



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

103/3

CWP No.19621 of 1998 (O&M)
Date of Decision:06.11.2024

Dr. Gurdeep Singh through his LRs

...Petitioner

Versus

State of Punjab and others

.....Respondents

2)

CWP No.13979 of 2003 (O&M)

Dr. Gurdeep Singh through his LRs

....Petitioners

Versus

State of Punjab

.....Respondents

3)

CWP No.9496 of 2004 (O&M)

Dr. Gurdip Singh through his LRs

....Petitioners

Versus

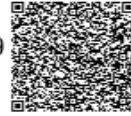
State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.D. Bawa, Advocate, with
Mr. Samuel Gill, Advocate
Mr. Rishabh Rana, Advocate, and
Mr. Randhir Bawa, Advocate,
for the petitioner(s).

Mr. T.P.S. Chawla, Sr. DAG, Punjab

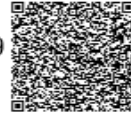


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HARSIMRAN SINGH SETHI, J. (Oral)

1. The present bunch of petitions, the same petitioners have raised three grievances. The first grievance which he has raised in CWP No.19621 of 1998 is with regard to the punishment which has been imposed upon him vide order dated 13.08.1998 (Annexure P-14). The other writ petitions being CWP No.13979 of 2003 and CWP No.9496 of 2004 are dependent upon the result in CWP No.19621 of 1998.

2. Keeping in view the relief sought therein, the petitioner, who is no more in this world as of now, was working as a Senior Medical Officer with the Government of Punjab. He was issued a charge-sheet on the allegation that he had performed a particular surgery upon a patient named Mehar Singh and surgical instrument was left in the abdomen of the said patient, which was ultimately removed by a private doctor keeping in view the fact that the patient complained of severe pain after the surgery. The further allegation that despite the fact that the petitioner was transferred from the Primary Health Centre, Gurusar Sudhar, Ludhiana but he still retained the case file of the said patient and did not return the same and the said record was manipulated/altered. On the basis of the said allegations, departmental enquiry was conducted against the petitioner in which the charges were proved and ultimately, vide order dated 13.08.1998, the petitioner was imposed a punishment of reduction of his pay to the P.C.M.S. Scale permanently though he was made entitled for annual increments after the

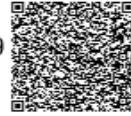


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imposition of the punishment. The petitioner never availed the remedy of an appeal against the said order though available but challenged the said order before this Court in CWP No.19621 of 1998.

3. Learned counsel for the petitioner has raised an argument that the finding recorded in the enquiry report are incorrect as, the private doctor as well as the patient, who should have been the material witness, were never examined and the petitioner was not given a chance to cross-examine them so that, the truth could be found out with regard to the allegation of leaving a surgical instrument in the abdomen of the patient namely Mehar Singh. Learned counsel for the petitioner argued that inspite of there being no statement by the patient or the doctor who removed the alleged surgical instrument from the abdomen of the patient subsequently, the petitioner could not have been held guilty of the allegation so as to impose the punishment vide order dated 13.08.1998, copy of which has been appended as Annexure P-14 and therefore, the rules of natural justice have been violated and the punishment imposed upon the petitioner is liable to be set aside.

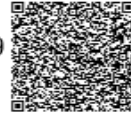
4. Upon notice of motion, the respondents have filed the reply wherein, the respondents stated that the issue came to the knowledge of the State through a newspaper report wherein, it was alleged that the petitioner performed a surgery on patient Mehar Singh and had left the surgical instrument in his abdomen which was removed later on by the private doctor though, the patient had complained about severe pain in his abdomen to the



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Government doctors, who did not bother to assess his sufferings, which led the patient concerned to attend the services of a private doctor. As per the respondents, a preliminary enquiry was conducted keeping in view the newspaper report and the petitioner was directed to associate himself in the preliminary enquiry by sending him letters dated 07.09.1995 and again on 29.09.1995 and thereafter again on 23.11.1995 but the petitioner refused to participate in the said preliminary enquiry wherein, not only the private doctor who operated upon the patient Mehar Singh subsequently as well as the patient Mehar Singh also appeared and gave their statements substantiating the allegation against the petitioner. Learned counsel for the respondents further submits that once, their statements were already there, in case the petitioner wanted to cross-examine them, the petitioner was free to call them but the said opportunity was never availed by the petitioner during the regular enquiry and therefore the petitioner cannot raise any grievance in this regard.

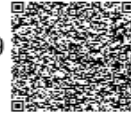
5. Learned counsel for the respondents further submits that in the enquiry report, the enquiry officer had proved the charges based upon the evidence which has come on record including the enquiry report which was submitted to the petitioner and the petitioner has responded to the same and once, the enquiry report is not under challenge to contend that the charges have wrongly been proved, the consequent punishment, cannot be challenged at the hands of the petitioner.



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6. I have heard learned counsel for the parties and have gone through the record with able assistance.

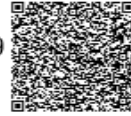
7. The petitioner, who is a doctor, is assailing the order of punishment which has been imposed upon him that he was negligent in performing his duties as a doctor while examining and operating a patient namely Mehar Singh, who was concededly operated upon by the petitioner for Hernia. It is a conceded fact that there appeared a newspaper report in various newspaper with regard to the allegation that the petitioner while performing a surgery upon a patient namely Mehar Singh left his surgical equipment in the abdomen of the patient which was later on removed by a private doctor after the patient complained of severe pain in the abdomen, which fact was ignored by the petitioner. In order to find out the truth, a preliminary enquiry was conducted by the department wherein, the patient appeared and supported the version that he was operated upon by the petitioner for Hernia and thereafter, the said patient reported severe abdominal pain to the doctors including the petitioner which was never looked into and ultimately, the patient approached a private doctor, who after getting the test done including the x-ray, reported that a surgical equipment was in the abdomen of the patient and thereafter the said patient was operated upon by a private doctor and the surgical equipment left by the petitioner in the abdomen of the patient Mehar Singh was removed. The doctor namely R.P. Singal who was running a private hospital under the name of Dr. Kundan



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Lal Hospital also appeared and gave his statement alongwith record and x-ray supporting the said allegation which are part of the record before this Court also as well as before the enquiry officer during the regular enquiry. Though, the said doctor was never called for giving a statement in the regular departmental enquiry which was conducted against the petitioner. The petitioner was given a chance to explain his conduct during the preliminary enquiry so as to have a face to face encounter with the patient as well as the doctor who removed the surgical equipment from the abdomen of the patient but despite receiving a request from the department more than once, the petitioner chose to abstain himself to come before an officer who was conducting the preliminary enquiry to prove his case though, there was no valid justification for ignoring the said request, so that, the petitioner could put his statement before the patient as well as the doctor concerned.

8. The argument that the petitioner suffered a fracture and was hospitalised due to which he could not appear in the preliminary enquiry, is falsified from the fact that learned counsel for the petitioner conceded that the fracture suffered by the petitioner was in the month of May 1995 whereas, the preliminary enquiry was being conducted in the month of May 1995 for which, he was duly served and requested to join the proceedings which the petitioner failed to join for the reasons best known to him and the inference can be very validly drawn from the said act on the part of the petitioner. Not only this, in the preliminary enquiry, the statements of the victim i.e. patient

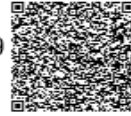


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Mehar Singh as well as that of the private doctor which were recorded in March 1996 when the petitioner was fit to join the preliminary enquiry to controvert the statement of the patient Mehar Singh and private doctor were also included.

9. Even if it is presumed for the sake of arguments that the petitioner could not appear before the preliminary enquiry but, the report including the statement of the doctor concerned who had operated upon the patient Mehar Singh subsequently to remove the surgical equipment from his abdomen as well as that of the patient Mehar Singh were brought on record of the enquiry as well as to the notice of the petitioner during the course of regular enquiry itself. The petitioner could have asked for the statement of those witnesses and he could have called them to join the proceedings but the petitioner chose not to call them. The statements of the patient with private doctor were put to the petitioner by way of the preliminary report which could not be rebutted by the petitioner in any manner. Therefore, the argument that the petitioner has been held guilty without there being any statement on the part of the patient concerned or the doctor who has removed the surgical equipment from the abdomen of the patient, is incorrect and the said argument cannot be taken into account so as to exonerate the petitioner from the allegations.

10. Further, the allegation in the departmental enquiry are to be proved on the basis of the probabilities. In the present case, sufficient

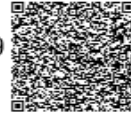


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evidence has already come on record to hold that no truth substantiate the findings given by the enquiry officer. Once sufficient evidence existed before the enquiry officer, the findings recorded by the enquiry officer cannot be looked into by this Court so as to reappraise the evidence in order to arrive at another conclusion than the one arrived at by the enquiry officer. The argument of learned counsel for the petitioner that the findings recorded by the enquiry officer are perverse to the evidence, cannot be accepted as, enquiry officer has dealt with the evidence in a manner required to record his findings of guilt against the petitioner. It cannot be said that in the present case there is no evidence so as to give the benefit to the petitioner to exonerate him of the allegations.

11. Further, the enquiry report, which is being made the basis that the finding recorded therein are either perverse or are of no evidence, is not under challenge in the present petition as well. In the absence of any challenge to the enquiry report, which has been relied upon by the punishing authority to impose the punishment, the punishment which is the consequence of the findings recorded by the enquiry officer which has not been challenged, no relief can be granted to the petitioner.

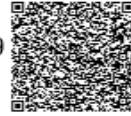
12. Not only this, further there is another allegation against the petitioner in the charge-sheet of withholding the medical record of Mehar Singh in his possession without there being any authority to do so. Even after the transfer of the petitioner from the Primary Health Centre, Gurusar Sudhar,



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Ludhiana, the petitioner took away the said record pertaining to the patient Mehar Singh from the hospital so as to retain it with him. There is a proved allegation that the said record was also altered. Once, the said allegation, when put to the learned counsel for the petitioner during the hearing of the present case, has not been rebutted, the said allegation of tempering with record by removing the same from the hospital was itself enough to record the punishment, which has been imposed upon the petitioner. Removing away the official record by the petitioner and keeping the same in his possession and that too without there being any valid authority, the punishing authority was very well within its jurisdiction to presume that in case the petitioner had done no wrong while performing the surgery upon patient Mehar Singh, why the record was removed by him from the hospital and kept in his possession so as to alter the same. The said allegation is also very serious on the part of the doctor, who was facing an allegation that he was negligent in performing a surgery upon the patient namely Mehar Singh.

13. Keeping in view the facts mentioned hereinbefore, even if, it is assumed for the sake of argument, though not accepted, that the patient never appeared in the regular enquiry to support the allegation though their statements were very much before the enquiry officer but the second charge of removing the official record from the hospital and keeping the same within his own custody without there being any valid authorization and to tamper with the same, is good enough to support the ultimate punishment imposed



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upon the petitioner. Hence, keeping in view the facts as mentioned hereinbefore, no ground is made out for any interference by this Court qua the punishment imposed vide order dated 13.08.1998 (Annexure P-14).

14. Coming up to the other petition, which has been tagged with the present petition, in CWP No.13979 of 2003, the petitioner is challenging non-grant of the proficiency step up. It may be noticed that the said benefit was not extended to the petitioner on the ground that he was facing the departmental enquiry in which he ultimately was held guilty and the punishment was imposed. Once, the departmental proceedings were pending against the petitioner, he was not entitled for the proficiency step up, which benefit has been treated equivalent to the grant of promotion and the promotion cannot be granted to an employee during the pendency of the departmental proceedings or the currency of the punishment, hence the benefit being sought of the proficiency step up, has rightly not been extended to the petitioner. No ground is made out for any interference qua the said prayer of the petitioner as well.

15. The other petition being CWP No.9496 of 2004, the petitioner is challenging the action of the respondents in making recovery after re-fixing his salary keeping in view the punishment imposed vide order dated 13.08.1998 (Annexure P-14) in CWP No.19621 of 1998. Though, the punishment has been upheld by this Court but the said punishment can only operate prospectively. Even while issuing notice of motion vide order dated



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12.07.2009, the recovery which was being sought to be done from the petitioner, has already been stayed, which interim order is continuing even as of now. During the pendency, the petitioner has unfortunately died. Once the petitioner has died and the punishment can only be imposed prospectively and not retrospectively, no recovery could have been done from the petitioner hence, any order of recovery from the petitioner passed by the respondents Annexure P-6 and Annexure P-7, impugned in CWP No.9496 of 2004 is held to be illegal and without jurisdiction and the same is consequently set aside with the clear observation that even while refixing the salary of the petitioner in the PCMS Scale, the same is to be prospectively and not retrospectively so as to recover any amount already paid to the petitioners.

- 16. The present petitions, are disposed of in the terms mentioned hereinabove.
- 17. A copy of this order be placed on the other connected case files.
- 18. Pending application(s), if any, also stand(s) disposed of.

**(HARSIMRAN SINGH SETHI)
JUDGE**

November 06, 2024
dinesh

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