IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIAGRH

C.W.P. No.21562 of 2008(O&M)
Reserved On: 12.04.2023
Decided on:04.07.2023

Limber Kumar Sandhir

...Petitioner

Versus

State of Punjab and others **..Respondents**

Civil Writ Petition No.35124 of 2019

Limber Kumar Sandhir

...Petitioner

Versus

State of Punjab and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: **Mr. R.K.Arora, Advocate,**
for the petitioner.

Mr. R.K.Kapoor, Addl.A.G., Punjab.

ANIL KSHETARPAL, J.

1. With the consent of the learned counsels representing the parties, both the writ petitions shall stand disposed of by a common order

2. While praying for the issuance of a writ in the nature of certiorari to quash the orders passed on 28.07.2008 and 03.08.2008, the petitioner, in substance, prays for the issuance of a writ in the nature of mandamus to calculate and release his pensionary benefits in accordance with his seniority at the time of his retirement along with 10% interest.

3. The question which arises for consideration is "Whether it is permissible to hold a departmental inquiry after the competent officer has closed the departmental proceedings based on the inquiry report?"

4. The relevant facts, in brief, are required to be noticed in order to grasp the controversy involved in the case.

A charge-sheet was issued to the petitioner on 15.12.2004. On filing of the reply by the petitioner, the disciplinary authority appointed the Joint Controller (Treasury & Accounts) as the Inquiry Officer. The gravamen of the charge against the petitioner is that, after he was transferred to Banga on 12.03.1999, which became his headquarters, he was not entitled to any travel allowance for coming and going to Banga, but only to transfer travel allowance. The Inquiry Officer in its detailed report dated 14.06.2005 reported that the charges against the petitioner are not proved. On 28.10.2005 the Special Secretary Finance and Director (Treasury and accounts), Department of Finance, Punjab, the punishing authority took a conscious decision to drop the charges against the petitioner. After almost two years on the basis of a complaint received from Sh. Inderpal Singh, the son of respondent no.4, the Principal Secretary directed the Additional Director, Audit Organization (Revenue), Punjab, to re-inquire the charges levelled against the petitioner. On receipt of the report dated 29.11.2007, the petitioner was issued show cause notice giving opportunity to the petitioner to file reply. While filing of the reply, the petitioner explained that Sh. Inderpal Singh is the son of respondent no.4 with whom he has long standing enmity. Despite detailed reply, the Principal Secretary vide order dated 28.07.2008 ordered the following punishments:-

(1) The entire amount drawn on account of wrong TA and the conveyance allowance by producing wrong handicap certificate be recovered from the dates of drawals along with interest @ 10% from Shri Limber Kumar Sandhir, Junior Assistant.

(2) Shri Limber Kumar Sandhir, Junior Assistant be reverted to the post of Clerk with immediate effect and placed at the minimum of the scale of the clerk."

5. On the basis of the order, the District Treasury Officer vide office order dated 03.10.2008 has debited the 'Head 2071-Pension' and other retiral benefits to the extent of Rs.1,21,160/-. Challenging the correctness of the aforesaid order, the present writ petition has been filed.

6. This Bench has heard the learned counsels representing the parties at length and perused the synopsis filed by them along with the paper book.

7. The learned counsel representing the petitioner has made elaborate submissions, however, for the purpose of the decision of the present case, it is not necessary to discuss all the contentions.

8. The order passed on 04.06.2007 is (Annexure R-12) and is at page 177 of the paper book. It is evident that the Principal Secretary noticed that vide order dated 28.10.2005, the charges issued to the petitioner were dropped after accepting the inquiry report. The Principal Secretary has failed to record any reason whatsoever to justify the order to re-inquire the

charges levelled against the petitioner. The operative part of the order reads as under:-

> *"Whereas one Shri Inderpal Singh, resident of # 173, New Mehar Singh Colony, Patiala, represented to the Principal Secretary to Government of Punjab, Department of Finance, wherein he complained of false T.A claim by Shri Limber Kumar Sandhir, Junior Assistant for the days whgile he was on casual leave/station leave. In this regard the complainant also sent a copy of report obtained under the Right to Information Act from the District Treasury Officer, Jalandhar. On request of above said complainant an opportunity of personal hearing was also given to the complainant by the Principal Secretary to Government of Punjab, Department of Finance. In view of the evidence produced by the complainant, it is felt that there exist grounds for thorough investigation of the charges leveled against Shri Limber Kumar Sandhir for making TA claim. And as such Shri Darshan Singh Sidhu, Additional Director, Internal Audit Organization (Revenue), Punjab, Chandigarh, is hereby appointed as Inquiry Officer to re-enquire the charges leveled against Shri Limber Kumar Sandhir, Junior Assistant by taking into account all the relevant record."*

9. The State of Punjab in exercise of powers conferred under proviso to Article 309 of the Constitution of India has framed the Punjab Civil Service (Punishment and Appeals) Rules, 1970 (hereinafter referred to as the '1970 Rules'). Rule 9 of the 1970 Rules lays down the procedure for taking action on the inquiry report which is extracted as under:-

***9.Action on the inquiry report** -*

(1) The punishment authority, if it is not itself the inquiring authority may, for reason to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and the inquiring authority shall thereupon proceed to hold the further inquiring according to the provision of rule 8 as far as may be.

(2) The punishing authority shall, if it disagrees with the finding of the inquiring authority on any article of charge, record its reasons for each disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the punishing authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (I) to (iv) of Rule 5 should be imposed on the Government employee, it shall, notwithstanding anything contained in rule 10, make an order imposing such penalty;

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the punishing authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government employee.

(4) If the punishing authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of opinion that any of the penalties specified in clauses (v) to (ix) of Rule 5 should be imposed on the Government employee ,it shall make an order imposing such penalty and it shall not be necessary to give the Government

> *employee any opportunity of making representation on the penalty proposed to be imposed ;*
>
> *Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the punishing authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government employee."*

10. Sub-rule (1) of Rule 9 of the 1970 Rules enables the punishing authority to remit the case to the inquiry authority for further inquiry. Sub-rule (2) of Rule 9 enables the punishing authority to disagree with the findings of such inquiry authority while recording the reasons for each disagreement and record its own finding on such charges. Sub-rule (3) of Rule 9 enables the punishing authority to agree with the findings of the Inquiry Officer and to penalise the delinquent officer with the penalties specified under Rule 5 of the 1970 Rules. Sub-rule (4) of Rule 9 of the 1970 Rules is on the same lines as Sub-Rule (3). There is no provision in the rules that allows for a re-inquiry after the charges have been dropped by the competent authority in a detailed order.

11. Moreover, as already noticed, the Principal Secretary has not recorded his reasons to justify such re-inquiry. Though, the learned State counsel has filed the written arguments, however, he has failed to draw the attention of the Court to reasons that justify the passing of the order in question. It is contended that the correctness of the order dated 04.06.2007 has not been challenged. The argument of the learned State counsel is correct to that extent, however, such contention would not be sufficient

ground to dismiss the writ petition as it is a technical ground. The order dated 04.06.2007 has been produced as Annexure R-12. This Court has carefully read the order and the same is not only without jurisdiction but also not sustainable in law. In any case, the petitioner in the prayer (IV) has already prayed for any other appropriate writ, order or direction as this court may deem fit and proper according to the facts and the circumstances of the case.

12. Keeping in view the aforesaid facts and discussion, the writ petition is allowed and the impugned orders passed on 27.08.2008 and 03.10.2008 are set aside.

13. The petitioner is a physically disabled person and on attaining the age of superannuation, retired, hence, the respondents are directed to recalculate and release the pensionary benefits of the petitioner in accordance with law within a period of next two months, from today.

14. In Civil Writ Petition No.35124 of 2019, the petitioner while praying for issuance of a writ in the nature of certiorari to quash the order passed on 17.04.2017 by Additional Director (Treasury and Accounts), Punjab, in substance, prays for issuance of direction to the respondents to release the benefits of the Assured Career Progression Scheme on completion of 4/9/14 years of his service.

15. On careful reading of order dated 17.04.2017 (Annexure P-21), it is evident that the issue with regard to the release of benefits under the Assured Career Progression Scheme was kept pending in order to await the decision of Civil Writ Petition No.21562 of 2008 which has been allowed.

16. In view of the aforesaid facts, the competent authority is directed to decide the claim of the petitioner in accordance with law after grant of an opportunity to the petitioner within a period of two months from the date of order and if it is found that the petitioner is entitled to the benefits, the same shall be released further within a period of one month, from the date of such order.

17. With these observations, the Civil Writ Petition No.21562 of 2008 is allowed, whereas the Civil Writ Petition No.35124 of 2019 is disposed of.

18 All the pending miscellaneous applications, if any, are also disposed of.

04th July, 2023 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO