

213

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

**CWP No.21073 of 2016 (O&M)
Date of Decision: 29.05.2023**

RAM NIWAS NAGPAL

.....Petitioner

Vs

STATE OF HARYANA & ORS

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Tarun Yadav, Advocate for
Mr. Harshvardhan Ranga, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, D.A.G., Haryana.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has assailed the charge sheet dated 22.08.2012, enquiry report dated 01.05.2014 and order dated 27.04.2016 passed by the respondent No.1 thereby applying penalty of 5% cut in the pension for six months.

[2]. The petitioner was appointed as a Clerk in the Rehabilitation Department, Haryana on 22.04.1974 and thereafter he was promoted to the post of Assistant, Naib Tehsildar (Peshi), Deputy Superintendent and ultimately to the post of Tehsildar (Sales) vide order dated 02.05.2012.

[3]. The petitioner had retired from the post of Tehsildar

(Sales) on 31.05.2012. One Sifte Hasan filed CWP No.3165 of 1987 against the order dated 12.05.1987 passed by the Financial Commissioner, Revenue thereby his claim for restoration of land in village Zabti Chhapra and Nabiabad (Karnal) was rejected. The said Sifte Hasan at the time of partition did not migrate to Pakistan rather shifted his place of abode temporarily in Uttar Pradesh.

[4]. In the aforesaid Civil Writ Petition, the stand of the State was that there was no alternate land available to be given to the aforesaid person in terms of Sections 20-A and 20-B of the Displaced Persons (Compensation & Rehabilitation) Act, 1954. The said provisions were struck down by the Hon'ble Apex Court. The said Civil Writ Petition was ultimately allowed by the High Court on 14.11.2011 with the observation that the necessary formalities for sanctioning the mutations be carried out by the State at the earliest in a time bound manner.

[5]. The copy of the aforesaid judgment dated 14.11.2011 was received in the office(s) of Advocate General, Haryana and Legal Remembrancer, Haryana. Both the parties were of the view that the case was not fit for filing further appeal. However the Government decided at its own level on 05.03.2012 to file the Latter Patent Appeal against the order dated 14.11.2011 passed by the learned Single Judge. The case was marked to

the petitioner, the then Deputy Superintendent for filing the LPA. The allegation against the petitioner is that the filing of the LPA was delayed and the LPA No.1699 of 2012 was ultimately filed with a delay of 250 days. The said LPA was decided on 13.03.2013 with the following observations:-

“Counsel for the State made a faint attempt to argue that as the 1950 and 1954 Acts have been repealed on 6.9.2015 and new enactments, namely, Haryana Evacuee Properties (Management and Disposal) Act, 2008/Haryana Evacuee Properties (Management and Disposal) Act, 2010, do not contain any provision empowering any authority for restoration of land to any Muslim restore, the impugned order is illegal and liable to be set aside. The plea, in our considered opinion, is nothing but a hollow attempt to take away the genuine claim of the respondent. The respondent had been pursuing his remedy since 1959 and he cannot be deprived of his legal right merely because in the new Act passed in the year 2008/2010, the State has failed to discharge his obligation to provide a forum for the redressal of genuine grievances of the rightful claimant or to restore/allot land to the successful litigants. In view of what has been discussed herein above, the appeal is dismissed, leaving parties to bear their own costs”

[6]. Evidently, the LPA was not dismissed on the ground of limitation rather the same was decided on merits. The case of alleged misconduct of the petitioner was examined on the ground that two persons were involved in not making serious effort in filing the LPA in time (though the LPA was not

dismissed on the ground of limitation).

[7]. Vide order dated 12.07.2012, it was decided by the competent authority to initiate departmental disciplinary proceedings against the petitioner. By that time, the petitioner had retired from the post of Tehsildar (Sales) on 31.05.2012. After the retirement of the petitioner, a chargesheet under Rule 2.2(b) of the Haryana Civil Services Rules, Volume II was issued to the petitioner on 22.08.2012 with the allegations that the Government took decision to file the LPA on 05.03.2012. The grounds of appeal were sent to the office of Advocate General, Haryana on 22.03.2012. Thereafter the file was marked to the petitioner on 22.03.2012 but the same was not pursued upto 24.04.2012 i.e. the date upto which the petitioner kept mum. The appeal could be filed only after issuing contempt notice to the Department with a delay of 250 days.

[8]. The Departmental enquiry was held in which the petitioner was found to be wanting in taking prompt action for the purposes of filing appeal and a penalty of 5% cut in the pension for six months was passed vide order dated 27.04.2016 by the Addl. Chief Secretary & Financial Commissioner to Govt. Haryana, Revenue and Disaster Management Department (Rehabilitation Branch) Chandigarh.

[9]. With reference to the sanctioned leave granted to the

petitioner from 23.02.2012 to 02.03.2012 (vide order dated 29.02.2012), 03.03.2012 to 09.03.2012 and from 04.04.2012 to 12.04.2012, learned counsel for the petitioner submitted that the petitioner was on sanctioned leave for 34 days which was upto 12.04.2012. On 31.05.2012, he had retired as Tehsildar (Sales), therefore, there was no question of keeping him upto 24.04.2012 as the petitioner was on sanctioned leave for 34 days prior thereto. The file was entrusted to the petitioner on 22.03.2012. From 01.04.2012, he was on sanctioned leave after availing earlier leave for 9 and 16 days. Ultimately, he came back only on 12.04.2012. It is not the case of the respondents that the appeal was dismissed on the ground of limitation and huge loss has been caused to the State. The appeal was dismissed after considering the merits of the case.

[10]. In view of aforesaid factual position of the case, I think that the issuance of chargesheet on 22.08.2012 after retirement of the petitioner on 31.05.2012 is wholly unjustified. The *bona fide* of the petitioner is evident from the record. Even otherwise, the punishment inflicted upon the petitioner does not commensurate to the alleged misconduct. During pendency of the sanctioned leave of the petitioner, the competent authority ought to have deputed some other employee in order to get the things done for the purposes of filing the appeal.

[11]. In my considered opinion, the chargesheet dated 22.08.2012 issued after about three months of the retirement of the petitioner is wholly unsustainable. The enquiry report conducted on the basis of aforesaid charges and ultimately order of punishment do not stand to the test of legality. This writ petition is accordingly allowed. The impugned orders are set aside. The recovery, if any inflicted from the pension of the petitioner is ordered to be refunded to the petitioner along with interest @6% per annum from the date of deduction till final realization of the same.

May 29, 2023

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No