

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RA-CW-153-2020 (O&M) in
CWP-24312-2016
Date of Decision:-27-08-2020.

Satnam Singh

.....Writ Petitioner

Versus

Punjab Water Supply & Sewerage Board and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR

Argued by: Mr. Vijay Kumar Kaushal, Advocate for the
applicants-respondents.

Mr. Dhiraj Chawla, Advocate for the
respondent-writ petitioner.

SANJAY KUMAR, J. (Oral)

The Punjab Water Supply & Sewerage Board, Chandigarh (for short, 'the Board'), and its Board of Directors, the respondents in **CWP-24312-2016**, seek review of the final order dated 26.02.2020 passed therein, allowing the said writ petition.

The writ petition was filed by the respondent herein, an employee of the Board, aggrieved by the imposition of the major penalty of stoppage of three increments with future effect, *vide* order dated 04.03.2016 passed by the Chief Executive Officer of the Board, and the confirmation thereof in appeal by its Board of Directors, *vide* order dated 30.06.2016.

Perusal of the final order dated 26.02.2020, review of which is presently sought, reflects that this Court found that the writ petitioner had already been administered a warning on 24.02.2014 in relation to the very same irregularities which formed the basis for the later disciplinary proceedings that culminated in the impugned punishment of stoppage of three increments with cumulative effect. As the warning remained operative and was never withdrawn, this Court held that the writ petitioner was, in effect, penalized twice for the same irregularities.

The contention advanced on behalf of the Board even at that time was that the authority who had issued the warning to the writ petitioner was not competent to do so. However, this Court found that no material was produced in support of that contention. Further, this Court held that, even if that be so, the Board necessarily had to recall the warning issued to the writ petitioner and only thereafter, initiate disciplinary proceedings afresh. It was categorically held that, without taking recourse to such procedure, the Board could not justify two penalties being visited upon an employee for the same misconduct. Reliance was placed on precedential law in support of this legal proposition and in consequence thereof, the writ petition was allowed.

While so, this review application was filed mainly on the ground that Office Order dated 20.03.2020 had been issued by the Chief Executive Officer of the Board withdrawing the warning issued to the petitioner in the year 2014. In effect, the Board now seeks to turn back the clock and nullify the past, by taking a cue from the observation made in the final order that, without withdrawing the said warning, fresh disciplinary proceedings could not have been initiated against the writ petitioner.

Mr. Vijay Kumar Kaushal, learned counsel for the Board, would contend that in the light of the law laid down by the Supreme Court in **P.N. Eswara Iyer and others Vs. Registrar, Supreme Court of India [(1980) 4 SCC 680]**, it would be open to this Court to take note of subsequent events also for the purpose of exercising review jurisdiction. However, perusal of the said decision demonstrates that, therein, the Constitution Bench was dealing with the substantive power of the Supreme Court under Article 137 of the Constitution and in that context, it was observed that the expression 'record', in its semantic sweep, would mean any material brought on record even later with the leave of the Court and would embrace subsequent events, new light and other grounds which are found in Order 47 Rule 1 CPC. The observations do not come to the aid of the Board.

On similar lines was the *ratio* laid down by the Supreme Court in **Ram Chandra Singh Vs. Savitri Devi and others [(2004) 12 SCC 713]**. That was a case turning upon the inherent power of the Supreme Court to correct mistakes in judgments and it was observed that in appropriate cases, the Supreme Court may pass an order *ex debito justitiae* and correct mistakes in its judgments, but its inherent power could be exercised only when there did not exist any other provision in that behalf. This judgment did not even touch upon the scope of a review application filed under Order 47 Rule 1 CPC.

Perusal of the said legal provision demonstrates that an application for review can be maintained on the strength of discovery of new and important matter or evidence which, after exercise of due diligence, was not within the knowledge of the party or could not be produced by it at

the time the judgment or order was passed; or on account of some mistake or error apparent on the face of record; or for any other sufficient reason.

In the case on hand, the Board seeks review of the final order passed in the writ petition on the ground that it thereafter removed the basis of the said order. Be it noted that the final order completely turned upon the fact that the writ petitioner had already been subjected to a 'warning' in relation to the very same misconduct and without withdrawing the same, the Board had resorted to fresh disciplinary proceedings. Therefore, the office order passed on 20.03.2020, being a wholly new development originating and ensuing from the adjudication itself, cannot be equated to 'new and important matter or evidence' in terms of Order 47 Rule 1 CPC. Significantly, the provision also postulates that such 'new and important matter or evidence', despite exercise of due diligence by the party, could not be produced at the time of passing of the order. In effect, such 'new or important matter or evidence' must have been in existence even at the time of disposal of the case but it could not be produced for *bonafide* reasons. Therefore, the said expression would not take within its ambit an order which was passed after the disposal of the case with the sole intention of invalidating the basis of such disposal.

Further, the mere withdrawal of the warning at this late stage would not operate retrospectively, thereby validating the initiation of the subject disciplinary proceedings. The office order dated 20.03.2020 is therefore of no avail to the Board.

Mr. Vijay Kumar Kaushal, learned counsel, would contend that a 'warning' does not figure amongst the prescribed penalties in the service

regulations of the Board and, therefore, it would be incorrect to say that the writ petitioner was 'penalized' twice. However, this Court finds no merit in this contention. If the Board, in its wisdom, did not even deem the misconduct of the writ petitioner to be serious enough to warrant at least a minor penalty and let him off with a mere warning in the year 2014, it could not thereafter have second thoughts and initiate major penalty proceedings against him without first recalling the warning issued to him.

Significantly, in **Nand Kumar Verma Vs. State of Jharkhand and others** [(2012) 3 SCC 580], a decision referred to in the final order, the Supreme Court held initiation of a second inquiry on the charges which were 'dropped earlier' to amount to harassment. Similar was the view taken in **Union of India and others Vs. Harjeet Singh Sandhu** [(2001) 5 SCC 593]. Therefore, the argument that not even a minor penalty was levied upon the petitioner initially and that it would be open to the Board to initiate disciplinary proceedings afresh, ignoring the warning, cannot be countenanced. Pertinent to note, if that was the understanding of the Board, there was no necessity for it to withdraw the warning on 20.03.2020. The Board cannot approbate and reprobate to suit its own convenience.

Further, the fact that the Board took a clue from the reasoning in the final order and unilaterally passed the office order in March, 2020, withdrawing a warning letter issued in the year 2014, does not constitute a 'sufficient reason' for invoking the review jurisdiction of this Court. In **Dr. Amitabh Kumar Vs. Union of India** 2017 SCC Online Jhar 1851, the Jharkhand High Court observed that the words 'sufficient reason' in Order 47 Rule 1 CPC are wide enough to include misconception of fact or law.

However, neither misconception of fact nor of law is pleaded or proved presently, to constitute a 'sufficient reason'.

The other ground raised in the review application is that the Engineer-in-Chief of the Board was not competent to issue a warning to the writ petitioner. This ground is unworthy of consideration as this very argument was raised even at the stage of the hearing of the writ petition but no material was produced in support thereof. The Board cannot be permitted to contend that such material was not available with it at that time and therefore, it should be allowed to now make good the lapses on its part. The levels of competence of the Board's officers, as per its rules, would have been available with the Board even then. A review application is not the means for a party to improve its case by belatedly producing material that was available with it all along. Further, even if accepted, this contention is of no avail as the warning issued to the writ petitioner was not withdrawn before initiation of the disciplinary proceedings.

Thus, both the grounds raised in the review application are devoid of merit and do not warrant exercise of review jurisdiction.

The review application is accordingly dismissed.

CM-6796-CWP-2020 shall also stand dismissed.

(SANJAY KUMAR)
JUDGE

August 27, 2020.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.