

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

225

CWP-6754 of 2018

Date of Decision:14.02.2023

Ajit Singh Salaria

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Anupam Bhardwaj, Advocate,
for petitioner.

Ms. Akshita Chauhan, DAG, Punjab

JASGURPREET SINGH PURI, J. (Oral)

The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *certiorari* for quashing of the impugned charge-sheet dated 28.02.2014 (Annexure P-8), enquiry report dated 02.02.2015 (Annexure P-12) and also the impugned order dated 02.02.2018 (Annexure P-14) whereby a cut of 20% in the pension of the petitioner has been ordered to be imposed for a period of five years.

The brief facts of the present case are that the petitioner was working as Deputy Registrar, Cooperative Societies, Gurdaspur and he was appointed as such from 01.10.2008 and thereafter for different dates he had worked there as a Deputy Registrar. There was one person namely Shri S.K.

Pant who was working as Assistant Manager in the Hindu Urban Cooperative Bank Limited, Pathankot (respondent No.6) and he had been dismissed by the bank. Thereafter, he had challenged his dismissal before the Appellate Authorities and his appeal was dismissed and then he even filed a writ petition before this Court which was also dismissed. After that, he assailed the judgment of this Court before the Hon'ble Supreme Court of India and SLP was also dismissed. The aforesaid facts with regard to the attaining of finality of the dismissal orders of the aforesaid S.K. Pant is not in dispute in the present case. The aforesaid SLP was dismissed in the year 2008.

After the dismissal of SLP and after the order of dismissal had attained finality, the aforesaid Shri S.K. Pant moved an application to the then Co-operation Minister, Punjab as a mercy appeal, which was marked to the then Deputy Registrar, Cooperative Societies, Gurdaspur whose name was Shri Kulwant Singh Bath. The aforesaid Deputy Registrar re-enquired the matter on the basis of marking made to him by the then Co-operation Minister, Punjab and on the basis of the re-enquiry, he came to the conclusion that the punishment order against the aforesaid S.K. Pant was erroneous and not correct on the ground that the punishment authority was the Board of Directors whereas qua him the punishment order has been passed by different authorities. The aforesaid Shri Kulwant Singh Bath, the then Deputy Registrar wrote a letter to the then Co-operation Minister, Punjab vide Annexure P-1 dated 23.04.2008 in which it was so stated that he has re-enquired the matter on the basis of enquiry conducted by him and he came to the conclusion that the order of punishment against the aforesaid S.K. Pant was not correct.

At the time when the aforesaid Annexure P-1 dated 23.04.2008, the letter was issued, the petitioner was nowhere in the picture and thereafter he joined as a Deputy Registrar, Gurdaspur on 01.10.2008, i.e. after a period of about 5-6 months. It was thereafter that when he joined as Deputy Registrar, Cooperative Societies, Gurdaspur that the aforesaid S.K. Pant again pressed upon that directions be issued to the Board of Directors of the bank to reinstate him on the basis of earlier re-enquiry conducted by the then Deputy Registrar. Since the petitioner had now joined as a Deputy Registrar, he on the basis of the aforesaid request/representation of Shri S.K. Pant wrote a letter to the bank vide Annexure P-2 on 11.05.2011 by referring to the earlier proceedings being conducted by the Deputy Registrar wherein reference was made to the aforesaid by stating that vide earlier letter dated 23.04.2008 (Annexure P-1) the earlier Deputy Registrar has stated that the action taken against the aforesaid Shri S.K. Pant was wrong and against the rules and that the bank has not intimated the compliance of the enquiry report and therefore on the basis of the earlier re-enquiry conducted and the recommendation made by the Deputy Registrar, he directed the bank to take action for reinstatement of the aforesaid S.K. Pant as Assistant Manager in the bank. There was a time gap of more than three years in the letter dated 23.04.2008 (Annexure P-1) and letter dated 11.05.2011 (Annexure P-2). However, the bank took up the matter before its Board of Directors and vide Annexure P-3 dated 22.09.2011 wrote a letter to the Deputy Registrar who is the present petitioner that the aforesaid S.K. Pant cannot be employed because after his dismissal, his order of dismissal had attained finality till the Hon'ble Supreme Court of India. On the receipt of the aforesaid letter which is dated 22.09.2011, the present petitioner who was the Deputy Registrar

immediately wrote a letter to the Registrar, Cooperative Societies, Punjab vide Annexure P-4 on 12.10.2011 by giving the entire factual position in which it was stated that in view of the factual position stated by the Board of Directors, the aforesaid employee (S.K. Pant) cannot be taken back in the bank. Thereafter, again after a few days, i.e. on 24.10.2011 (Annexure P-5), he again wrote a letter to the Registrar seeking stay on the instructions issued by the Deputy Registrar, Co-operative Societies in case of his reinstatement by stating that earlier the Deputy Registrar had come to the conclusion that the aforesaid S.K. Pant was required to be reinstated but in view of the factual position pertaining to his dismissal order which had attained finality till Supreme Court of India, he cannot be taken back.

Thereafter, the petitioner retired on attaining the age of superannuation of 31.12.2011. After his superannuation, he was charge-sheeted on 28.02.2014 (Annexure P-8) on the ground that he had misconducted and concealed the facts at the time of directing the reinstatement of the aforesaid S.K. Pant.

Thereafter, an enquiry was conducted and vide enquiry report (Annexure P-12), the allegations against the petitioner were proved and thereafter vide Annexure P-14 the Additional Chief Secretary, Cooperation, Punjab passed an order of punishment against the petitioner whereby a cut of 20% for a period of five years was imposed against the petitioner on his pension. The present petition has been filed seeking quashing of the aforesaid impugned order dated 02.02.2018 (Annexure P-14) as well as charge-sheet dated 28.02.2014 (Annexure P-8) and enquiry report dated 02.02.2015 (Annexure P-12).

Learned counsel for the petitioner submitted that it is a case of total high handedness against the petitioner. He submitted that the facts of the case speak for themselves. At the time when Annexure P-1 dated 23.04.2008 was issued by the Deputy Registrar to the Minister of Department of Co-operation on the basis of mercy plea by S.K. Pant, the petitioner was not even posted at that point of time as a Deputy Registrar and one Kulwant Singh Bath was the Deputy Registrar who issued the aforesaid letter and in that letter it has been so stated that he has conducted the re-enquiry and he has found that the order of dismissal was incorrect, but there was no reference to the earlier proceedings pertaining to the dismissal of the aforesaid S.K. Pant which attained finality till the Hon'ble Supreme Court. The petitioner thereafter joined as a Deputy Registrar on 01.10.2008 and he was not even aware of the aforesaid position especially in view of the fact that Annexure P-1 did not refer anything with regard to the earlier litigation pertaining to dismissal of S.K. Pant and even vide Annexure P-2, he only reiterated what was done by the earlier Deputy Registrar and nothing new had been done by the petitioner and that was only in exercise of its powers in official capacity as Deputy Registrar, but nothing new was done by him. Thereafter, when Annexure P-3 was received by him from the bank, he immediately informed the Registrar not only once but twice that the aforesaid S.K. Pant cannot be re-employed in view of the earlier litigation which attained finality till Supreme Court of India and rather the petitioner has exercised his due diligence and acted bonafide.

Learned counsel further submitted that surprisingly the Deputy Registrar who had issued Annexure P-1 and who had re-enquired was not even charge-sheeted and he was the person who actually re-enquired the

matter after the dismissal of S.K.Pant which attained finality till Supreme Court and he concealed the facts not only from the higher authorities but also from the Minister but he was never charge-sheeted. He submitted that on the top of it surprisingly the aforesaid S.K. Pant who was dismissed and regarding whom the controversy had arisen died in the year 2012 and immediately his son was granted compassionate appointment by the bank and in this entire scenario, the petitioner who was not at fault at all as stated above, has been charge-sheeted after three years of his superannuation and thereafter the order of punishment of 20% cut for five years in the pension of the petitioner has been passed on 02.02.2018 vide Annexure P-14. He further submitted that a perusal of the enquiry report would show that primarily the reason as to why it has been so observed by the Enquiry Officer that the charges have been proved that when the Joint Registrar had asked clarification from the petitioner he did not give para-wise reply to him and therefore on the basis of the presumption that the petitioner was in the knowledge of the earlier litigation of aforesaid S.K. Pant, he came to the conclusion that the charges stood proved. He submitted that the entire enquiry report is based upon conjectures and surmises and totally perverse and based upon presumption.

Ms. Akshita Chauhan, learned DAG, Punjab while referring to the reply filed by the State as well as the enquiry report submitted that the petitioner was in the knowledge of the earlier litigation of Shri S.K. Pant and that was the reason as to why he had directed the bank to re-employ the aforesaid Shri S.K. Pant and has submitted that therefore the impugned orders passed by the Addl. Chief Secretary are correct. She submitted that the

charges against the petitioner stood proved and therefore the punishment orders have been rightly passed.

I have heard the learned counsels for the parties at length.

Most of the facts of the present case are not in dispute. One S.K. Pant who was working as Assistant Manager in the office of respondent No.6, i.e. the Hindu Urban Co-operative Bank Ltd., Pathankot was dismissed and he assailed his dismissal order before the appellate authority and thereafter before this Court and before the Hon'ble Supreme Court and his dismissal attained finality. It was after the dismissal order had attained finality upto Hon'ble Supreme Court that the controversy of the present case started. Vide Annexure P-1 a letter was written by the then Deputy Registrar, Cooperative Societies, Gurdaspur to the Minister, Department of Co-operation on the basis of marking which was made to him that the order of dismissal was wrong. However, this letter from where the entire controversy initiated was not written by the present petitioner, but it was written by one Kulwant Singh Bath who was the then Deputy Registrar, Cooperative Societies, Gurdaspur. It was only on 01.10.2008 that the petitioner joined as Deputy Registrar, Cooperative Societies at Gurdaspur. Thereafter another representation was made by Shri S.K. Pant for his re-employment and the present petitioner vide Annexure P-2 which is of the year 2011 while referring to the earlier initiation done by the earlier Deputy Registrar and referring to the same asked the bank to implement the earlier letters and to reinstate him. There was no fresh exercise conducted by the present petitioner and it was only for the purpose of implementation of the letters

issued by the earlier Deputy Registrar. When the bank received the letter issued by the present petitioner, they immediately informed the petitioner that this cannot be done because the aforesaid S.K. Pant has already been dismissed and his dismissal has attained finality till Supreme Court and therefore he cannot be employed or reinstated and a perusal of Annexures P-4 and P-5 would show that the petitioner immediately wrote to the Registrar who is the head of department with regard to the same and stated that the aforesaid Shri S.K.Pant cannot be employed in view of the factual position. When it came to the knowledge of the aforesaid through the bank vide Annexure P-3, he reacted immediately and wrote to the Registrar, Co-operative Societies. However, after his retirement a charge-sheeted was issued to him on the ground that in fact he is the person who had misconducted by directing the bank to reinstate the aforesaid Shri S.K. Pant whereas the aforesaid position was factually incorrect. The initiation and the entire re-enquiry etc. had been done by the earlier Deputy Registrar against whom no action has been taken by the respondent State at all nor any charge-sheet has been issued against the aforesaid Kulwant Singh Bath. Apart from the above, a perusal of the enquiry report would show that it was only on the basis of presumption that the Enquiry Officer came to the conclusion that the petitioner was guilty of misconduct. The operative part of the aforesaid enquiry report would show that it was so observed by the Enquiry Officer that since the petitioner did not reply to the Joint Registrar's letter, it was within his knowledge that S.K. Pant had been dismissed.

This Court is of the view that the observations of the Enquiry Officer were totally perverse and totally based upon conjectures and surmises especially in view of the fact that the entire sequence of dates has been mentioned and so referred to by the Enquiry Officer. The operative part of the enquiry report is contrary to the references made in the earlier part of the enquiry report. Still further, when the matter came up for taking a final decision by the competent authority, even the competent authority also did not apply its mind and passed the punishment order by ignoring the factual position as aforesaid. The Deputy Registrar at that point of time vide Annexure P-1 was somebody else and he had re-enquired the matter and came to the conclusion that dismissal of Shri S.K. Pant was wrong since it was not passed by the competent authority whereas the competent authority was the Board of Directors and the role of the petitioner was that he only reiterated after his joining as a Deputy Registrar on 01.10.2008.

Apart from the above, the petitioner was charge sheeted after about 3 years of his retirement. There is no allegation of pecuniary loss nor it has been ascertained and therefore cut of 20% from pension could not have been imposed.

In view of the aforesaid totality of facts and circumstances, this Court is of the view that the present petition deserves to succeed. The issuance of charge-sheet dated 28.02.2014 (Annexure P-8), enquiry report dated 02.02.2015 (Annexure P-12) and the impugned order dated 02.02.2018 (Annexure P-14) are totally perverse, illegal and against the record hence, impugned order Annexure P-14 is set aside and is hereby quashed.

The petitioner shall be entitled for the amount which has been deducted from his pension in pursuance of the order Annexure P-14, alongwith interest @ 6% per annum. Let the arrears alongwith interest be calculated and paid to the petitioner within four months from today

The present writ petition stands allowed.

(JASGURPREET SINGH PURI)
JUDGE

February 14, 2023
dinesh

Whether speaking : Yes/No
Whether reportable : Yes/No