

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

105

Civil Writ Petition No.6678 of 2018
Date of Decision: February 7th, 2020

Surinder Kumar Sharma

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. K.B. Raheja, Advocate
for the petitioner.

Ms. Monica Chhibber Sharma, Sr. Deputy Advocate General,
Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

On 31.01.2020, following order was passed:-

“Learned counsel for the petitioner contends that the petitioner, who is working on the post of Inspector, Food and Supplies and Smt. Damanjit Kaur, Assistant Food and Supplies Officer, were charge-sheeted on 04.07.2014 (Annexure P-5) In pursuance thereto, an inquiry was held in which the petitioner and Smt. Damanjit Kaur were exonerated of the charges in the report dated 18.12.2018. On the basis of the said inquiry report, petitioner was satisfied that he would not be proceeded with any further, however, the Principal Secretary to Government of Punjab, Food Civil Supplies and Consumer Affairs Department, vide order dated 28.12.2017 (Annexure P-10) imposed punishment of stoppage of two annual increments with cumulative effect upon petitioner as well as Smt. Damanjit Kaur, Assistant Food and Supplies, Officer. Petitioner challenged the said order by filing the present writ petition.

It is the contention of learned counsel for the petitioner that the appointing and punishing authority of the petitioner, as per the Punjab Food and Supplies (Class III) Service Rules, 1990 (hereinafter referred to as '1990 Rules'), is the Director of the Department and the Appellate Authority is

Government. Petitioner submits that the order of punishment as has been passed is of the Secretary, which is the Appellate Authority, thus, denying the petitioner the remedy of his statutory appeal as provided under rules. In support of this contention, he has placed reliance upon Rule 16 of the 1990 Rules. Referring to Rule 7 of the said 1990 Rules, he contends that all appointments to the Class-III service have to be made by the Director and, therefore, the Director is the appointing authority. Referring to the appendix 'A' attached to the rules, post of Assistant Food and Supplies Officer finds mention at Sr. No.7 in the District Office (Ministerial and Executive) Branch. Post held by the petitioner i.e. Inspector, Food and Supplies finds mention at Item No.8 of the said appendix. He on this basis contends that the appointing and punishing authority of the petitioner as well as Smt. Damanjit Kaur was the Director and not the Secretary to the Government of Punjab. He, thus, contends that the punishment as imposed upon the petitioner by the Secretary is not sustainable as it is in violation of the statutory rules.

With regard to this contention, response of the respondents-State is that since the punishing authority of the Assistant Food and Supplies Officer is the Government, therefore, the Secretary as per the provisions of Section 12 of the Punjab Punishment and Appeal Rules, 1970, the said authority would be the competent authority in the case of the petitioner as well as there was a common inquiry held, was to be dealt by the said authority.

Counsel for the petitioner submits that this stand of the respondents is not sustainable in the light of the 1990 Rules, wherein the appointing and the punishing authority has been provided to be as Director of both Assistant Food and Supplies Officer as well as Inspector, Food and Supplies. Counsel for the petitioner has further referred to an order dated 04.12.2018 (Annexure P-13) passed by the Principal Secretary, Department of Food, Civil Supplies and Consumer Affairs, Punjab, wherein the so purported appeal preferred by

Smt. Damanjit Kaur, Assistant Food and Supplies Officer, has been accepted in the light of the award of `8,03,45,334/- has been passed by the Arbitrator in favour of PUNGRAIN and against M/s. Lavan Arora Rice & General Mill, Talwandi Bhai, on 14.07.2017 and further taking into consideration the fact that she along with the petitioner had been exonerated in the inquiry report dated 29.06.2015 submitted by the Deputy Director, who was appointed the Inquiry Officer.

Counsel for the State prays for an adjournment to seek instructions with reference to the above assertions of the counsel for the petitioner, especially with regard to the appointing and punishing authority of the petitioner as also the Assistant Food and Supplies Officer as also the order dated 04.12.2018 (Annexure P-13) passed by the Principal Secretary, Department of Food, Civil Supplies and Consumer Affairs, Punjab, whereby Smt. Damanjit Kaur, Assistant Food and Supplies Officer, who is similarly placed as the petitioner, has been exonerated by the said authority.

*Adjourned to **07.02.2020**.*

To be shown in the urgent list.”

2. In pursuance to the said order, reply to the writ petition has been filed by the respondents.
3. Perusal of the reply would not indicate as to how the statutory rules could not have been followed with regard to imposition of penalty, especially in the light of Rule 16, which provides for the punishing authority as well as the Appellate Authority, according to which Director, Department of Food, Civil Supplies and Consumer Affairs is the punishing authority for Assistant Food and Supplies Officer as well as the Inspectors. The punishment order dated 28.12.2017 passed by the Principal Secretary, Punjab Government, Department of Food, Civil Supplies and Consumer Affairs, Punjab, being in violation of the statutory

rules cannot sustain and is hereby set aside for the simple reason that by virtue of the said order, the statutory remedy of appeal would not be available to the petitioner as the Government is the Appellate Authority as per Rule 16 of the Rules, referred to above.

4. It may also be pointed out that the appeal preferred by the Assistant Food and Supplies Officer, who was also one of the persons who had been proceeded against along with the petitioner and a common inquiry was held against them, where the findings were against both of them and had been given punishment vide the same impugned order, has resulted in the passing of an order by the competent authority, whereby the punishment imposed vide the impugned order has already been waived off. Petitioner, therefore, cannot be differently treated as he is similarly placed.

5. In view of the above, the writ petition is allowed and the impugned order dated 28.12.2017 (Annexure P-10) is hereby quashed.

6. It goes without saying that the petitioner shall be entitled to all consequential benefits as a result of the quashing of the impugned order.

7. The consequential benefits be released to the petitioner within a period of three months from today.

February 7th, 2020
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No