

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

Date of decision : 27.03.2023

1. CWP-27164-2017

Hemant Batra

..... Petitioner

versus

State of Punjab and others

..... Respondents

2. CWP-13481-2018

Shakti Sagar Bhatia and others

..... Petitioners

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Brijesh Khosla, Advocate
for the petitioner in CWP-27164-2017.

Mr. R.K. Arora, Advocate
for the petitioners in CWP-13481-2018.

Mr. Inderpreet Singh Kang, AAG, Punjab.

None for other respondents.

PANKAJ JAIN, J.

By way of present judgment, I intend to dispose off above said
two writ petitions as common question of law and facts are involved therein.

For the sake of convenience, facts are being taken from CWP-27164-2017.

2. The petitioner has impugned chargesheet dated 03.02.2014
(P-2), inquiry report dated 03.02.2016 (P-3), order dated 24.03.2017 (P-10)
and that dated 24.11.2017 (P-14).

3. Petitioner who was working as Senior Town Planner with the respondent-department and was assigned current duty charge of Chief Town Planner on 28.12.2016 was chargesheeted on 03.02.2014 and was proceeded against by way of regular inquiry. The said proceedings finally culminated in the penalty of censure awarded to the petitioner vide order dated 29.12.2016/08.02.2017 (Annexure P-9). Vide order dated 24.03.2017, respondents withdrew the orders dated 29.12.2016. Petitioner was repeatedly called for personal hearing by the concerned Minister and was finally ordered to be dismissed from service vide order dated 24.11.2017.

4. 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 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 repeated 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 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.”

5. Learned Senior counsel submits that the issue involved in the present case would be covered as the order of review has neither been passed by Governor nor by the Appellate Authority or any authority specified in this behalf by Governor by any order. Thus, ratio of law laid down by this Court in *Jaswinder Singh's case (supra)* fully supports the case of the petitioner.

6. Thus considering the facts of this case in the light of the aforesaid ratio of law, present writ petitions are allowed. Impugned orders dated 29.12.2016/08.02.2017 (Annexure P-9) and 24.11.2017 (P-14) are hereby ordered to be quashed. Consequential relief be released to the petitioner(s) within a period of 12 weeks from the date of receipt of certified copy of this order.

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7. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

27.03.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No