

CWP No.8664 of 2012

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

Sr. No.203

Civil Writ Petition No.8664 of 2012

DECIDED ON: February 06, 2018

SURJIT KAUR

..PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. V.K. Shukla, Advocate, for the petitioner.

Mr. T.P.S. Chawla, Deputy Advocate General, Punjab.

JASPAL SINGH, J.

Ms. Surjit Kaur widow of Sh. Gurdev Singh-petitioner preferred instant civil writ petition under Article 226 of the Constitution of India, seeking issuance of a writ particularly in the nature of Certiorari for quashing the order dated dated 08.12.2010 (P-3) passed by respondent No.2, whereby a punishment of recovery of Rs.1,77,900/- has been inflicted upon her as well as order dated 06.12.2011 (P-5) passed by respondent No.1, whereby an appeal preferred by him against the order dated 08.12.2010 (P-3) has been dismissed. Further issuance of a direction to the

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respondents to release aforesaid amount of Rs.1,77,900/-, which has been withheld by respondents from her gratuity.

2. The main ground of attack raised by learned counsel for the petitioner to the impugned orders is that the same are absolutely, wrong, illegal, unlawful, unconstitutional and against the provisions of Punjab Civil Services (Punishment & Appeal), Rules, 1970 (for short 'Rules, 1970'). It is evident from the charge-sheet dated 11.09.2007 (P-1) that it was issued under Rule 8 of the Rules, 1970. Accordingly, respondents were obliged to conduct a regular inquiry prior to the passing of order dated 08.12.2010 (P-3). But in the instant case, no regular inquiry as required under Rule 8 of the Rules, 1970 was ever initiated or conducted. Neither any Inquiry Officer nor Presenting Officer was appointed under Rule 8 of the Rules, 1970. The respondents only got conducted a fact finding inquiry from the then Director (Field), Ferozepur and on the basis thereof, by switching over to the procedure prescribed for taking action under Rule 8 of the Rules, 1970, passed the impugned order only imposing a minor punishment. It is well settled proposition of law that once charge-sheet is issued for imposition of a major penalty which envisages holding of a regular inquiry, disciplinary authority cannot by merely examining the reply to the charge-sheet inflict even a minor punishment without holding a complete departmental inquiry and the orders passed in such a manner, while imposing a minor punishment are not sustainable in the eyes of law and deserves to be quashed.

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3. To buttress his contention, learned counsel for the petitioner has placed reliance upon the pronouncement of the Full Bench of this High Court delivered in “*Dr. K.G. Tiwari vs. State of Haryana, 2002(4) SLR 329; 2002(2) SCT 915*” as well as “*Puran Chand Sharma vs. State of Haryana, 1995(4) SCT 29*”.

4. On the other hand, learned State Counsel while controverting the aforesaid contentions raised by the learned counsel for the petitioner has argued with vehemence that on account of the fact that petitioner was served with a charge-sheet under Rule 8 of the Rules, 1970 for imposition of major punishment. But subsequently, on considering the reply to the charge-sheet, if a minor punishment has been imposed, it does not in any way prejudiced the petitioner. Moreover, in the case in hand, application of the principles of natural justice is not a question of observance of a formula or a mere technicality. It is meant to assure that party concerned had an opportunity of being heard i.e. principle of audi alteram partem. In the case in hand, on considering the reply to the charge-sheet furnished by the petitioner, a lenient view was taken and he was left with an imposition of a minor penalty. Since, there is no violation of principles of natural justice while passing the impugned order dated 08.12.2010 (P-3) as well as while passing the order dated 06.12.2011 passed by the Appellate Authority, no interference in the impugned orders is legally and factually justified.

5. To fortify his aforesaid contention, learned State counsel has placed reliance upon the judgment rendered in case *Shadi Lal Gupta vs. State of Punjab, 1973 (3) SCR 637; 1973(1) SCC 680* as well as another

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judgment rendered by the Hon'ble Apex Court in case ***D.H.B.V.N.L Vidyut Nagar, Hisar & Ors. vs. Yashvir Singh Gulia, 2013(4) S.C.T. 124; 2013 (3) Apex Court Judgments (SC) 15.***

6. This Court has given a deep thought to the rival submissions made by the learned counsel for the parties and have minutely scanned the documents available on file besides going through the various judgments relied by the learned counsel for the parties in support of their respective claims.

7. Concededly, petitioner was served with a charge-sheet dated 11.09.2007 (P-1) under Rule 8 of the Rules, 1970 but vide impugned order dated 08.12.2010 (P-3), the petitioner was inflicted a minor punishment i.e. recovery of a sum of Rs.1,77,900/- switching over to the procedure prescribed under Rule 8 of the Rules, 1970 for imposition of a minor penalty is impermissible as per the settled proposition of law and an identical controversy came before the Hon'ble Apex Court in ***Dr. K.G. Tiwari's case (supra)*** and after having considered the judgment rendered in ***Shadi Lal Gupta's case (supra)*** as well as other various judgments on the point that where a charge-sheet is issued for imposition of a major penalty, which envisages holding of a regular departmental inquiry, the disciplinary authority cannot by merely examining the reply to the charge-sheet, inflict even a minor punishment without holding a complete departmental inquiry.

8. Here it would also be pertinent to mention that ***Shadi Lal Gupta's case (supra)*** was also discussed at length by the Full Bench of this

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Court and came to the decision that the said judgment is not applicable in the facts and circumstances of the said case.

9. As far as another judgment relied upon by the learned State counsel rendered in ***D.H.B.V.N.L Vidyut Nagar, Hisar's case (supra)*** is concerned, the same is not applicable in the facts and circumstances of the case in hand particularly for the reason that it pertains to an employee of the electricity board to whom the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990 (for short Regulations, 1990) were applicable. There is a sub regulation 8 to Regulation 7, which specifically provides that where an employee has been charge-sheeted under Regulation 7(8) (for major punishment), the competent authority on receipt of his reply to the charge-sheet is of the opinion that no major punishment as laid down in Regulation 4 (vi to x) is called for, it may dispense with the holding of enquiry and inflict the minor punishment. For the proper appreciation of the said Rule, it would be appropriate to reflect the same, it reads as follows:-

“ 7(8) Where an employee has been charge-sheeted under this Regulation and the Competent Authority, on receipt of his reply to the charge-sheet is of the opinion that no major punishment as laid down in Regulation 4 (vi to x) is called for, it may dispense with the holding of enquiry and inflict straight away any of the minor penalties as laid down in Clause (i) (v) of the ibid Regulation by a speaking order.”

10. Here it would be pertinent to mention that in the aforesaid Regulations, 1990, there is a specific provision as referred to above which specifically provides that the disciplinary authority is Competent Authority

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to dispense with holding of a regular enquiry if it is of the view no major punishment is called for and inflict straight away any of the minor penalties as laid down in the ibid Regulations. The said provision is not applicable to the petitioner, she being governed by the Rules 1970, where there is no such provision.

11. So, net result of the aforesaid discussion is that once the punishing authority has opted to initiate the proceedings for imposition of a major penalty by way of serving a charge-sheet, it is not permissible for it, to switch over to the another Rule for imposition of a minor penalty. Accordingly, impugned orders dated 08.12.2010 (P-3) and 06.12.2011 (P-5) are not sustainable in the eyes of law.

12. In the light of foregoing discussion on law and facts, instant petition is allowed. Resultantly, both the orders dated 08.12.2010 (P-3) and 06.12.2011 (P-5) are set aside/quashed and an amount of Rs.1,77,900/- is ordered to be refunded to the petitioner, within a period of two months from the date of receipt of a certified copy of this order. In case of non-compliance of the aforesaid order, petitioner shall be entitled to interest @ 9% per annum from the date of filing of the instant civil writ petition i.e. on 08.05.2012 till actual realization.

13. No order as to costs.

February 06, 2018

Ankur

**(JASPAL SINGH)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

Yes/No