IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 20.08.2019

CWP No.7626 of 2017

Sant Lal ...Petitioner

Vs.

Punjab & Haryana High Court, Chandigarh & another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. S.P.Arora, Advocate,
for the petitioner.

Ms. Geeta Sharma and Mr. Amit Sharma, Advocates,
for the respondents.

RAJIV NARAIN RAINA, J.

1. The petitioner is a compulsory retired employee of the Sessions Division, Hisar. As per the statement of allegations that led to the order of petitioner's compulsory retirement on proof of misconduct, the case against him imputed was that his wife Veena Rani entered into an agreement of sale of immovable property in September 2004 with one Hari Nath Mehta son of Bhagwan Dass for purchase of SCO No.144 admeasuring 115 square yards situated in Red Square Market, Sector Commercial Urban Estate-I, Hisar for a consideration of Rs.4 lakhs. A sum of Rs.1 lakh was paid to the proposed vendor as earnest money. The registered sale deed was agreed to be executed on target date 15.02.2005 in terms of the agreement. Ultimately, payment of Rs.3 lakhs was made to the vendor in February, 2005 and possession of the property and its documents of title were handed over to the vendee – Veena Rani. Re-allotment letter was issued by HUDA on 21.03.2007 in favour of Veena Rani. The petitioner did not disclose about the acquisition of this

property in his property returns in the office of the District & Sessions Judge, Hisar and thereby he was charged with commission of breach of the Punjab Government Employees (Conduct) Rules, 1966 and instructions issued by Haryana Government and the High Court in this behalf from time to time.

2. On discovery of transaction, he was issued a show cause notice on 06.11.2013 and was asked to furnish information contained therein alleging that failure to furnish information regarding sale. For want of proper response another show cause notice was issued to him on 27.12.2013 for explaining the purchase of property. He was specifically asked to disclose the copy of the application for withdrawal of Rs.2 lakhs from GPF Account of his wife Veena Rani, who was a government servant working in the Education Department, Haryana together with documentary proof of resources of Rs.3 lakhs paid to the vendor. These documents were not produced. The complainant against the petitioner which led to his fall was Ram Kumar, a colleague – at the relevant time working as a Reader in the same Sessions Division. The complainant had listed the following moveable and immoveable properties acquired by the petitioner, which were stated to be disproportionate to his known sources of income:

> “1. SCO in the name of his wife Veena in Red Square Market, Hisar between Verma Dental Clinic and Minerva Hotel.
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> 2. Shop near Telephone Exchange, Sector 27-28,. Hisar.
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> 3. One house adjacent to his residential house in the name of his wife Veena which was earlier purchased in the name of his brother-in-law.

4. Two shops outside Sabzi Mandi, Hisar.

5. 500 gm. Gold purchased recently through a friend from Dubai.

6. Plot near Post Office, Model Town, Hisar.

7. Car No.HR-51A-2647 which is being used by him daily for traveling from Hisar to Hansi.

8. He has so many others Benami properties which are in the name of his relatives and friends, but actually owned by him.

9. He has so many bank accounts in different bank and different names."

3. The then Chief Judicial Magistrate was appointed as Enquiry Officer on 17.04.2012 for conducting a fact finding enquiry into the matter and asking her to submit her report. On transfer, another Judicial Officer, namely, Sh. Sudeep Goel conducted enquiry and submitted a report to the effect that property mentioned at Sr.No.1 in the aforesaid complaint stood in the name of Veena Rani. The report was submitted on 17.04.2013, wherein it was established that the charge-sheet property being an SCO stood in the name of Veena Rani, wife of the petitioner. Additionally, the Deputy Commissioner, Hisar was asked to conduct a thorough enquiry from the concerned Executive Departments on the complaint and to submit his report. The report was submitted on 20.03.2013 establishing what was found in the fact finding enquiry.

4. In his reply dated 27.11.2012 submitted to the Enquiry Officer, the petitioner denied owning any moveable or immoveable property in his name as alleged in the above said complaint. One thing was, however

proven that the wife of the petitioner had acquired property and the transaction in this regard was not disclosed to the employer Sessions Division. The show cause notices mentioned above followed. In response to the second show cause notice eliciting information regarding documentary proof of withdrawal of money, the petitioner furnished a sanction order dated 15.04.2004 passed by the DPEO, Hisar for withdrawal of Rs.2 lakhs and its disbursement to Veena Rani. However, he failed to furnish the requisite sanction order of the competent authority in the Education Department for purchase of the property in question and the documentary proof of her resources to meet the amount of Rs.3 lakhs paid to the vendor on 15.02.2005. He also failed to supply copy of her application seeking withdrawal of Rs.2 lakhs from her GPF Account. It was incumbent upon the government employee to observe utmost honesty and integrity, but in negation of that expected conduct, he deliberately concealed the acquisition of the property in question knowing full well and having reason to believe that the same is owned by his wife Veena Rani. The property was a commercial property, whereas the copy of sanction order was for withdrawal of amount from GPF Account for purchase of a house. This nailed the lie and exposed the petitioner to action under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 and the Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997.

5. The petitioner in his reply to the charge-sheet dated 24.09.2014 has submitted that the charge-sheet is not legally sustainable as it does not disclose as to which of the provisions/instructions relating to the government employees conduct have been violated by him. He wrote that he had

clarified that the property in question was acquired by his wife by utilizing her own resources and she utilized her savings for purchasing the property in question and that he had no role to play in this purchase. He submitted that Clause 2 of the Punjab Government Employees (Conduct) Rules, 1966 provided that no government employee shall except with previous knowledge of the prescribed authority acquire or dispose of any immoveable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any member of his family. The Rule talked about previous knowledge and the Department in which the petitioner's wife served had knowledge of the transaction. Therefore, the charge is not sustainable. He had cited government instructions dated 21.12.1992 to plead that they specifically laid down that property either acquired by the member or family of the employee from out of their own funds or inherited by them would not attract the provisions of these Rules. Therefore, he had nothing to do with the purchase and was not required to show the said property in his return of moveable or immovable property acquired by his wife.

6. The regular enquiry under Section 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 read with Rule 12 of the Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Services) Rules, 1997 was conducted by Shri Vimal Kumar, Judge and Enquiry Officer, Hisar. It was proved in the proceedings that the delinquent employee did not disclose property of his wife in his property return as per Rules and instructions on the subject. In his cross-examination, the petitioner admitted that in his property statement, he never mentioned anything regarding income or assets of his wife Veena Rani. He volunteered that she used to submit separate property statement with her employer.

7. The second show cause notice was served on the petitioner on 04.09.2015 with a copy of the enquiry report dated 25.08.2015 proposing to impose upon him one of the penalties provided under Rule 4(v) to (x) of the 1987 Rules. In reply thereof, the delinquent submitted that only the charge of non-disclosure of the acquired property by his wife in his own property returns was imputed, but according to him that non-disclosure was for the reason that he had no knowledge of such acquisition at the time of filing of his property returns as his wife was annoyed with him and did not disclose the factum of purchase to the delinquent. This part of the story is unbelievable and not easily bought. No evidence was produced by the delinquent that his relationship with his wife has broken down or they were separated from hearth and home. This was a defence of desperation and goes a long way in establishing prima facie mens rea, which is not outside the consideration of probabilities in departmental proceedings for the authorities to rely and depend upon. There is no proof of assertion that his relations with his wife were acrimonious. Being annoyed and acrimony are entirely different emotions and are distinct apart and because there was acrimony, he did not inform the department about the purchase of commercial site is an afterthought and weak defence. Here the petitioner was wrong in his statement. In the first instance, he said that he did not know about the transaction and they turned around to say that he could not disclose the transaction and could not inform the department. The non-disclosure was a deliberate act on his part to hide facts of acquisition of property. He also asked for pardon for the lapse, if any, and a lenient view may be taken in the matter of punishment. He was due to retire on 31.05.2016. He was compulsorily retired short by a few months by way of penalty.

8. Rule 18 of the Punjab Government Employees (Conduct) Rules, 1966, applicable at the relevant time, prescribed as follows:

> "**18. Movable, Immovable and Valuable Property –** (1) Every Government employee shall on his first appointment to any service or post and thereafter at such intervals as may be specified by the government, submit a return of his assets and liabilities, in such form as may be prescribed by the Government, giving the full particulars regarding-
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> (a) The immovable property inherited, owned, acquired or held on lease or mortgage, by him or his spouse or any member of his family, either in his own name or in the name of any other person;
>
> (2) No Government employee or any dependent member of his family shall except with the previous knowledge of the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any dependent members of his family;
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> Provided that the previous sanction of the prescribed authority shall be obtained by the Government employee if any such transaction is:-
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> (i) With a person having official dealings with the government employee, or
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> (ii) Otherwise than through a regular or reputed dealer.
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> (4) The Government or the prescribed authority may at any time, by general or special order, require a government employee to furnish, within a period specified in the order, a full and complete statement of such movable or immovable property held or acquired by him on his behalf or by any member of his family as may be specified in the order. Such statement shall, if so, required by the government or by the prescribed authority, include the details of the means by which, or the source from which such property was required."

9. The punishing authority in its order was correct in reasoning that it was not the case of the delinquent that his wife Veena is residing separately from his by a decree or order of the court. The defence that the delinquent was in a strained relationship with his wife is an attempt to pull wool over his eyes and deserves to be discredited without going into anything further. His first reflex to save himself from punishment by speaking the untruth reflects that he disclaimed knowledge about the transaction and his second reflex is an attempt to cover up the transaction pretending that his wife was annoyed with him and thus did not inform him about the transaction. What nails him is documentary proof that she applied for a residential house and bought a commercial property instead and this aspect was amply picked up by the punishing authority.

10. An SCO i.e. commercial property in market value is much more than a residential house. Municipal taxes were levied on commercial rates. In the request to the department, it was her duty to give full particulars of the property including its nature i.e. residential or commercial. In the absence thereof, the government does not accord such sanction. Besides, there is a lot of time difference between the date of sanction of refundable advance and the execution of agreement to sell to purchase the property in question. Therefore, it was reasoned that the aforesaid advance was not for the purchase of commercial property and this material fact was deliberately withheld in the application on the basis of which sanction order was passed by the authority.

11. There is another aspect in the shape of copy of property returns (Ex.D-4), wherein the delinquent was shown to have started a recurring deposit of 5 years in her daughter’s name, but requisite particulars showing

maturity amount of the deposit, date of maturity, the mode of payment, utilization thereof are also missing form record. There is no material evidence on record, which may support the statement of the delinquent qua saving of Rs.5000/- per month for his child in those days, which is a tidy amount. The authority summed up that the defence of the delinquent was false and an adverse inference can be drawn that he and his wife had acquired the property in question without the proper sanction from their respective prescribed authorities. He failed to produce the documentary proof of the resources available with them to foot the sale consideration, registration charges incurred on execution of sale deed/conveyance deed etc. The acquisition of the property in question by his wife is in clear violation of the provisions of Rule 18 of the 1966 Rules. She may not have been dependent upon him for income, but it was incumbent upon him and his wife to prove that the property was acquired by her out of her own funds. He failed to prove that the acquisition of property in question was within the known sources of her income. The property returns furnished by the petitioner in the office of the District & Sessions Judge does not disclose the maturity amount, date of maturity and its utilization. The petitioner's statement that his career was unblemished was false on the face of the record. Vide order dated 27.12.1996 passed by the then District & Sessions Judge, Hisar, punishment of stoppage of one annual increment without cumulative effect was imposed upon him for negligence in the performance of his official duties. As a result of the findings recorded, the charges stand proved against the delinquent that he is guilty of breach of Conduct Rules, 1966 in acquiring property in question in the name of his wife by utilizing the amount of sale consideration which was beyond their known sources and this tantamount to unbecoming conduct by a government servant. A lenient view could not be taken, as retention of such a person in government service is no longer in the interest of the department and the general public. In the main, the punishing authority deemed fit to impose penalty of compulsory retirement from service upon the delinquent official. He was ordered to stand compulsorily retired from service w.e.f. 08.01.2016, short of his retirement on superannuation.

12. The petitioner's service appeal was dismissed by the then Hon'ble Administrative Judge of Hisar Sessions Division by order dated 25.01.2017 accepting the reasoning of the disciplinary authority. Finding the order in accordance with the statutory rules and there being no illegality therein, it was held that there was no scope for interference in appeal.

13. Having heard Mr. S.P.Arora, learned counsel at length appearing for the petitioner and Ms. Geeta Sharma, learned counsel representing the respondents, I find no reason or valid ground to interfere with the enquiry proceedings or the impugned order/s passed by the then Hon'ble Administrative Judge as well as by the District & Sessions Judge, Hisar.

14. As a result of the above discussion, I find no merit in this petition and it is ordered to stand dismissed. The order of compulsory retirement is upheld.

20.08.2019 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes/No*