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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-6183-2016
Date of Decision: 17.03.2022

Bipan Kumar Sood

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Harjot Singh Bedi, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

(Through Video Conference)

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<u>HARSIMRAN SINGH SETHI J.</u> (ORAL)

The present petition has been filed challenging the issuance of the charge-sheet dated 17.04.2015 (Annexure P-5) to the petitioner by respondent No.2 on the ground that respondent No.2 was not competent to issue the same to the petitioner, therefore, as the charge-sheet has been issued by a person not competent to do so, the same is liable to be set aside.

As per the averments made in the petition, the petitioner was working in the Department of Animal Husbandry and Fisheries, Diary Development, Punjab. In the year 2009, the petitioner was promoted as a Deputy Director and after the said promotion, as the post of Director in the said Department was vacant, the petitioner was asked to discharge the duties of the post of Director and Warden Fisheries. Thereafter, the petitioner was promoted as a Joint Director, Fisheries by respondent No.2 on 23.09.2011. Though, the petitioner was on substantive rank of Joint Director, Fisheries but he kept on discharging the duties of the post of Director, during which period a charge-sheet was served upon the petitioner on 17.04.2015, alleging certain allegations. The said charge-sheet has been impugned by the petitioner in the present petition on the ground that as the petitioner was discharging the duties of the post of Director, which post is of the Head of the Department, hence as per the Rules of Business issued by the Standing Order dated 04.04.2012, the charge-sheet can only be issued after the approval of the same by the Chief Minister of Punjab, whereas in the present case the charge-sheet has been issued by respondent No.4, who is not competent to do so. The alternative argument of the petitioner is that even if his substantive rank of Joint Director, Fisheries, is to be taken in consideration still, the charge-sheet can only be issued to the petitioner, being a Class-A Officer after the approval by the Minister-in-charge which approval was never asked for hence the impugned charge-sheet issued by respondent No.2, i.e. the Financial Commissioner and Principal Secretary to the Government of Punjab, Department of Animal Husbandry, Fisheries and Dairy Development, is without jurisdiction and liable to be set aside on this ground alone.

Upon notice of motion, the respondents have filed the reply and in the reply, the respondents have defended their action of issuance of the charge-sheet to the petitioner by respondent No.2. In the reply, respondents have conceded that the petitioner was discharging the duty of the post of Director, Fisheries in the year 2014 at the time when the charge-sheet was served and that his substantive rank was of Joint Director. To support the fact that substantive rank of the petitioner was that of Joint Director, the respondents have submitted that the petitioner attained the age of superannuation in the year 2014 and even the extension in service granted to the petitioner, prior to the issuance of the charge-sheet, described the petitioner as Joint Director, hence, the claim of the petitioner that he was Head of the Department and is to be treated as Director for all intents and purposes even for the issuance of the charge-sheet, is not at all correct.

The respondents have further submitted that as per the Rules of Business, in respect of which Standing Order was issued on 04.04.2012, there are three annexures which details as to what matters are to be decided at the level of the Chief Minister, Minister-in-charge concerned and the Financial Commissioner of the said Department. Learned State counsel also submits that the case of the petitioner with regard to the issuance of the charge-sheet is covered under Annexure-III of the Notification, wherein at Clause No.8, which deals with the calling of explanation of Group A & B Officers and issuance of the charge-sheet under Rules 8 & 10 of the Punjab Punishment & Appeal, Rules, 1970, as per which the Financial Commissioner and the Secretary of the Department is competent. The stand of the respondents is that there is no irregularity in issuance of the charge-sheet dated 17.04.2015 to the petitioner by respondent No.2.

The learned counsel for the petitioner in rebuttal argues that the present case is either covered by Clause No.3 of Annexure-I of the Standing Order dated 04.04.2012 or under Clause No.25 of Annexure-II of the same order, according to which, the prosecution, suspension, dismissal, removal or compulsory retirement of a head of the department and any Group A & B Officers, it is the Chief Minister and Minister-in-charge respectively, after whose approval only, the Charge-sheet can be issued by the Financial Commissioner and therefore, in the present case, Clause No.8 of Annexure III of the Standing Order dated 04.04.2012 is not applicable, whereas either Clause No.3 of Annexure-I or in alternative, Clause No.25 of Annexure II of the Standing Order dated 04.04.2012 issued on 04.04.2012 are applicable, and therefore, respondent No.2 was not competent to issue the petitioner the charge-sheet.

I have heard learned counsel for the parties and have gone through the records with their able assistance.

First of all, the factual aspect which is being raised in the present petition needs to be decided, which is whether the petitioner is to be treated as the Head of the Department, i.e. Director Fisheries so as to bring him within the domain of Annexure-I of the Standing Order dated 04.04.2012 so as to conclude that it is only the Chief Minister, after whose approval, the charge-sheet can be issued to the petitioner or not. It is a conceded case that the substantive rank of the petitioner is that of a Joint Director, Fisheries. The petitioner was never promoted as Director, Fisheries at any given point of time during his service career. For initiating proceedings, the substantive rank is taken into account and not the post of which, an employee is discharging the duties on current duty basis. Though, the petitioner might be discharging the duties of the post of Director, Fisheries on current duty basis at a given point of time, but all the benefits and the proceedings which are to be initiated against the petitioner are to be taken into account, keeping in view the substantive rank of the petitioner. Once the petitioner was substantively holding the post of a Joint Director, the jurisdiction to initiate proceedings is to be seen on the basis of the said substantive rank being held at the time of the initiation of the proceedings.

It is a conceded fact that at the time of issuance of the charge-sheet dated 17.04.2015, the substantive rank of the petitioner was of a Joint Director, Fisheries. That being so, the petitioner cannot claim himself to be holding the post of a Director/Head of the Department substantively hence the petitioner is to be treated as Joint Director for initiating the disciplinary proceedings against him.

Now once, the petitioner is to be treated as a Joint Director, this Court is to examine, as to which is the competent authority to issue the charge-sheet to a Joint Director working in the Department of the Fisheries, keeping in view the Standing Order dated 04.04.2012.

It is not disputed that a Standing Order has been issued by the Government of Punjab on 04.04.2012, so as to bifurcate the jurisdiction as to which cases are to be dealt by the Financial Commissioner; the Minister-in-charge of the concerned department and the Chief Minister of the State respectively. The cases to be dealt by the Chief Minister have been detailed in Annexure-I to the Standing Order dated 04.04.2012. The cases to be disposed of by the Minister-in-charge to Government of Punjab, Department of Animal Husbandry, Fisheries & Dairy Development have been detailed in Annexure-II of the Standing Order dated 04.04.2012, and the cases which are to be disposed of by the Financial Commissioner and the Secretary to Government of Punjab, Department of Animal Husbandry, Fisheries & Dairy Development have been detailed in Annexure-III of the Standing Order dated 04.04.2012.

Clause-3 of the Annexure-I of the Standing Order dated 04.04.2012 which relates to the cases to be submitted to the Chief Minister, which is being relied by the petitioner is as under:-

> *"3. Proposals for the prosecution, suspension, dismissal,*

removal or compulsory retirement of the officers holding the posts of the heads of department and the posts equivalent thereto;"

The Clause-25 mentioned in Annexure-II of the Standing Order dated 04.04.2012 also being relied upon by the learned counsel for the petitioner in the alternative,, giving jurisdiction to the Minister-in-charge the concerned department reads as under:-

> *"25. Proposals for the prosecution, suspension, dismissal, removal or compulsory retirement of any group A and B officers."*

A bare perusal of the above reproduced provisions of the Standing Order dated 04.04.2012 would show that the same deals with the proposal for prosecution, suspension, dismissal, removal or compulsory retirement of the Officers holding the post of the Heads of Department and equivalent, for which the Chief Minister has the jurisdiction and for Class 'A' and 'B' Officers, for which the jurisdiction is with the Minister-in-charge.

Similarly, the cases which are to be disposed of by the Financial Commissioner have been detailed in Clause-8 of Annexure-III of the Standing Order dated 04.04.2012, which is as under:-

> *"8.Calling of explanation of group A and B officers and issuance of charge sheet under Rule 8 and 10 of the Punishment and Appeal Rules, 1970."*

A bare perusal of the same would show that the jurisdiction of seeking explanation of Group A & B Officers and issuance of charge-sheet under Rule 8 & 10 of Punjab Civil Services (Punishment and Appeal) Rules, 1970 is within the jurisdiction of the Financial Commissioner and Secretary to Government of Punjab, Department of Animal Husbandry, Fisheries & Dairy

Development.

The above factual aspect makes it clear that the charge-sheet to all the Group A & B Officers can be issued by the Financial Commissioner and Secretary to Government of Punjab. Once, it is admitted that the petitioner is a Group A Officer and cannot be treated as head of the department, he will be covered under Clause-8 of Annexure-III of the Standing Order dated 04.04.2012 and the Financial Commissioner and Secretary to Government of Punjab, Department of Animal Husbandry, Fisheries & Dairy Development is competent to issue a charge-sheet.

As far as Clause-3 of Annexure-I or Clause-25 of Annexure-II of the Standing Order dated 04.04.2012 which deals with the proposal for prosecution, suspension, dismissal, removal or compulsory retirement of the officers holding the post of the Heads of Department and the equivalent post or Group A & B Officers, which case to be dealt by the Chief Minister and the Minister-in-charge respectively, the same are applicable where order of suspension, dismissal, removal or compulsory retirement is to be passed against an officer and does cite the issuance of the charge-sheet to the officer concerned. In case, any Head of the Department or a Class A & B Officer is to be suspended also, then the approval of the Chief Minister/Minister-in-charge as the case may be, is necessary but where only the charge-sheet is to be issued, keeping in view the simple and plain language used in the Standing Order dated 04.04.2012, the same can be issued by the Financial Commissioner and Secretary to Government of Punjab, Department of Animal Husbandry, Fisheries & Dairy Development.

If along with issuance of a charge-sheet, Head of the Department or a Class A & B Officer is to be suspended also or where after inquiry into the allegations alleged in the charge-sheet, any punishment is to be imposed, only in those cases, the approval of the Chief Minister is required in case of the Head of the Department and approval of Minister-in-charge is required in case of the Class A & B Officers. The plain language of Clause No.8 of Annexure-III of the Standing Order dated 04.04.2012 makes it clear that while issuance of charge-sheet either to the Head of the Department or to a Group A & B Officer, no approval of the Chief Minister or the Minister-in-charge is needed and respondent No.2 is competent enough to issue a show-cause notice or the charge-sheet to the concerned official. If the argument of the learned counsel for the petitioner that even the charge-sheet to a Head of the Department or Group A & B Officers is to be issued after the approval of the Chief Minister or Minister-in-charge respectively is accepted the Clause-8 of Annexure-III would stand redundant and will carry no meaning. Learned counsel for the petitioner failed to submit that in case his argument is accepted than in which case, Clause No.8 of Annexure-III of the Standing Order dated 04.04.2012 will apply. While interpreting a Clause of the Standing Order, every clause of the said Standing Order has to be given meaning to and the interpretation to any clause can't be such that another Clause of the said Standing Order gets redundant. A harmonious interpretation is to be given to each and every Clause, hence keeping in view the said, as per the doctrine of harmonious construction, the interpretation rendered to Clause No.3 of Annexure-I, Clause No.25 of Annexure-II and Clause No.8 of Annexure-III of the Standing Order dated 04.04.2012 hereinbefore will apply.

If the argument which is being raised by the learned counsel for the petitioner that the Clause 3 of Annexure-I is to be interpreted to mean that the charge-sheet has to be approved by the Chief Minister in case of the Head of the

Department and by the Minister-in-charge in case of Group A & B Officers first, and the Financial Commissioner concerned has to only convey the same under Clause-8 of Annexure-III of the Standing Order dated 04.04.2012 has to be accepted, then the language of Clause-8 of Annexure-III of the Standing Order dated 04.04.2012 would have been different. Here, Clause-8 of Annexure-III of the Standing Order dated 04.04.2012 gives details of the cases specifically to be dealt by the Financial Commissioner. The interpretation being extended by the learned counsel for the petitioner that Clause-8 is to be interpreted only to mean that the Financial Commissioner is only a conveying authority, is not borne out of the language of Annexure-III of the Standing Order dated 04.04.2012 and hence, cannot be accepted. It is a conceded position that even as of now, in the cases which are covered under Clause No.3 of Annexure-I & Clause No.25 of Annexure-II, the orders are issued by the respondent No.2 after the approval of Chief Minister or the Minister-in-charge concerned, as the case may be. Hence, the argument of the learned counsel for the petitioner cannot be accepted.

Keeping in view of the above, no further irregularity is found in the issuance of the charge-sheet to the petitioner by respondent No.2. Furthermore, learned counsel for the petitioner submits that the proceeding in respect of the said charge-sheet has already attained finality as the petitioner was found guilty and even the punishment has been imposed, which has also attained finality as of now. That being so, no relief can be granted to the petitioner *qua* the prayer made in the present petition.

The present petition is, accordingly, dismissed.

17.03.2022 **(HARSIMRAN SINGH SETHI)**
Bhumika **JUDGE**

1. Whether speaking/reasoned : Yes 2. Whether reportable : Yes