

CWP-15676-2016

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

CWP-15676-2016

Date of Decision: 16th January, 2020

Dalbir Singh & others

...Petitioners

Versus

State of Punjab & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Suman Jain, Advocate,
for the petitioners.

Mr. Charanpreet Singh, Asstt. A.G., Punjab.

AUGUSTINE GEORGE MASI, J. (ORAL)

Prayer in this writ petition is for quashing of the order dated 11.07.2016 (Annexure P-13) passed by the Director, Agriculture Department, Punjab – respondent No.2, whereby, the petitioners, who were promoted as Superintendent Grade-II in the pay-scale of Rs.10300-34800+4800/- grade pay, against the leave vacancy on temporary basis, were served with an order of cancelling their promotion w.e.f. 17.04.2015 i.e. the date of their promotion.

2. It is the contention of the learned counsel for the petitioners that the services of the petitioners, after having been promoted w.e.f. 17.04.2015 as Superintendent Grade-II against leave vacancies were held to

be in violation of the instructions issued by the Government of Punjab. Petitioners had performed their duties for the period, for which they have now been denied the benefit and that too, after their superannuation. No notice was issued to the petitioners prior to passing of the impugned order dated 11.07.2016 (Annexure P-13). That apart, he asserts that because it is alleged that the promotion of the petitioners was done wrongfully in violation of the instructions issued by the Government of Punjab, charge-sheets were issued to the Director and Joint Director, Agriculture Department, Punjab but after holding an enquiry, the promotion of the petitioners has been found to be in accordance with the rules and therefore, charge-sheets served upon the said officials have been dropped. He contends that once the charge-sheets issued to the Director and Joint Director, Agriculture Department, Punjab, have been dropped by the Competent Authority, wherein it has been found that the promotion of the petitioners was not in violation of the Government instructions and no action has been taken against such alleged erring officials, petitioners cannot be penalized for an act, in which they had no role nor is such an allegation. That apart, it is asserted that the said order has been passed after the retirement of the petitioners, which cannot be so done especially in the light of the fact that no notice has been served upon them. Prayer has, thus, been made for setting aside the impugned order dated 11.07.2016 (Annexure P-13).

3. On the other hand, learned counsel for the State submits that irrespective of the fact as to whether the charge-sheets have been dropped

against the Director and Joint Director, Agriculture Department, Punjab, it goes without saying that the promotion of the petitioners could not have been done as it was in violation of the instructions of the State Government. The said action may not have been found to be of such a nature, which would require the departmental proceedings to continue against the officials but promotion of the petitioners is not sustainable. He, however, could not dispute the fact that no notice was issued to the petitioners prior to issuance of the impugned order dated 11.07.2016 (Annexure P-13).

4. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the records of the case.

5. The primary reason as to why the impugned order dated 11.07.2016 (Annexure P-13) has been passed by the Director, Agriculture Department, Punjab, is that the promotion of the petitioners were in violation of the instructions issued by the Government of Punjab and that there were no regular sanctioned posts available against which they could have been promoted. Perusal of the order of promotion of the petitioners would indicate that they were not promoted on regular basis but were promoted against the leave vacancy on temporary post with a condition that they can be reverted at any time. If that be so, the reason assigned in the order of reversion dated 11.07.2016 (Annexure P-13) cannot sustain.

6. That apart, the impugned order dated 11.07.2016 (Annexure P-13) would indicate that because of the fact that the promotion of the petitioners was found to be in violation of the Government instructions and

with *mala fide* intention, an enquiry was initiated against the then Director and Joint Director, Agriculture Department, Punjab. In the said enquiry, which is an admitted fact, the allegations made therein have not been substantiated leading to the dropping of charge-sheets against the said officials vide order dated 08.07.2019 (Annexure P-19). If that be so, the stand of the respondents in passing of the impugned order itself loses the steam as the very basis for passing the order having gone, the impugned order cannot sustain.

7. Another aspect which would go against the respondents and in favour of the petitioners is that the right, which has been conferred upon the petitioners, has been taken away by the respondents by passing an order without even issuing them a notice, which is in violation of the principle of natural justice. This alone is a ground enough to set aside the impugned order dated 11.07.2016 (Annexure P-13). It may be added here that the petitioners, on their promotion, have performed their duties on the said post of Superintendent Grade-II and had also superannuated. It cannot be said nor has it come on record that the promotion as granted to the petitioners were in any manner triggered or moved at the behest of the petitioners. That be so, the impugned order dated 11.07.2016 (Annexure P-13) cannot sustain.

8. In view of the above, the present writ petition is allowed and the impugned order dated 11.07.2016 (Annexure P-13) passed by the Director, Agriculture Department, Punjab – respondent No.2, is hereby quashed.

9. It has been pointed out that the full retiral benefits, which the petitioners are entitled to, have not been released to them till date. If that be so, the said benefits be released to the petitioners at the earliest and in any case, within a period of three months from the date the petitioners approached the respondents with complete papers with regard to the remaining retiral benefits.

16th January, 2020
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

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