

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

**CWP-10878-2017 (O&M)
Date of decision : 14.02.2023**

Hartej Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Harjass Sandhu, Advocate for
Mr. P.S. Bajwa, Advocate
for the petitioner.

Mr. Sehajbir S. Aulakh, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J. (ORAL)

Present writ petition has been filed under Article 226/227 of the Constitution of India praying for issuance of writ in the nature of certiorari impugning the order dated 9th of May, 2017 (Annexure P-9) whereby the service of the petitioner has been discontinued.

2. While the petitioner was working as Superintendent with Municipal Corporation, Ludhiana. In the year 2007 a complaint was made against him. The petitioner was chargesheeted vide memo dated 18th of August, 2008 under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. The charges levelled against the petitioner were finally dropped on 10th of April, 2015 vide

Annexure P-4. The petitioner was thereafter promoted as Secretary Municipal Corporation on 29th of September, 2016 and was also granted on year extension of service from 1st of September, 2016 to 31st of August, 2017. On 9th of May, 2017 the services of the petitioner were discontinued with immediate effect vide Annexure P-9. The petitioner herein has challenged the aforesaid order dated 9th of May, 2017 (Annexure P-9) and seeks writ in the nature of mandamus directing the respondents to allow the petitioner to continue his services till August, 2017 i.e. when the extension of one year granted to him expires.

3. Counsel for the petitioner has argued that issuance of order dated 9th of May, 2017 impugned in the present writ petition, amounts to reviewing the order dated 10th of April, 2015 (Annexure P-4) whereby the same charges levelled against the petitioner were ordered to be dropped by the Competent Authority. Both the orders have been passed by the concerned Secretary, Department of Local Bodies. It has been claimed that merely for the reason that a direction was issued by this Court to look into the grievance raised by the complainant it does not entitle the authorities to review earlier order dated 10th of April, 2015. So much so, the authority has not even bothered to look into the earlier order whereby charges leveled against the petitioner were ordered to be dropped.

4. Per contra, Mr. Aulakh submits that the order dated 9th of May, 2017 (Annexure P-9) has been passed in compliance of the directions issued by this Court in CWP No.14872 of 2016 dated 28th of July, 2016. Thus, the authority was well within its right to pass the same and no fault can be found with the exercise of such jurisdiction. However he does not dispute that the order dated 9th of May, 2017 infact amounts to review of order dated 10th of April, 2015.

5. I have heard counsel for the parties and have gone through records of the case.

6. The short issue that arises in the present writ petition is : *'whether order dated 9th of May, 2017 which amounts to review of order dated 10th of April, 2015 (Annexure P-4) could be sustained ?'*

7. In order to answer the aforesaid issue it will be apposite to peruse order dated 10th of April, 2015 which reads as under :-

“Charge-sheet/Show Cause Notice issued by Municipal Corporation, Ludhiana to the following officers/officials under Punjab Civil Services (Punishment & Appeal) Regulation, 1970 regarding allocation of fresh property number to Property No.B-XIX-888, Green Park, Civil Lines, Ludhiana in connivance with Sh. Rajinder Bhalla, Smt. Rame Nayyar and Smt. Rekha Malhotra :-

Sr. No.	Name of Officer/official	Charge-sheet/ Show Cause Notice
1	Sh. Hartej Singh, Superintendent, Municipal Corporation, Ludhiana.	Charge-sheet Under Rule 8
2	Smt. Kailash Sethi, Inspector, Municipal Corporation, Ludhiana.	Show Cause Notice under Rule 10

Sr. No.	Name of Officer/official	Charge-sheet/ Show Cause Notice
3	Sh. Pradeep Kumar Jhanji, Junior Assistant, Municipal Corporation, Ludhiana.	Show Cause Notice under Rule 10

The following charges leveled against above noted officers/officials :-

“Sh. Sudhir Kumar Bhalla has filed a complaint, in which, following allegation is leveled :-

That Sh. Hartej Singh, Superintendent, House Tax, Smt. Kailash Sethi, Inspector and Sh. Pardeep Kumar Jhanji, Clerk, in connivance with Sh. Rajinder Bhalla, Smt. Rame Nayyar and Smt. Rekha Malhotra, allotted a fresh property number of Property No. B-XIX-888, Green Park, Civil Lines, Ludhiana, whereas the said property was partitioned.

Enquiry into said complaint conducted by Vigilance Cell of department, on which, following deficiencies are detected :-

- i) A fresh peroperty number issued to said Property without obtaining No Objection Certificate from Sh. Sudhir Kumar Bhalla (other brother), whereas according to T.S.-I Register/ record of Municipal Corporation, the said property was owned by Sh. Sudhir Kumar Bhalla and Sh. Rajinder Kumar Bhalla.
- ii) Final assessment of said property conducted by Sh. Hartej Singh, Superintendent, whereas Zonal Commissioner was competent authority for this purpose.
- iii) Notice U/s. 101 issued on 15.11.2007 to Smt. Rama Nayyar and Smt. Rekha Malhotra, on which, objections are required to be awaited for one month. But Smt. Rama Nayyar submitted N.O.C. in reply to notice on that very day i.e. 15.11.2007. Thereafter, Sh. Hartej Singh, Superintendent finalized the assessment on 15.11.2007 itself, which shows unnecessary hastiness, whereas Smt. Rekha Malhotra did not submit her reply, for which, it was necessary to wait for one month.
- iv) Sh. Hartej Singh, Superintendent issued a copy of T.S. I

Form on 16.11.2007, whereas the assessment was not conducted by the competent authority i.e. zonal Commissioner.

2. Reply to charge-sheet was sought from delinquent officer/officials, on which comments obtained from the Commissioner, Municipal Corporation, Ludhiana. The Commissioner, Municipal Corporation, Ludhiana made clear in his letter No. 277/ZC/D dated 2.3.2015 that the Inspector allotted new House number, which, on conducting enquiry, has been cancelled and the complaint is redressed. In this connection, a written submission was made by complainant that the complaint was filed by him due to family dispute. On this, Municipal Corporation took action and the complaint was redressed. Hence the said complaint may be consigned to records. In this connection, it is recommended by the Commissioner, Municipal Corporation, Ludhiana that there is no fault on the part of said officer/officials in this case, hence chargesheets/show cause notices, issued to them, may be consigned to records. Hence chargesheets/show cause notices, issued to said officers/officials, are liable to be consigned to records.

3. On consideration in view of above noted facts, reply submitted by said officer/officials and comments received from the Commissioner, Municipal Corporation, Ludhiana, it is revealed that no charge is made out in this case against said officer/officials, for which they may be held liable. As such, the charge-sheets issued to them are hereby consigned to records. This order is being issued with approval by the Local Bodies Minister.

Dated, Chandigarh :
10.4.2015

Sd/-
Ashok Kumar Gupta, IAS
Secretary, Punjab Govt.,
Local Bodies Department.”

8. The complainant thereafter approached this Court by way of CWP No.14872 of 2016 which was decided vide order dated 28th of

July, 2016 in the following terms :-

“Feeling aggrieved against the alleged continuation of respondent no.5 in service after the superannuation, petitioner has approached this court by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Quo-warranto.

However, during the course of hearing, learned counsel for the petitioner submits that he does not intend to press this petition for a writ in the nature of Quo-warranto, instead he wants to restrict his claim only for a writ of mandamus. Accordingly, he seeks a direction to the Principal Secretary, Local Government Department, Government of Punjab-respondent no.2 for considering and deciding his demand notice dated 1.10.2015 (Annexure P-7) by passing an appropriate order thereon.

Having heard learned counsel for the petitioner at some length and without expressing any opinion on the merits of the case, lest it should prejudice the rights of either of the parties, Principal Secretary, Local Government Department, Government of Punjab-respondent no.2 is directed to look into the matter, consider the grievance raised by the petitioner in his demand notice dated 1.10.2015 (Annexure P-7) and decided the same at an early date, by passing an appropriate order thereon, strictly in accordance with law, but in any case within a period of three months from the date of receipt of certified copy of this order.

With the above said observations made and directions issued, present writ petition stands disposed of.”

9. The authority while issuing the order did not even bother to look at order dated 15th of April, 2015 and has merely recorded that keeping in view the serious nature of the allegations levelled a regular inquiry is liable to be conducted.

10. Rule 21 of the Punjab Civil Services (Punishment and

Appeal) Rules 1970 deals with power of review the same. The same reads as under :

21. Review - (1) Notwithstanding anything contained in these Rules -

- (i) the Governor; or
- (ii) the appellate authority, within six months of the date of the order proposed to be reviewed; or
- (iii) any other authority, specified in this behalf by the Governor by a general or special orders, and within such time as may be prescribed in such general or special orders:

may at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any order made under these rules or under the rules repealed by Rule 25 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the commission where such consultation is necessary, and may -

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order or impose any penalty where no penalty has been imposed:
or
- (c) remit the case to authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case: or
- (d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it

is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 5 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 8 and except after consultation with Commission, where such consultation is necessary.”

11. It is evident that it is only the Governor who is vested with the power to review order at any point of time. The Appellate Authority can review the order only within six months and not beyond thereafter. In the present case, both the orders have been passed by the same authority and that too beyond six months.

12. In the considered opinion of this Court, the Authority passing the impugned order (Annexure P-9) ought to have been alive to the consequences of the order and the consequence thereof which amounts to review of order Annexure P-4. The respondents cannot be allowed to take refuge under the orders passed by this Court in CWP No.14872 of 2015 dated 28th of July, 2016 which was preferred at the behest of the complainant. In that writ also so far as the extension of service of the petitioner is concerned, the complainant had given up his claim and he confined his prayer only to a writ of mandamus directing the Principal Secretary, Local Government Punjab to decide his legal notice (Annexure P-7). Once the authorities in their own wisdom had found that no charge is made out against the petitioner and have ordered the chargesheet to be consigned to the record merely for the

reason that complainant/petitioner had issued legal notice, the authority ought not have reviewed the said order that too without there being any provision in law clothing the said authority with such power beyond six months.

13. Resultantly, the order dated 9th of May, 2017 (Annexure P-9) cannot be sustained and the same is thus quashed.

14. Petitioner cannot be granted mandamus as prayed for to allow him to be in service continuously till 31st of August, 2017. However, since he has been deprived of the work, respondents are directed to give him salary for the remaining period i.e. from the date of his relieving pursuant to Annexure P-9 till the end of extension of service, within a period of eight weeks from today.

15. Writ petition is allowed in the aforesaid terms.

16. Pending application(s), if any, shall also stand disposed off.

February 14, 2023

Dpr

**(PANKAJ JAIN)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No