

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.2779 of 2014 (O&M)
Date of decision : February 01, 2017

Major Singh Sandhu

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Harinder Sharma, Advocate for the petitioner.

Mr. T.N. Sarup, Addl. A.G., Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

The petitioner, who retired as District Education Officer (DEO) from District Moga, has sought writ of certiorari for quashing the inquiry report dated 15.11.2011 (Annexure P-6), the order of punishment dated 22.10.2012 (Annexure P-7) and the order passed in review application dated 22.01.2013 (Annexure P-9) being violative of Punjab Civil Services (Punishment and Appeal) Rules 1970. He also claims that the deduction made from the pension of the petitioner, in pursuant to the said order be refunded to him along with interest @ 12% per annum.

The petitioner started his service career as Social Studies Master in the Education Department of the Government of Punjab on 08.10.1975. He was promoted as Head Master on 06.10.1989 and was

promoted to the cadre of Punjab Education Services (PES) Officer in the School and Inspection Cadre on 14.12.1996 and was posted as DEO. He superannuated on 13.12.2009. The petitioner claims that throughout his service career, the petitioner performed his duties with full dedication and to the entire satisfaction of his superiors. However, towards the end of his service career, the then Director General School Education, Punjab-cum-State Project Director, Sarv Sikhiya Abhiyan Authority Punjab, Shri Krishan Kumar, I.A.S., who was also holding the post of Special Secretary in the Department of School Education of the Government of Punjab, involved the petitioner by framing frivolous charge-sheet against the petitioner in a bid to spoil his service career. It is stated that vide order dated 14.05.2009 (Annexure P-1), a Committee was constituted by the Director General School Education, Punjab, headed by Shri Avtar Singh, the then Deputy State Project Director (Admn.) (SPD)(A) and four other Members to visit the District Moga and make comprehensive report and point out if there are any embezzlement and procedural irregularities in utilization of funds. Shri Amit Mahajan, Assistant Manager (Internal Audit) submitted the report (Annexure P-2) pointing out certain discrepancies and irregularities in the office of DEO of District Moga.

Petitioner claims that at the time of visit of the said Committee, he was not present at Moga. In pursuant to the said report (Annexure P-2), a charge sheet dated 10.06.2009 (Annexure P-3), i.e. before the retirement of the petitioner, was issued to him under Rule 8 of the Punjab Civil Services Rules (Punishment and Appeal), 1970. The inquiry was entrusted to Shri J.P.S. Puri, I.A.S. (Retd.). After the retirement of the petitioner, the Inquiry

Officer submitted the report on 15.10.2011 (Annexure P-5), whereby he was held guilty of the charges Nos. 1, 3 and 6 to 10. Thereafter, a show cause notice was issued to the petitioner, in which the Secretary to the Government of Punjab, vide impugned order dated 22.10.2012 (Annexure P-7) held that the petitioner has been able to give satisfactory explanation regarding charges Nos.6, 8 and 10 but he could not give any explanation regarding charge Nos.1, 3, 7 and 9. Accordingly, punishment of 10% cut in the pension for three years was imposed on account of charges Nos.1, 3, 7 and 9 having been proved against the petitioner.

The petitioner submitted review application on 05.12.2012 (Annexure P-8) against the said order, which was dismissed vide order dated 16.01.2013, Endst. No.4/97/2009-4E4/748, dated 22.01.2003 (Annexure P-9). It is claimed that as per Rule 7 of the Punjab Education Service (School and Inspection) Group 'A' Services Rules 2004, the Government which is represented through its Principal Secretary/Secretary holding administrative control, is competent to impose the penalty/punishment and that the provisions of Punjab Civil Services (Punishment and Appeal) Rules 1970 are applicable to such inquiries. It is stated that the charge sheet has been issued by the authority subordinate to the authority competent to impose punishment which is violation of the mandatory provisions of Rule 8 of Punjab Civil Services (Punishment and Appeal) Rules 1970. The action was initiated by the then Director General of School Education-cum-Special Secretary in the Department of the Government of Punjab and the State Project Director, Sarv Sikhiya Abhiyan Authority Punjab with the misuse of his authority and power as Director General of School Education-

cum-State Project Director Sarv Sikhiya Abhiyan Authority, who constituted a Committee and obtained the report. Mr. Amit Mahajan, Assistant Manager (Internal Audit), who submitted report, was not the Member of the Committee, therefore, the mandatory provisions are violated.

Respondent Nos.1, 3, 4 and 5 in the reply took the plea that the petitioner committed large scale embazzlement and irregularities. The office of the District Project Officer, Moga was suddenly inspected on 18.05.2009 at 9.00 a.m. by a Committee constituted by the State Project Director, Sarv Sikhiya Abhiyan, Punjab. During the inspection of the record of District Project Officer by the said Committee, it was found that the petitioner has violated the procurement and financial norms while making the purchase with intention to give benefits to a particular firm. He committed irregularities in the purchase of furniture for the office of Sarv Sikhiya Abhiyan, Moga, ECCE component, AIE component, furniture under CRS/BRC uniforms, kits under AIE component and issuing of bearer cheques for which he had made himself liable to proceedings under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules 1970. The issuance of the charge-sheet and appointment of Inquiry Officer were admitted. It is stated that after the inquiry report, the opportunity of personal hearing was granted to the petitioner on 09.03.2012 and after considering his explanation and the personal hearing, the punishment order dated 22.10.2012 (Annexure P-7) was passed, after obtaining the consent from the Punjab Public Service Commission.

The allegations of personal bias by Shri. Krishan Kumar, IAS were denied. It is stated that he has not been impleaded as a party to the

present petition. It was denied that the charge-sheet has been issued by the subordinate authority. The matter of the issuance of the charge-sheet was specifically referred to Hon'ble the Education Minister, Punjab. It was after the approval from Hon'ble the Education Minister, Punjab that the charge-sheet was issued to the petitioner.

I have heard learned counsel for the parties and have also carefully gone through the case file.

The plea of the learned counsel for the petitioner is that Shri Krishan Kumar, IAS had personal bias against the petitioner. He was the Special Secretary in the Department of School Education of the Government of Punjab. He was also the Director General of School Education and was also holding the charge of Project Director of Sarv Sikhiya Abhiyan Authority of Punjab. In this way, he was having three charges of public departments. The allegations of the petitioner are of personal bias. No malafide are alleged against the petitioner by Shri Krishan Kumar, IAS. Shri Krishan Kumar, IAS did not act in the matter without holding preliminary inquiry in the matter.

A perusal of order dated 14.05.2009 (Annexure P-1) shows that it was during their monthly meeting as well as weekly review meeting that it was brought to the notice that compliance of the decision taken is not adequate in case of District Moga. This raised the suspicion of the Director General, School Education, Punjab-cum State Project Director, Sarv Sikhiya Abhiyan Authority, Punjab, who ordered the formation of the Committee on 14.05.2009 with a direction to visit the spot and submit the report. It was only after that the internal inquiry was conducted. As per stand of the

respondents, the matter was referred to the Minister of Education Department and it was only thereafter that the charge-sheet was issued. When the file is sent to the Education Minister, it is routed through the Secretary of the Education Minister. In this way, the Secretary is involved in the process.

As per Rule 7(2) of the Punjab Education Service (School and Inspection) Group 'A' Service Rules 2004, the Government is competent to impose the penalty after following the procedure under Punjab Civil Services Rules (Punishment and Appeal) Rules 1970. The Government does not mean that only the Principal Secretary is the Government. When the matter is routed by an authority to its minister, it is routed through the Secretary/Principal Secretary and after getting the approval from the Education Minister, the charge-sheet is issued. It is the act of the Government, though a Special Secretary might have actually signed the charge-sheet. In this case, the examination of the inquiry report shows that the Inquiry Officer examined the record and apparently an impartial report was submitted, in which some of the charges were held not proved. Only charges Nos.1, 3 and 6 to 10 were found to be proved by the Inquiry Officer. Thereafter, the reply of the petitioner was obtained and the Punishing Authority i.e. Secretary to the Government of Punjab Education Department (Schools) was satisfied that charges Nos.6, 8 and 10 have been satisfactorily explained. This was held despite the fact that the petitioner was held guilty by the Inquiry Officer regarding such charges also. The Punishing Authority held that the petitioner could not falsify the charges Nos.1, 3, 7 and 9. Therefore, the punishment was awarded on the basis of

those charges by imposing 10% cut in the pension of the petitioner for the period of three years. The punishment from this face is not harsh as it is limited to three years. When these charges are examined, it goes to show that the purchase of the furniture was made from one M/s Sumeksha Sales Corporation, Ropar and excess payment was made. This is despite the fact that the purchase could have been made from the nearby places from Ludhiana, which is more nearer to Moga. Charge No.3 is regarding issuance of bearer cheque to one Gurvinder Singh though the bill was shown from other firm, which does not do the painting work. Charge No.7 is regarding making substantial purchase of some articles from M/s Sumeksha Sales Corporation, Ropar by ignoring the local market. Quotations were also obtained from the sister concern of M/s Sumeksha Sales Corporation and excess rates were mentioned. The file work was completed only after the purchase of the articles. Charge No.9 is regarding the purchase of kits under AIE component.

In this way, I am of the view that a fair inquiry was held and the Secretary of the Department of School Education passed a well reasoned order. Therefore, it cannot be said that the punishment order passed by the Secretary is illegal. It being so, there is no illegality or infirmity in the inquiry report dated 15.11.2011 (Annexure P-6), the order of the punishment dated 15.10.2012/22.10.2012 (Annexure P-7) and the order dated 16.01.2003/22.01.2003 (Annexure P-9) passed on the review application and dismissing the same.

So far as the charges of bias against Shri Krishan Kumar, IAS are concerned, mere saying that he has bias, is not sufficient. No detail of

malafide has been given. The said officer while discharging his official duties, took cognizance of some irregularities and appointed a Committee to conduct the inspection and only after the inspection report, he proceeded with the matter and took up the same with the authorities. Since, the authorities up to the minister level were involved and after the approval from the Minister, the charge-sheet was issued, therefore, the authority of Hon'ble the Supreme Court delivered in case of ***"Amar Nath Chowdhury v Braithwaite and Co. Ltd."***, 2002 AIR(SC) 678 as well as the authority of this Court delivered in case of ***"D.K. Banerjee v Food Corporation of India"***, 1997(1)PLR 125 are not attracted in the present case.

Learned counsel for the petitioner has argued that the petitioner had retired at the time of passing of the punishment order. Since no financial loss was caused to the Government, therefore, no cut in the pension could be imposed under Rule 2.2(b) of the Punjab Civil Services Rules, Vol. II. In the present case, the inquiry was initiated during the service of the petitioner and since the petitioner retired during the pendency of inquiry, therefore, the punishment order was passed after his retirement, which is deemed proper under Rule 2.2(b). First of all, the irregularities mentioned above, indicate that the financial loss was caused to the Government. Due to irregularities committed by the petitioner, there was some financial loss to the Government, though the actual loss was not ascertained in the inquiry.

A three Judges Bench of Apex Court in case of ***"Anant R. Kulkarni v Y.P. Education Society and others"***, 2013(3) S.C.T. 188, examined such irregularities, where the person retired during the pendency of the inquiry and held that the proceedings can be continued even after the

retirement of the person and the financial loss can be recovered from the pension of the retired person, as in the said case, financial loss was involved.

In the present case, by imposing 10% cut in the pension, the loss caused to the Government is being recovered. Admittedly, it was observed by the Bench of three Judges, which is as under:

“18. Thus, it is evident from the above, that the relevant rules governing the service conditions of an employee are the determining factors as to whether and in what manner the domestic enquiry can be held against and employee, who stood retired after reaching the age of superannuation. Generally, if the enquiry has been initiated while the delinquent employee was in service, it would continue even after his retirement, but nature of punishment would change. The punishment of dismissal/removal from service would not be imposed.”

The Hon’ble Supreme Court in case of **“Inspector General of Police v Thavasiappan”, 1996(3) S.C.T., 680**, had even taken the view that the initiation of disciplinary proceedings by an authority subordinate to the punishing authority is not bad in law in the absence of any specific Rule in that regard. However, in this case it is not so.

In view of what has been discussed above, I do not find any merit in the present petition. As such, the same is dismissed.

(KULDIP SINGH)
JUDGE

February 01, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes