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

CWP-14266-2018

Date of decision : 27.03.2023

Micheal

..... Petitioner

versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sehaj Bir Singh, Advocate
for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

PANKAJ JAIN, J.

While issuing notice of motion, following order was passed on
30.05.2018:-

“*Inter-alia*, learned counsel for the petitioner has contended that no doubt, vide order dated 24.03.2017 (P-8), petitioner was imposed punishment of stoppage of three annual increments with cumulative effect. The said order was not challenged by the petitioner. Subsequently, without his knowledge and consent and any sort of notice to him, afore-said order dated 24.03.2017 (P-8) was withdrawn and reviewing the same afresh order dated 24.11.2017 was passed, which was subsequently amended vide order dated 30.11.2017. The sentence earlier imposed vide order dated 24.03.2017 (P-8) was substituted by punishment of “*reduction to his original rank and post*”. While passing the afore-said order, no opportunity of being heard was given to the petitioner by the Principal Secretary, Govt. of Punjab, Department of Local Government. Otherwise also, if at all an opportunity of

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personal hearing was afforded by the Minister incharge of the Local Government but penalty has been imposed by the Principal Secretary, who in fact never provided personal hearing him. Review of order dated 24.03.2017 (P-8) and passing a fresh order whereby, the penalty imposed earlier was substituted by way of reduction to his original rank and post, is impermissible under law particularly when order dated 24.03.2017 (P-8) was never assailed by either of the parties i.e. petitioner or the Government.

Notice of motion for 31.08.2018.”

2. The issue involved is as to whether punishment imposed vide order dated 24.03.2017 (Annexure P-9) could have been reviewed vide impugned order dated 30.11.2017 and enhanced.

3. Counsel representing the parties are *ad idem* that the issue in hand already stands answered by this Court in **CWP No.24781 of 2018** titled as '**Jaswinder Singh vs. State of Punjab and others**' decided vide judgment dated 16.02.2023 holding as under:-

“xx xx xx

It is the Punjab Civil Services (Punishment and Appeal) Rules, 1970, which will be applicable to the present situation. Rule 21 thereof provides for the power of review. The same reads as under:-

"Rule 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 order, and within such time as may be prescribed order in

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such general or special order 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 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 imposed any penalty where no penalty has been imposed; or*
- (c) remit the case to the 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 if 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 of making a representation to impose any of the specified in clauses (v) to (ix) or 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 and except after consultation with the Commission where such consultation is necessary.

There is no denial that power of review is provided under the Rule, however, the same vests with the Governor or the Appellate Authority or any other authority specified in this behalf by the Governor, by a

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general or special order. Impugned order Annexure P-7 does not fall in in any of the aforesaid category. The same authority reviewed Annexure P-3 by way of Annexure P-7. Apart from that even if the authority passing Annexure P-7 being higher in rank his additional Chief Secretary is taken to be Appellate Authority, the same could have reviewed the order only within a period of six months. Beyond six months even the Appellate Authority becomes functus officio and was not within its power to assume the jurisdiction of review.

In view of aforesaid, this Court is of the considered opinion that Annexure P-7 cannot be sustained and is hereby ordered to be quashed. The petitioner is held entitled for all benefits including for promotion from the date, persons junior to the petitioner, have been promoted.

Respondents are directed to release the benefits of the petitioner within a period of twelve weeks from the date of receipt of certified copy of this order.”

4. In view of the aforesaid ratio of law, present writ petition is allowed. Impugned orders dated 24.03.2017/30.11.2017 are hereby ordered to be quashed. Consequential relief be released to the petitioner within a period of 12 weeks from the date of receipt of certified copy of the order.

5. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

27.03.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No