

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

2007

Civil Writ Petition No.7268 of 2011
Date of Decision: February 13th, 2020

Dharam Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Y.P. Singla, Advocate
for the petitioner.

Ms. Anju Sharma Kaushik, Deputy Advocate General, Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the charge-sheet dated 21.11.2007 (Annexure P-2), inquiry report dated 26.12.2008 (Annexure P-4), order of punishment dated 04.08.2009 (Annexure P-7) imposing cut in pension to the extent of 5% for ten years and the order dated 19.10.2009 (Annexure P-9) vide which the suspension period of the petitioner has been treated as *dies non*.

2. It is the contention of learned counsel for the petitioner that as per the inquiry report dated 26.12.2008 (Annexure P-4) submitted by the Inquiry Officer, there are only two charges out of the seven charges, which have been partially proved according to the punishing authority. Charge No.2 related to non-completion of the inspection of society and charge No.6 was not sending the passed resolution of the society to the office of the concerned Assistant Registrar, Cooperative Societies. He contends that the inquiry report does not indicate that charge No.6 was proved as it has come on record that the petitioner had sent the resolutions to the office of the concerned Assistant Registrar. He, however, contends

that the finding which has been taken against the petitioner is that there has been negligence in his duties for not complying with the instructions of the Head Office in this regard. The counsel contends that observation in the inquiry report qua charge No.6 is contrary to what has been said in the earlier part of the conclusion, where it has been said specifically that there are no written instructions of the Assistant Registrar, Cooperative Societies, Samrala, which required the Inspector to send the resolutions of the Managing Committee or as an Administrator to the office on different dates within a time bound manner. As regards charge No.2, he contends that the allegations were based upon the records which were produced by Pardeep Kumar, Clerk. This Pardeep Kumar, Clerk, as per the inquiry report, did not appear for cross-examination, rather he was not produced for the same. That apart, he contends that qua charge No.2, the allegation was that he had not completed the inspection of the society, which fact has been found to be wrong. What has been stated is that the petitioner had sent the inspection reports late. Nothing has come on record which would require the petitioner to submit the inspection reports within some specified time and in any case, the delay, if any, is not substantial as it has come on record that the inspection was carried out by the petitioner on 15.02.2007 and 28.03.2007 and the reports were sent to the office in June 2007.

3. In the light of the above, counsel contends that the punishment which has been imposed upon the petitioner is unsustainable. He, thus, prays that the impugned order be set aside and the petitioner be granted the consequential benefits.

4. Counsel for the State, on the other hand, contends that the Inquiry Officer, after going through the evidence, has returned finding holding the petitioner to be guilty of charges No.2 and 6, may be partially. It cannot be said that the charges, which were levelled against the petitioner, were without any basis as petitioner has been held liable for sending the inspection report of the society after completion thereof late and with regard to the non-sending of the resolutions to the office of the concerned Assistant Registrar within time. She contends that the negligence of the petitioner having been established as per the report of the Inquiry Officer, the punishing authority has agreed with the same and passed the punishment order dated 04.08.2009 (Annexure P-7). In the light of the punishment order which has been passed on 04.08.2009, she contends that the appeal has rightly been dismissed by the Appellate Authority vide order dated 26.11.2009 (Annexure P-8). As regards treating the suspension period of the petitioner as *dies non*, is a consequence upon the petitioner having been found guilty of the charges proved against him and, therefore, is sustainable.

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

6. A perusal of the inquiry report would leave no manner of doubt that the submissions as made by the counsel for the petitioner deserve acceptance as the Inquiry Officer has, with regard to charge No.2, concluded that the inspection of the society was done by the petitioner in time, however, there has been delay in sending the same to the Head Office.

This finding is not borne out from the records as the audit was duly conducted by the petitioner, as has been stated above on 15.02.2007 and 28.03.2007 at Machhiwara and forwarded in June 2007, which cannot be said to be an unreasonable delay and in any case, there are no charges against the petitioner with regard to delay in submission of the inspection report. The charge against the petitioner was for not completing the inspection of the societies, which was found to be not proved.

7. As regards charge No.6, the Inquiry Officer has himself stated that the said charge has not been proved against the petitioner as there were no instructions or rules, which mandated or required the sending of the resolutions of the society or as the Administrator to the office of the concerned Assistant Registrar. In the absence of such a requirement under the rules/instructions, even the finding of negligence on the part of the petitioner, is without any basis.

8. In the light of the above, the inquiry report itself cannot sustain. The punishing authority has accepted the inquiry report and has proceeded to impose a cut of 5% in pension for ten years vide order dated 04.08.2009 (Annexure P-7), which is unsustainable in the light of the fact that the charges against the petitioner have not been proved and there is no dissenting note given by the punishing authority. Similarly, the Appellate Authority has also failed to look into this aspect and, therefore, the consequential order dated 26.11.2009 (Annexure P-8) passed in appeal deserves to be set aside. With the setting aside of the punishment orders passed against the petitioner, the consequential order dated 19.10.2009

(Annexure P-9) vide which the period of his suspension with effect from 09.05.2007 to 31.11.2007 was treated as *dies non* also cannot sustain.

9. In view of the above, the present writ petition is allowed. Impugned orders dated 04.08.2009 (Annexure P-7), 26.11.2009 (Annexure P-8) and 19.10.2009 (Annexure P-9) are hereby set aside. The consequential benefits be released to the petitioner within a period of two months from today.

February 13th, 2020
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No