

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

CWP No. 21094 of 2013 (O&M)

Date of decision: March 24, 2017

Praneet

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. D.V. Sharma, Senior Advocate with
Mr. Shivani Sharma, Advocate,
for the petitioner.

Mr. J.S. Puri, Additional Advocate General, Punjab.

JAISHREE THAKUR, J.

1. The instant writ petition has been preferred seeking to challenge the findings of the inquiry report and for writ in the nature of certiorari to quash the impugned order dated 3.9.2013 by which punishment of stoppage of one increment with cumulative effect has been imposed by respondent No.1.

2. In brief, the facts are that the petitioner was appointed to PCS (Executive Branch) in April, 1989. In the year 2003, the petitioner was appointed as an Electoral Registration Officer with the last date of filing of nomination papers fixed as 19.6.2003 and as per Section 32 (3) of the State Election Commission Act, 1994, votes could be deleted or included up to the last date of filing of the nomination papers. An application was received in the office of the Electoral Registration Officer for deletion of 140 votes of

village Said Mubarak. On the basis of the verification report, 118 votes were deleted out of the electoral roll, as the persons mentioned therein were either not found residing in the village or their names have been registered in other constituency or had died. A supplementary list of deleted votes of Said Mubarak was prepared and sent to the Returning Officer/BDPO on 19.6.2003 that is on the last date of filing of nomination. A complaint was made by one Jaswant Singh, who was a defeated candidate and whose name was never deleted, to the effect that 120 votes were deleted from the basic roll of 1998 and the said list was brought to the notice of the candidates only in the morning of 29.6.2003. Thereafter, a letter dated 23.7.2003 was written by the State Election Commission to the office of the Deputy Commissioner, Gurdaspur, for directing the SDM to send an official dealing with the subject on 24.7.2003 with the record pertaining to the deletion of votes. The record was sent to the Deputy Commissioner, Gurdaspur, by the petitioner on 26.7.2003 that is two days after the due date.

3. On the basis of the alleged irregularities in the voter list pertaining to village Said Mubarak, delay in sending the record to the office of the State Election commission, amongst another charge, the petitioner was served with a Memo dated 10.8.2004. The petitioner submitted a detailed reply and brought the factual aspect of the matter to the notice of the authorities. Thereafter, a charge sheet dated 7.10.2005 was issued to the petitioner at the instance of the State Election Commission, Punjab, and Shri S.R. Ladhar, IAS, Commissioner, Jalandhar, was appointed as an Inquiry Officer who submitted his report to the Chief Secretary, Punjab on 1.7.2008. It was alleged that during the course of inquiry no evidence was

led by the prosecution to prove the charge against the petitioner. The BDPO, who was the Returning Officer and the most crucial witness, did not appear to prove the alleged charge. The matter was referred to the Punjab Public Service Commission seeking approval to award major penalty under Rule 5 (v) to (ix) as mentioned in the Punjab Civil Services (Punishment and Appeal) Rules 1970 for short (the Rules of 1970). As the Commission did not agree with the imposition of punishment in the first instance, the matter was again sent for reconsideration and the Commission reiterated its stand. However, a decision was taken by the Cabinet of Ministers to impose a punishment of stoppage of one increment with cumulative effect, vide impugned order. Aggrieved against that, the petitioner has filed the instant writ petition.

4. Mr. D.V. Sharma, learned Senior Counsel, appearing on behalf of the petitioner herein, contends that the impugned order of punishment imposed upon the petitioner of stoppage of one increment with cumulative effect is wholly unwarranted and deserves to be set aside. It is argued that the punishment has been imposed after an inordinate delay of five years on completion of the inquiry, while submitting that there was non-compliance of Rule 24 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, which clearly shows that whenever the Commission is consulted regarding any punishment to be imposed, as has been done in the instant case, a copy of the advice by the Commission and where such advice has not been accepted also a brief statement of the reasons for non-acceptance shall be furnished to the Government employee. It is argued that in the instant case, the matter was put up before the Punjab Public Service Commission

regarding imposition of penalty of stoppage of one increment with cumulative effect, however, the Commission did not agree with the proposal and instead was of the opinion that the proposed punishment is excessive and the individual should be issued an advisory to be more cautious in future. It is further argued that the inquiry report itself is unsustainable on account of the fact that there was no evidence on record. Moreover, there is utter violation of Rule 8 (23) (i) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. In case, the complainant had any grievance against addition/deletion of names in the voters list, he had the statutory remedy of appeal which was not availed of. The action that was taken by the petitioner herein was on account of the Panchayat elections held under the Punjab State Election Commission Act, 1994, and Section 128 of the said Act provides protection for any act done in good faith.

5. Per contra, Mr. J.S. Puri, learned Additional Advocate General, counsel for the respondent-State submits that specific instructions had been issued by the State Election Commission on 9.5.2003, that there would be no change in the electoral roll, no addition/deletion shall be made after 20.5.2003 and any change shall be made only with the prior approval of the Commission. It is further submitted that the State Election Commission, vide their letter dated 3.7.2004, had brought to the notice of the Government that the petitioner while being posted as SDM had committed certain irregularities by deleting/restoring number of votes from the electoral roll without prior approval. It is on the recommendation of the Commission, the matter was considered and it was decided to initiate Departmental Proceedings under Rule 8 of the Punjab Civil Services (Punishment and

Appeal) Rules, 1970. The petitioner was served with the charge sheet dated 7.10.2005. However, no reply was given to the said charge sheet. An inquiry was conducted and the Inquiry Officer submitted his report. The inquiry report was sent to the petitioner to obtain his comments to which a reply was furnished by him. An opportunity of personal hearing was given to the petitioner by the competent authority. The competent authority came to the conclusion that it was not a case of mere illegality but it was a case of gross negligence and, therefore, a decision was taken to impose penalty of stoppage of one increment with cumulative effect. The matter was placed before the Punjab Public Service Commission for concurrence/advice to which it did not agree and thereafter, the matter was referred to the Commission for re-consideration. The Commission reiterated its advice and then it was decided to place the matter before the Council of Minister which disagreed with the Commission and decided to impose the penalty of stoppage of one increment with cumulative effect.

6. I have heard learned counsel for the parties and have also perused the record of the case.

7. The questions that requires to be decided in the instant writ petition are, whether there is a delay in imposition of penalty after conclusion of the inquiry and the effect thereof; and whether there is violation of Rules 8 (23) (i) and 24 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970.

8. Rules 8 (23) (i) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 reads as under

“ 8(23) (i) After the conclusion of the inquiry, a report shall

be prepared and it shall contain

- (a) the articles of charge and the statement of the imputations of misconduct or misbehaviour ;*
- (b) the defence of the Government employee in respect of each article of charge ;*
- (c) an assessment of the evidence in respect of each article of charge ;*
- (d) The findings on each article of charge and the reasons therefore.”*

9. Rule 8 of the Punjab Civil Service (Punishment and Appeal) Rules 1970 lays down the procedure for imposition of major penalty upon a delinquent officer, which clearly makes it mandatory for a procedure to be followed in the holding of the inquiry. Rule 8 (23) (i) stipulates that after the inquiry has been completed a report is to be prepared which shall contain the articles of charge and the statement of imputation of misconduct or misbehaviour, include the defence of the government employee in respect of each article of charge and thereafter give a finding on each article of charge and the reasons therefor. The language in the rule is mandatory and cannot be deviated from. The inquiry report notices the charges that have been leveled against the petitioner, and then notices the contentions of the petitioner in the written statement against the charges leveled against him, and thereafter the inquiry officer proceeded to hold that the charges stood proved against the petitioner.

10. In the case of **State of U.P. vs. Saroj Kumar Sinha (2010)**

2 SCC 772, it has been held:-

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental inquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental inquiry is conducted against the government servant it cannot be treated as a casual exercise. The inquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly

unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

11. This Court is conscious of the fact that it cannot sit as a court of appeal over the findings given in the inquiry report or on the matter of punishment imposed upon a delinquent officer. However, as held in case reported as the **High Court of Judicature at Bombay versus Shashikant S. Patil 1994 (4) SCT page 770**, interference with the decision of a departmental authority can be permitted in the exercise of jurisdiction under Article 226 of the Constitution of India, (i) if such authority had held proceedings in violation of principles of natural justice or in violation of statutory regulations prescribing mode of inquiry; and (ii) if a decision of authority is vitiated by consideration extraneous to the evidence and merits of the case or if conclusion made by the authority on very face of it is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion.

12. On a conjoint reading of **Saroj Kumar Sinha (supra)** and **Shashikant S. Patil (supra)**, it can safely be concluded that the departmental inquiry has to be conducted in accordance with the statutory provisions, the inquiry officer is not a representative of the Department, but a quasi-judicial officer whose duty is to examine the evidence even in the

absence of the delinquent officer, and on examination of the evidence, record a finding as to whether the charges are proved or not. The entire ratio as laid down in the aforesaid judgments is that the inquiry has to be conducted in a fair manner by following the rules of natural justice and in case the same is not done the High Court can interfere under Article 226 of the Constitution of India.

13. The finding of the inquiry officer on charge No. 1 is not based on any discussion of evidence nor have the contentions raised regarding charge No. 2 being taken into account or discussed. On the whole, reading of the conclusion per charge does not satisfy the mandate of Rule 8 (23) (i) of the Rules of 1970. Statement of the petitioner is annexed as Annexure P-7, in which it has been stated that instructions issued on 09.05.2003, by which it had been specified that no addition or deletion in the voters list could be made without prior approval, did not reach his office, whereas a press statement had been issued by the Election Commissioner Sh. C.L Bains that votes could be made/deleted up to 19.06.2003. It was stated that as per Section 31 and Section 32 of the Punjab State Election Commission Act 1994, additions and deletions could be made till the filing of nomination i.e 19.6.2003 in the instant case and no changes have been made thereafter. Evidence was also annexed in support of the contentions raised, however, the inquiry officer has not taken these documents into consideration while holding charge No. 1 proved against the petitioner. Even the findings on charge No. 2 are against the record. In the written statement filed, it has been submitted that time was sought for by letter dated

24.07.2003 to locate the record and send it and the same was sent on 26.07.2003. There is no discussion of the statement and evidence as produced before the inquiry officer in the inquiry report. Therefore, the inquiry report is faulty. Rules have been prescribed as to how an inquiry is to be conducted and inquiry report to be prepared. In the instant case, the Inquiry Officer has acted in an arbitrary manner while illegally ignoring the evidence before him and, therefore, if the inquiry report is based on no consideration of evidence, it cannot be sustained in law.

14. An argument has been raised by the learned counsel for the petitioner, that the petitioner could not be held liable for any proceedings that were done under the Punjab State Election Commission Act 1994 since Section 128 provides protection to the Election Commission or any officer for any act done in good faith in the course of conducting an election, and in case a person had a grouse they had a remedy of an appeal under the Act itself. It is contended that no such appeal was filed. Moreover, the elections that were held in the year 2003 pertained to elections for the Panchayat under Punjab Panchayat Election Rules 1994 and Section 31 permitted the electoral registration officer to correct any clerical or printing error that he may discover in the electoral roll. In the instant case, the petitioner would be entitled to the benefit of Section 128 in case he did not receive communication dated 09.05.2003 which was issued by the State Election Commission not to make additions and deletions in the voters list without prior approval. Section 128 provides immunity to the Election Commission or any person acting under the directions of the Election Commission from

any suit or legal proceedings in case any act is done in good faith. The categorical stand herein is that the petitioner was not on receipt of communication dated 09.05.2003 and acted in good faith to update the voters lists which issue has not been dealt with by the Inquiry Officer, thus drawing a presumption in favour of the delinquent officer. Statements of witnesses have not been dealt with as well.

15. Mr. D.V. Sharma, learned Senior Counsel appearing on behalf of the petitioner, also urges that the petitioner has been put to great prejudice as there is violation of Rule 24 of the the Rules of 1970 insofar as there was no communication to the petitioner as to why the advice of the Public Service Commission was not being accepted. Mr. J.S. Puri learned Additional Advocate General on the other hand submits that no prejudice has been caused to the petitioner on account of not supplying the reasons for disagreeing with the advice of the Punjab Public Service Commission not to impose any penalty. Non-supply of the reasons for disagreeing with the advice of the Punjab Public Commission would not be fatal in the instant case as it is well-settled that advice of a Public Service Commission is not binding and only a recommendation. In the law, as laid down in **Managing Director, ECIL, Hyderabad versus B. Karunakar (1993) 4 SCC 727**, it has been held that where the inquiry report is not furnished to the delinquent employee in the disciplinary proceedings, the courts/tribunals should cause a copy of the report to be furnished to the aggrieved employee and give the employee an opportunity to show how his or her case was prejudiced because of non-supply of the report. The inquiry proceedings

should only be set-aside if the court/tribunal finds that the furnishing of the report would have made a difference to the result and in that case the order of punishment should be set-aside. In the instant case, had the disagreement note been made available to the petitioner, no difference would have been made to the punishment that was to be imposed. It was the Cabinet of Ministers who considered the case of the petitioner and decided to impose the penalty of stoppage of one increment. Therefore, by placing reliance upon a judgment rendered in **Managing Director ECIL Hyderabad** (supra) this court is of the opinion that no prejudice has been caused to the petitioner by non-compliance of Rule 24 of the Rules of 1970.

16. Another factor that needs consideration, is whether there is a delay in imposing penalty upon the petitioner? Admittedly, the petitioner was served with a memo regarding the irregularities in the electoral rolls on 10.08.2004. Thereafter, it was proposed to hold a regular inquiry by order dated 07.10.2005 and the inquiry officer submitted his report on 01.07.2008 and eventually by the impugned order dated 03.09.2013, major penalty was imposed of stoppage of one increment with cumulative effect. Despite inquiry having been completed on 01.07.2008 the punishment came to be imposed after a period of 5 years. The Department seems to have slept and woken up only in April 2013 when the matter was referred to the Punjab Public Service Commission for its advice. There is no explanation forthcoming as to why the matter was not concluded in a reasonable time frame. A similar matter came up for consideration before this court in a **Rajender Kumar Sood Junior Engineer versus State of Punjab 1994 (1)**

RSJ 355, where the Single Bench of this Court dealt with the case where

there was a delay caused by the punishing authority in issuing show cause notice after it had received the inquiry report. It was held that *‘such a long delay leads me to the conclusion that the proceedings against the petitioner must have been dropped. Final show cause notice to a delinquent official has in public interest and in fairness to the official to be issued within a reasonable time and as early as possible after the receipt of the inquiry report and not that he remains on tenterhooks and that Damocles’ sword kept hanging on him for years together as in the present case. If there is inordinate delay after the receipt of the report it can well be presumed that a competent authority had dropped the proceedings’*. The learned Single bench relied on several judgments to concur with the views expressed therein and quashed the show cause notice issued on the ground of inordinate delay. In the instant case there has been an inordinate delay in imposing punishment. As has been held time and time again, the State is expected to act in a fair manner which would necessarily mean to act in accordance with law and with promptitude. In case there is a delay in the issuance of a charge sheet, the courts are known to have stepped in to the rescue of the delinquent officer. It is also well settled that a person would be denied relief in case he does not approach the courts in time by applying the law of limitation and invoking the principles of delay and laches. Therefore, by applying the same principle, delay in imposing punishment after an inordinate delay of 5 years and thereby keeping the Damocles’ sword hanging, is certainly not warranted when coupled with the fact that the inquiry is vitiated. The impugned order of punishment deserves to be set-aside.

17. Therefore,in view of what has been discussed hereinabove, this Court is of the opinion that the inquiry report suffers from the vice of being in violation of Rule 8 (23) (i) of the Punjab Civil Service (Punishment and Appeal) Rules 1970 insofar as there is no discussion of the evidence produced on the record by the petitioner and findings are contrary to the evidence on the record. The inquiry report itself is vitiated and any punishment thereto would be unsustainable.

18 . The writ petition is hereby allowed and impugned orders are set aside.

March 24, 2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No