

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CM No. 5219 of 2018 in/and
Civil Writ Petition No. 18357 of 2015 (O&M)
Date of Decision: 30.04.2018**

Dharamvir Sharma

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. R.K. Arora, Advocate
for the **applicant-petitioner**.

Mr. Manoj Bajaj, Additional Advocate General, Punjab
for the respondents-State.

JASWANT SINGH, J.

CM No. 5219-CWP of 2018

Present application moved by the counsel for **applicant-petitioner** is for preponing the actual date of hearing from 05.07.2018.

Notice of the application was issued.

Learned State Counsel has no objection if the actual date of hearing is preponed from 05.07.2018 and the case is fixed for today itself.

In view of above, present **application is allowed**. The date of hearing is preponed from 05.07.2018 and the case is taken up today itself.

CWP No. 18357 of 2015 (O&M)

1. Present writ petition has been filed under Article 226 and 227 of the Constitution of India, seeking quashing of charge-sheet dated 03.11.2011 (**Annexure P-4**), inquiry report dated 22.08.2013 (**Annexure P-6**), termination order dated 03.06.2014 (**Annexure P-8**), and

order dated 24.12.2014 (**Annexure P-10**), whereby appeal of the petitioner has been dismissed.

2. The petitioner joined as Clerk in the office of respondent No. 2—Department of Health and Family Welfare. The petitioner was promoted as Senior Assistant w.e.f. 01.04.1989, and thereafter as Superintendent Grade-I on 01.01.2010. The petitioner attained the superannuation age of 58 years on 31.12.2015.

3. The petitioner was issued charge-sheet dated 03.11.2011 with below mentioned article of charges:-

(a) By concealing facts, without informing the competent authority, dealing with the firm of your wife and issuing supply order indirectly.

(b) Misusing your post.

(c) Negligence in performance of duty and causing financial loss to the department.

4. The petitioner filed reply to aforesaid charges, however, respondents were not satisfied with reply and appointed Sh. N.M. Oberoi, a retired I.A.S officer, as Inquiry Officer, who vide report dated 22.08.2013 (**Annexure P-7**) held him guilty and confirmed the charges.

5. The petitioner filed his reply/objection to inquiry report, however, Principal Secretary, Department of Health and Family Welfare decided to terminate service of the petitioner. The case of petitioner was sent to PPSC, Patiala for approval which was accorded, and termination order dated 03.06.2014 (**P-8**) was passed. The petitioner filed appeal/review before learned Minister, Health and Family Welfare Department who sought report from Director-respondent No. 2, and dismissed appeal/review on

Hon'ble Governor.

6. Learned counsel for the petitioner contended that wife of the petitioner was no doubt proprietor of M/s D.R. Surgical, but respondent-Department granted tender to Central/Public Sector undertakings (CPSU). The respondent neither ever allotted tender to M/s D.R. Surgical nor did it participate in the tender process. The Department has neither ever received goods from said firm nor made direct or indirect payment to said firm, therefore, there was no question of favour to firm owned by wife of the petitioner, and mere non-disclosure was of not any significance.

7. Per contra, Mr. Manoj Bajaj, Additional Advocate General, Punjab, argued on the line of reply which is nothing more than reiteration of findings of inquiry report as well termination order.

8. Having scrutinized record of the case and heard both the counsel, this Court finds that below mentioned undisputed facts emerge:

- i.M/s D.R. Surgical is engaged in manufacturing of Bandage. Wife of petitioner is proprietor of said firm which got drugs licence in the year 2001.
- ii.The petitioner intimated facts of issue of Drugs licence to respondent-Department.
- iii.M/s D.R. Surgical neither participated nor was allotted tender.
- iv. The tender was allotted to five CPSU in equal shares.
- v. The respondent-Department never made payment to M/s D.R. Surgical.
- vi.Drugs Inspector, Bathinda found that Bandages manufactured by M/s D.R. Surgical are Sub-Standard.
- vii.Director, Health and Family Welfare, Punjab vide memo dated 24.09.2014 opined that punishment of

dismissal from services is exemplary which is not proportionate to charges against the petitioner.

9. Having considered arguments of both the counsel, this Court is of the opinion that present petition deserves to be allowed with all consequential benefits. It is undisputed fact that the petitioner has for thirty-six (36) years served respondent-Department with unblemished record, except present alleged case of indirect purchase of bandage by Department from a firm, which is owned by wife of the petitioner. The respondent-Department invited tenders which were allotted to 5 CPSU equally. M/s D.R. Surgical neither participated in the tender process nor was made any payment by respondent-Department. It was not even case of respondent that M/s D.R. Surgical supplied material to respondent as third party Contractor or Sub-Contractor.

In the aforesaid circumstances, the allegation of Department cannot be believed at least for the purpose of exemplary punishment, i.e., termination of services. The Director, Health & Family Welfare, Punjab himself in its report proposed that services should not be terminated, in view of nature of allegations. The tender was allotted by a committee and the petitioner was not part of said committee. The respondent-Department, for the supply of sub-standard articles could take action as per law against M/s D.R. Surgical or any other supplier, if permitted by law. The respondent has no license to impose such a drastic and disproportionate punishment i.e. termination of services of petitioner just because wife of petitioner is proprietor of any manufacturing company whose material was purchased by any other company. There is nothing on record to show that respondent

initiated any action against CPSU or their vendors whereas action has been

taken against the petitioner who is neither part of committee allotting tender nor had any authority to grant tender. It is not the case of the Department that any loss has been caused or was caused to the Government by the mere non-disclosure by the petitioner of his wife being a proprietor of a firm, manufacturing bandages, which at best, for the violation of Rule 4 (3) of the Government Conduct Rules, 1966, would invite imposition of a minor punishment, rather than proceeding to issue a charge-sheet for imposition of a major penalty. The respondent again ignored un-blemished thirty-six (36) years' service record of the petitioner. Thus, it is evident that the Disciplinary Authority in the colorable exercise of power has acted in a palpably arbitrary manner. Consequently, it is held that the petitioner has been illegally denied to continue in service with effect from the date of his termination, i.e., 03/04.06.2014 **(P-8)** till the date of his superannuation on 31.12.2015. The petitioner also has been denied his right to seek extension in service for two years beyond the age of 58 years.

In view of the above observations, the present petition is **allowed** with all consequential benefits. Accordingly, the impugned charge-sheet dated 03.11.2011 **(P-4)**, enquiry report dated 22.08.2013 **(P-7)**, termination order dated 03/04.06.2014 **(P-8)** and the appellate order dated 24.12.2014 **(P-10)**, are set aside. The respondents are directed to release all the arrears of salary payable till the date of superannuation, i.e., 31.12.2015 and the retiral benefits including arrears of pension payable till today. It is further directed that the entire amounts due shall be paid within a period of four months from the date of receipt of certified copy of this order, failing which the petitioner would be entitled to award of interest @ 12% on the

total amounts due payable w.e.f. 01.06.2016 till the date of realization/payment, with permission to the Government to recover the same from the erring official(s) concerned.

April 30, 2018
'dk kamra'

(JASWANT SINGH)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>