove the charges against the petitioner which was not part and parcel of the charges. The petitioner was not permitted to verify the stock of articles despite certain requests. It was further contended that police investigation team's findings have not been placed on record and petitioner has been victimised. The inquiring, disciplinary and appellate authorities have not appreciated the contentions of the petitioner. When the petitioner had taken certain contentions before the authorities, non-consideration of petitioner's plea amounts to non-application of mind. Consequently, on that score, itself from the stage of the Inquiring Officer's report till appellate authority orders are liable to be set aside.

4. Learned counsel for the petitioner further submitted that copy of the Committee's recommendation for imposing the penalty of premature and further second report relating to recommending to impose penalty of compulsory retirement were not made available to the petitioner before imposing compulsory retirement penalty. On the petitioner's request, respondent have furnished speaking order of the then Hon'ble Chief Justice along with recommendations / comments of the Committee of Hon'ble Judges were furnished on 18.06.2009 i.e. much after imposition of penalty. Respondent – disciplinary authority should have

furnished and sought petitioner's explanation in respect of recommendation of pre-mature retirement and later on modified recommendation to impose penalty of compulsory retirement. Thus, there is a violation of natural justice to the extent while disciplinary authority imposing penalty considered committees report and recommendation for imposing penalty of compulsory retirement. Even the disciplinary authority has not considered each of the contention of the petitioner against show cause notice as is evident from para no.3 of order dated 07.05.2009 which states that

“The reply dated 15.10.2005 of Shri S.S. Bajwa to the Inquiry Report dated 30.06.2005 was considered by the authorities and the same was found unsatisfactory.”

This is evident that disciplinary authority the then Hon'ble Chief Justice has not complied Rule 35 of Rules, 1973 read with Rule 5 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred to as “Rules, 1970). In other words, mechanically recommendation of the Committee was perused and proceeded to impose the penalty of compulsory retirement without considering petitioner's various pleas in the reply to show cause notice.

5. It was further contended that disciplinary proceedings were initiated under Rules 1973 read with Rules 1970. Reading of both the rules, there is no provision for forwarding inquiry proceedings to the Committee of Judges to look into the Inquiring Officer's report read with petitioner's explanation on the Inquiring Officer's report, therefore, the disciplinary authority has erred in forwarding the inquiry papers to the

Judges Committee and taking opinion so also recommendation for imposition of penalty. In the statutory Rules 1973 read with Rules 1970, there is no provision, therefore, for the purpose of initiation of inquiry and its completion against the petitioner cannot be gone beyond Rules 1973 read with Rules 1970. Thus, from the date of forwarding Inquiring Officer's report read with petitioner's explanation to the Judges Committee is without authority of law unless and until, Rule 35 of Rules 1973 provides for it. Question of interference by the Judges' Committee was not warranted, merely the then Hon'ble Chief Justice forwarded Inquiring Officer's report and petitioner's explanation, the Judges' Committee do not get jurisdiction to examine and recommend for imposition of particular penalty like compulsory retirement in the present case, since statutory rules like Rules, 1973 read with Rules 1970 do not empower Judges' Committee. Therefore, from the stage of forwarding papers to the Judges' Committee, there is an error. Consequently, orders of disciplinary and appellate authorities are liable to be set aside.

6. Per contra, learned counsel for the respondent submitted that petitioner has raised legal issues for the first time in the writ petition without raising legal issues before the disciplinary and appellate authorities, therefore, petitioner is not permitted to raise the legal issues in the writ petition. It was also submitted that vital issue of scope and ambit of powers vested in the Hon'ble Chief Justice under Article 229(1) of the Constitution is pending adjudication in LPA No. 442 of 2017 titled as “High Court of Punjab and Haryana vs. Avtar Singh Kalra and others” for 02.04.2018. The decision of the aforesaid case would have impact on the

present case wherein the existence and role of the Committee of Hon'ble Judges constituted by the Hon'ble Chief Justice is involved and on 23.03.2017, LPA Bench was pleased to observe that:-

“.... The matter involves the vital issue of scope and ambit of powers vested in the Hon'ble Chief Justice under Article 229(1) of the Constitution and/or under the rules referable to Sub-article (2) thereof....”

Learned counsel for the respondent requested for deferring the present petition to await the outcome of the LPA.

7. Learned counsel for the respondent vehemently argued that 41 charges have been leveled against the petitioner. Most of the charges are relating to embezzlement of money like purchasing articles more than quotations and so also more than market price. Further certain articles were missing and articles which have been given for the purpose of account were not the actual articles. In other words, quality articles have been replaced by inferior articles. Thus, petitioner has manipulated while giving accounts relating to number of articles. The petitioner should have been dismissed from service instead of imposing the penalty of compulsory retirement. The Hon'ble Judges' Committee and the disciplinary authority so also appellate authority have taken a very lenient view to the extent of recommending compulsory retirement, imposing the compulsory retirement and affirming the order of compulsory retirement.

8. Hon'ble Chief Justice has ample power under Article 229 read with Article 231. Thus while exercising power Rules 1973 and Punjab and Haryana High Court Rules and Orders, Vol.5 and Chapter 9 relates to Miscellaneous under Part A Rules for the Disposal of Executive and

Administrative Business provides for various businesses were framed. Rule 2 relates to matters which shall be disposed of at a Judges' meeting. The then Hon'ble Chief Justice while invoking Rule 2(ix) – Any other matter which may be referred by the Hon'ble Chief Justice or not less than three Hon'ble Judges to a meeting of Hon'ble Judges has been invoked for the purpose of formation of number of Committees. The Committees were constituted on 11.05.2007 and it was further reconstituted on 06.01.2009 (Annexure R-16) is relevant wherein Item No. 25 relates to High Court Establishment-III. Committee – one of the item is relating to “enquiries of Superintendents Grade-II, Revisors, Assistants, Translators, Stenographers, Supervisor or Drivers.” Since one of the item assigned to the High Court Establishment-III – enquiries of Superintendent Grade-II, therefore, the then Hon'ble Chief Justice referred the Inquiring Officer's report and petitioner's explanation on the Inquiring report for examination, opinion and for recommendation of a penalty. Thus, there is no lacuna or any deviation of Rules 1973 read with Rules 1970 in forwarding the Inquiring Officer's report and petitioner's explanation to the Hon'ble Judges' Committee and taking opinion and recommendation for imposing compulsory retirement. Hence, petitioner's contentions are liable to be rejected.

9. Heard learned counsel for the parties.

10. Learned counsel for the respondent requested for deferring the matter on the score that identical issue is pending consideration in LPA No. 442 of 2017 cited supra. It was contended that the existence and role of the Committee of the Hon'ble Judges constituted by the Hon'ble

Chief Justice is involved. It is to be noted that in LPA matter relating to exercising the power under rule 38 in respect of power to relax rules in favour of individuals, whereas in the present case, issue is the disciplinary proceedings viz., whether disciplinary authority/the then Hon'ble Chief Justice is permitted to forward the papers of the enquiry and aggrieved persons' explanation to the Hon'ble Judges' Committee constituted under Rule 2 (ix) of Chapter 9 of Punjab and Haryana High Court Rules and Orders, Vol.5 read with Rule 35 of Rules 1973 and Rules 1970. Therefore, contention of the respondent's counsel that the issue involved in the present case is similar to that of pending LPA case is distinguishable and not identical. In the LPA case, question for consideration is whether the Hon'ble Chief Justice can invoke Rule 38 – relaxation in respect of any of the provision in the Rules 1973 is permissible or not if it is so to what extent. In the present case, matter relates to disciplinary proceedings, interpretation of Rule 35 of Rules 1973, Rule 2(ix) of Chapter 9 of Punjab & Haryana High Court Rules and Orders, Vol.5 read with Rules 1970. Accordingly, respondent's request for deferring the matter is hereby turned down.

11. The petitioner was subjected to disciplinary proceedings for various serious allegations relating to abuse of power in purchasing furniture and other articles (infrastructure to the residence/office of the Hon'ble Chief Justice and to the High Court) and so also raising various bills in respect of repair of furniture and polishing. Petitioner's contention relating to non-appreciation of material on record by the Inquiring authority cannot be gone into by this Court as there were no perverse

evidence which have been taken into consideration for the purpose of proving the charges leveled against the petitioner. In this regard, Supreme Court in the case of ***Kuldeep Singh vs. Commissioner of Police and others***, reported in ***(1999) 2 SCC, 10 (Para Nos. 6, 9 and 10)*** and ***R.R. Parekh vs. High Court of Gujarat and another***, reported in ***(2016) 14 Supreme Court Cases 1***, in para no.20 examined the scope of Article 226 of the Constitution in respect of disciplinary proceedings. Para no.20 reads as under:-

“20. A disciplinary inquiry, it is well settled, is not governed by the strict rules of evidence which govern a criminal trial. A charge of misconduct in a disciplinary proceeding has to be established on a preponderance of probabilities. The High Court while exercising its power of judicial review under Article 226 has to determine as to whether the charge of misconduct stands established with reference to some legally acceptable evidence. The High Court would not interfere unless the findings are found to be perverse. Unless it is a case of no evidence, the High Court would not exercise its jurisdiction under Article 226. If there is some legal evidence to hold that a charge of misconduct is proved, the sufficiency of the evidence would not fall fore re-appreciation or re-evaluation before the High Court. Applying these tests, it is not possible to fault the decision of the Division Bench of the Gujarat High Court on the charge of misconduct. The charge of misconduct was established in Disciplinary Inquiry No.15 of 2000.”

Therefore, petitioner's contention that the Inquiring Officer has failed to appreciate evidence cannot be gone into in the absence of perverse

evidence has been taken into consideration.

12. The disciplinary authority has deviated Rule 35 of Rules 1973 read with Rules, 1970 and Rule 2(ix) of Chapter 9 of Punjab & Haryana High Court Rules and Orders (Vol.5) or not? No doubt, the Hon'ble Chief Justice has ample power to issue rules and power has been exercised in issuing Punjab and Haryana High Court Rules and Orders (Vol.5), whereas formation of Committee under Rule 2(ix) of Chapter 9 even though Committee has been constituted assigning certain matters. For the purpose of the present case, list of Committees dated 11.05.2007 read with notification dated 06.01.2009 (w.e.f.) - High Court Establishment-III “**25 High Court Establishment-III Committee** – General Supervision and all matters pertaining to selection, seniority, promotion, reimbursement of claims, retention of service and enquiries of Superintendent Grade-II, Revisors, Assistants, Translators, Stenographers, Supervisor of Drivers, Hon'ble Mr. Justice, Hon'ble Mr. Justice, Hon'ble Mr. Justice were appointed. Perusal of the formation of Committee and assigning which are the matters are required to be dealt with by the Committee. It is evident that one of the matter is relating to enquiries of Superintendent Grade-II, Revisors, Assistants, Translators, Stenographers, Supervisor of Drivers. No doubt, enquiry matters have been assigned to the Hon'ble Judges' Committee, at the same time, it is to be noted that in conducting enquiries what is the role of the Committee is not forthcoming. Assuming that Hon'ble Judges' Committee were required to hold enquiry, in that event, the enquiry should have been entrusted to Hon'ble Judges' Committee from the initiation of enquiry till the stage of aggrieved

person's explanation on the Inquiring Officer's report so as to disciplinary authority to exercise power to impose anyone of the penalty. Therefore, there is ambiguity in stating that Hon'ble Judges' Committee would decide enquiries of certain post holders. When the enquiries against Superintendent Grade-II and other posts were required to be held against High Court employee under Rule 35 of Rules 1973 read with Rules, 1970. Rule 35 reads as under:-

*“35. **Penalties – (1)** The following penalties may be imposed upon officers and servants serving on the staff attached to the High Court namely:-*

- (a) Censure;*
- (b) Withholding of increments of promotion including stoppage at an efficiency bar, if any;*
- (c) Reduction to a lower post or time scale or to a lower stage in the time-scale;*
- (d) Recovery by deduction from pay of the whole or part of any pecuniary loss caused to a Government by negligence breach or orders;*
- (e) Suspension;*
- (f) Compulsory Retirement;*
- (g) Removal from the Civil Service of the Government with no disqualification for future employment;*
- (h) Dismissal from the Civil Service of the Govt. with a disqualification for future employment;*

Provided that the discharge of a person appointed on probation, during or at the end of the period of probation or before his confirmation in a substantive capacity in accordance with the terms of appointment shall not amount to removal or dismissal within the meaning of this rule.

Note: An order of temporary appointment referred to in the note under sub-rule (2) of rule 36 as non-appealable shall not be deemed to be an order withholding promotion or adversely affecting the rights of any person for a permanent vacancy.

(2) Any of the above penalties may be imposed by the authorities specified in Schedule II hereto annexed;

Provided that the Chief Justice alone shall have power to impose any penalty on the Registrar of the High Court.

(3) The rules or orders regulating enquiries into allegations against Government servants in the service of the Punjab Government shall apply with necessary modifications and adaptations to enquiries into the conduct of officers and staff attached to the High Court.

(4) Notwithstanding anything contained to the contrary in the Punjab Civil Services (Punishment and Appeal) Rules, 1970 where the Enquiry Officer is other than the Disciplinary authority himself, the copy of the inquiry report shall be furnished to the delinquent officer, to enable him to represent to the Disciplinary Authority within the time specified as to why the enquiry report should not be accepted and acted upon by the Disciplinary Authority.

(5) Rule 11 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 in its application to the officers and staff attached to the High Court shall read as follows:-

“Orders made by the Punishing Authority shall be communicated to the employee concerned, who shall be supplied with a copy of the report of enquiry, if any hold by Punishing Authority, for the purpose of filing appeal, if any,

provided under the Rules.”

(6) Notwithstanding anything contained to the contrary in the Punjab Civil Services (Punishment and Appeal) Rules, 1970, the Disciplinary Authority may treat the enquiry report of the 'Sexual Harassment Probe Committee' as a report submitted by an enquiry officer under the Punjab Civil Services (Punishment and Appeal) Rules, 1970, and may take further action in accordance therewith.”

Perusal of the aforesaid rule, it is evident that disciplinary authority is required to take action from the date of initiation of enquiry till imposition of penalty. There is no provision for forwarding Inquiring Officer's report and aggrieved person's explanation on the Inquiring Officer's report to the Hon'ble Judges' Committee and to seek recommendation as is evident from Rule 35(4) of Rules, 1973. In other words, Rule 35 of Rules 1973 and Rule 2 (ix) of Chapter 9 of Punjab and Haryana High Court Rules and Orders, Vol.5 do not specify what are the powers and functions of the High Court Establishment-III Committee in respect of inquiries. Rule 35 provides for initiation of enquiry till imposition of penalty by the disciplinary authority. Thus, there is error committed by the then Hon'ble Chief Justice from the stage of receipt of petitioner's explanation on the Inquiring Officer's report and forwarding to the Hon'ble Judges' Committee and taking opinion and recommendation to impose penalty of compulsory retirement and to pass order of penalty and consequently, appellate authority decision. Hon'ble Supreme Court in the following decisions held that when a statute specified particular things is to be done by particular officer / authority, there cannot be deviation to statute:-

- i) ***Prabha Shankar Dubey vs. State of M.P.*** reported in **(2004) 2 Supreme Court Cases 56**, Para 11 reads as under:

“11. Though there cannot be any quarrel with the general principle highlighted by learned counsel for the appellants that if a thing is required to be done in a particular way it should be done in that way, the position here is different in view of our conclusions that the requirements of Section 50 of the Act were sufficiently complied with. The general principle, as noted, has been stated illuminatingly in Nazir Ahmad v. King Emperor (AIR 1936 P.C. 253), and later by this Court in State of Uttar Pradesh v. Singhara Singh (1964 (4) SCR 485). What the officer concerned is required to do is to convey about the choice the accused had. The accused (suspect) has to be told in a way that he becomes aware that the choice is his and not of the officer concerned, even though there is no specific form. The use of the word 'right' at relevant places in the decision of Baldev Singh's case (supra) seems to be to lay effective emphasis that it is not by the grace of the officer the choice has to be given but more by way of a right in the 'suspect' at that stage to be given such a choice and the inevitable consequences that have to follow by transgressing it.”

- ii) ***Narayan Laxman Patil vs. Gala Construction Company Private Limited and others*** reported in **(2016) 14 Supreme Court Cases 388**, Para 25 reads as under:-

“25. Merely saying that Respondent 1 or the original owner did not object at any time to the possession, does not make his possession lawful, even if it is accepted that he was in possession. The appellant has to prove his title of possession by pointing out that it was lawful and if such requirement could not be proved, mutation entry is required to be cancelled. Recording the name of the appellant along with six others in the other rights column merely on the basis of

possession is nothing short of perversity and unless the officer concerned was satisfied that the said possession was lawful such an entry could not have been made irrespective of whether the original owners appeared and contested the plea and more so when the officer was performing a statutory duty. When the statute states that a duty has to be performed or an enquiry has to be conducted in a particular manner, it is well settled, it has to be done in that manner alone and it was necessary for the Tehsildar to ensure that the requirements of the Code were satisfied by the petitioners' predecessor."

13. Learned counsel for the petitioner contended that Committee's reports have not been made available to the petitioner before imposing the penalty of compulsory retirement. In other words, petitioner has not been provided natural justice in perusal of Hon'ble Judges' Committee report. Consequently, orders of disciplinary and appellate authority are liable to be set aside is concerned, the appellate authority has discussed in para nos. 3 and 4 how the petitioner is not entitled. Therefore, question for consideration is whether the petitioner is entitled for copy of Hon'ble Judges' Committee reports dated 10.11.2008 and 30.04.2009 or not? Supreme Court in the case of ***Union of India and others vs. R.P. Singh***, reported in ***(2014) 7 SCC 340 (Para Nos. 21 to 23)*** held that copy of the advise of the UPSC during the intervening period from the date of submission of explanation on the Inquiring Officer's report and imposing the penalty, if the UPSC's opinion is taken into consideration by the disciplinary authority, in that event, aggrieved person is entitled for copy of the UPSC advise or opinion for the purpose of further natural justice. In

the present case, it is undisputed that disciplinary authority at one point of time while considering the Hon'ble Judges' Committee report found that question of pre-mature retirement cannot be imposed on the petitioner as recommended by the Hon'ble Judges' Committee since it is not one of the penalty identified **under Rule 35 of Rules 1973 read with Rule 5 of Rules 1970**. Further, the matter was forwarded by the disciplinary authority to the Hon'ble Judges' Committee for fresh consideration. Consequently, Hon'ble Judges' Committee have recommended penalty of compulsory retirement while furnishing its opinion. Therefore, the petitioner has been denied the opportunity of his say on the Hon'ble Judges' Committee opinion which has been considered by the disciplinary authority while imposing the penalty of compulsory retirement on the petitioner.

14. Learned counsel for the respondent submitted that the Hon'ble Chief Justice has got ample power under Article 229 read with Article 231 of the Constitution, therefore, there is no infirmity in forwarding the inquiry papers and petitioner's explanation on the Inquiring Officer's report for its opinion and recommendation for a particular penalty. To support this, he has stated in CM-13902-CWP-2017 for placing on record additional affidavit with Annexures R-12 to R-17. An extract of para no.10 of additional affidavit reads as under:-

“10. The role and functions of the aforesaid Committee of the Hon'ble Judges are not specified in the aforesaid orders of the Hon'ble Chief Justice. But it is a long established practice that the Committee of the Hon'ble Judges examines the enquiry report and the comments of

the delinquent official/officer thereon and make appropriate recommendations. Thereafter, the matter is examined thoroughly by the Hon'ble Chief Justice on the basis of enquiry report, comments of the delinquent official & the recommendations of the Committee of the Hon'ble Judges. Accordingly, Hon'ble Chief Justice passes appropriate orders of penalty.”

Learned counsel for the respondent's contention that the Hon'ble Chief Justice has got ample power is undisputed. Respondent has admitted that it is a long established practice that the Committee of Judges examined the inquiry report and the comments of the delinquent official/officer thereon and make appropriate recommendations is concerned if there is illegality, the same cannot be perpetuated. Decision by an unauthorized Committee cannot be validated or acted upon by the disciplinary authority while imposing penalty. At the same time, it is to be noted that while exercising power by the Hon'ble Chief Justice notified Rules 1973 and Punjab and Haryana High Court Rules and Orders, in respect of disciplinary proceedings matter in particularly Superintendent Grade-II is governed by Rule 35 of Rules 1973 read with Rules 1970. Therefore, the then Hon'ble Chief Justice cannot deviate from the statute in particularly rule 35. Punjab and Haryana High Court Rules and Orders are like Rules of Business that have been framed under Article 229 of Constitution cannot override the provisions of any statutory rule like Rules 1973 in respect of disciplinary matters against High Court employee field is occupied by Rules, 1973 (issued under Article 229 of Constitution) read with Rules, 1970 (issued under Article 309 of Constitution). It is to be noted that

disciplinary authority has not retained his power to sub-delegate to any one in respect of exercising Rule 35 of Rules, 1973. When Rule 35 specifically provides for mode of initiation of disciplinary proceedings and its logical end. Question of referring the matter to the Judges' Committee and seeking its opinion and recommendation would be impermissible. That apart while constituting Committee under Rule 2(ix) of Chapter 9 of Punjab and Haryana High Court Rules and Orders (Vol.5) read with notifications dated 11.05.2007 and 06.01.2009 do not specify what are the roles of the Hon'ble Judges' Committee in respect of inquiries are concerned. Further specific powers and functions in respect of inquiries have not been assigned to the Committees. For example, in the present case, the then Hon'ble Chief Justice has forwarded inquiry papers from the receipt of petitioner's explanation on the inquiry report and sought opinion and recommendation of imposing certain penalty. In the absence of assigning specific powers and functions on the Committee of Judges in respect of inquiries are concerned, one cannot assume that the Hon'ble Chief Justice has ample power to assign work to the Hon'ble Judges' Committee when the powers and functions of the inquiry is already vested with the Hon'ble Chief Justice under Rule 35 which is a statutory rule, the same cannot be deviated by means of executive/administrative action like communication by the Hon'ble Chief Justice to the Hon'ble Judges' Committee. Discretionary power is concerned, the Supreme Court in the case of ***Union of India vs. Kuldeep Singh*** reported in ***(2004) 2 Supreme Court Cases 590*** in para nos. 20, 21 and 24 held as under:-

“20. When anything is left to any person, judge or Magistrate to be done according to his discretion, the law intends it must be done with sound discretion and according to law. (See Tomlin's Law Dictionary). In its ordinary meaning, the word “discretion” signifies unrestrained exercise of choice or will; freedom to act according to one's own judgment; unrestrained exercise of will; the liberty or power of acting without control other than one's own judgment. But, when applied to public functionaries, it means a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. Discretion is to discern between right and wrong; and therefore, whoever have power to act at discretion, is bound by the rule of reason and law. (See Tomlin's Law Dictionary).

21. Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection; deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private affections of persons. When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not

humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself (per Lord Halsbury, L.C., in Sharp v. Wakefield, 1891 AC 173: (1886-90) All ER Rep 651 (HL). (Also see S.G. Jaisinghani v. Union of India, AIR 1967 SC 1427).

24. *Such discretion is usually given on matters of procedure or punishment, or costs of administration rather than with reference to vested substantive rights. The matters which should regulate the exercise of discretion have been stated by eminent judges in somewhat different forms of words but with substantial identity. When a statute gives a judge a discretion, what is meant is a judicial discretion, regulated according to the known rules of law, and not the mere whim or caprice of the person to whom it is given on the assumption that he is discreet (per Willes, J. in Lee v. Bude and Torrington Junction Rly. Co. (1887) LR 6 CP 576: 24 LT 827 and in Morgan v. Morgan, (1869) LR 1 P&M 644.”*

Therefore, exercising discretionary power by the Hon'ble Chief Justice in forwarding papers to the Hon'ble Judges' Committee would be contrary to the above principle laid down by the Supreme Court so also contrary to Rule 35 of Rules, 1973.

15. Learned counsel for the respondent raised a plea that petitioner cannot urge legal contentions in the writ proceedings and legal issues have not been urged by him before the disciplinary and appellate authority, therefore, the legal contentions of the petitioner are liable to be rejected. It is to be noted that filing of writ petition is court of first

instance. Therefore, legal issues can be raised at any point of time. In fact, Supreme Court in the following decisions held that if a question of law is involved and any violation of the statutory provision, in that event, the same can be entertained and it cannot be treated as it is a new plea:-

- i) ***Abhijit Pawar vs. Hemant Madhukar Nimbalkar and another***, reported in (2017) 3 SCC 528 (para 30) - Pure question of law - can be raised at any stage of the proceedings, more so when it pertains to jurisdiction of court
- ii) ***Shree Bhagwati Steel Rolling Mills vs. Commissioner of Central Excise and another*** reported in (2016) 3 SCC 643 (para 29) – Pure question of law going to the very jurisdiction of impugned action, held, maintainable for the first time before Supreme Court.
- iii) ***Rajendra Shankar Shukla and others vs. State of Chhattisgarh and others***, reported in (2015) 10 SCC 400 (Para 30)

In other words, if the legal contentions are taken, it will go to the root of the matter, therefore, respondent's counsel contention that petitioner cannot urge legal contention in absence of taking such pleas before the authorities is hereby rejected.

16. To sum up, three issues are:-

- i) The very entrustment of inquiry papers to the Committee by the disciplinary authority for its opinion and recommendation for imposing particular penalty is without authority of law;
- ii) In not providing copy of the Committee's two reports dated 10.11.2008 and 30.04.2009, one is for pre-mature retirement and other is for compulsory retirement on the petitioner before imposing the penalty of compulsory retirement is in

violation of principle of natural justice;

- iii) Both the disciplinary and appellate authorities have not considered each of the contentions raised by the petitioner before the disciplinary and appellate authority as is evident from the orders dated 07.05.2009 and 14.03.2011.

17. In the light of the aforesaid discussion, disciplinary authority's order dated 07.05.2009 and appellate authority's order dated 14.03.2011 are hereby set aside. The respondent – disciplinary authority is at liberty to proceed from the stage of receipt of petitioner's explanation / comments on the Inquiring Officer's report in accordance with law.

18. Writ petition stands allowed.

October 6th, 2017
vkd

[P.B. Bajanthri]
Judge

Whether speaking / reasoned : Yes

Whether reportable : Yes