IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

114 *2024:PHHC:049325-DB*

LPA-901-2024 (O & M)
Date of Decision: 10.04.2024

The National Institute of Pharmaceutical Education and Research (NIPER)
.....Appellant(s)

Versus

Dr. A.S. Sandhu and another ....Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA, ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. Sandeep S. Majithia, Advocate, for the appellant.

Mr. Kashmiri Lal Singla, Advocate, for respondent No.1.

G.S.SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

1. Consideration in the present letters patent appeal is to the order dated 07.02.2024 passed by the learned Single Judge in CWP-25461-2023 whereby, the learned Single Judge allowed the writ petition and set aside the order dated 01.06.2023 (Annexure P-17) whereby the appellant as such had deducted a sum of Rs.6,50,000/- from the gratuity of the writ petitioner and reduced his pension by 10% for a period of two years commencing from 01.07.2023. The learned Single Judge repelled the argument that there is an alternative remedy as such and the writ jurisdiction could not be invoked.

2. Mr. Majithia has strenuously argued on this aspect that the learned Single Judge fell in error in following the said course and the case should have been referred to the Appellate Authority as the impugned order was appealable. It is also contended that it was not a case of interference on account of the inquiry report as such having come against the employee.

3. We have perused the paper book. The learned Single Judge came to

the conclusion that the *lis* was regarding a litigation between the Chairman and the Director of the Institute. The writ petitioner as such was posted as a Garden Supervisor in the Department of Industrial Products and in January, 2019, he had been given the additional charge of Registrar having joined the Institute on 10.05.1996 and served it till 30.04.2020. The amount disbursed had been used for making payment to a Lawyer who was engaged in respect of litigation between the Chairman and the Director and the bill had been approved by the Director and, therefore, there was no personal gain as such by the writ petitioner.

4. Reliance was placed upon the judgment of the Supreme Court rendered in ***Natural Resources Alloocation, In re. Special Reference No.1 of 2012, (2012) 10 SCC 1.*** Reference was further made to a three-Judge Bench judgment of the Supreme Court rendered in ***Magadh Sugar & Energy Ltd. Vs. State of Bihar & Ors., 2021 SCC OnLine SC 801*** after considering its earlier judgment in ***Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai (1998) 8 SCC 1, Harbanslal Sahni Vs. Indian Oil Corporation Ltd. (2003) 2 SCC 107 & Radha Krishan Industries Vs. State of Himachal Pradesh 2021 SCC OnLine SC 334.*** Further, reference was made to ***Hari Krishna Mandir Trust vs. State of Maharashtra and others, (2020) 6 SCC 356*** and ***Uttar Pradesh Power Transmission Corporation Ltd. and others vs. CG Power and Industrial Solutions Ltd. and others, (2021) 6 SCC 15*** regarding the power of the Court under Article 226 of the Constitution of India. A finding was, thus, recorded that in the absence of the writ petitioner not being a beneficiary of the litigation and the bill having been approved by the Director and since there was no allegation of connivance between the writ petitioner and the Lawyer, recovery could not be effected.

5. The Statement of the Imputations of Misconduct (Annexure P-6) would go on to show that there are allegations that the writ petitioner had failed to

maintain absolute integrity and devotion while disbursing the fees as such against the directions of the Board of Governors and conferred undue favour. It is in such circumstances, the Inquiry Officer as such had come to the conclusion vide the inquiry report dated 10.02.2021 (Annexure P-8) that the release of salary as such to the SEO was at the cost of the Government exchequer and the misleading submissions were given before this Court with a motive to embezzle and misappropriate public funds and cause financial favour. The five Articles involved in the charge sheet had not been supported by any evidence, thus, Articles I, II, III, VI, X were not proved. Article IV as such was proved, which was pertaining to the payment of counsel fee which reads thus:-

Article IV

> *That, during the aforesaid period and while functioning as Officiating Registrar and Drawing & Disbursing Officer of the Institute, said Dr. A. S. Sandhu committed misconduct in as much as that he ordered under his seal and stamp to made third party payment to the tune of Rs. 6,50,000/- against the legal fee and bill ref. No. 626/32/Jun/18 dated 28.06.2018 & Ref. No. 679/32/Sept./18 dated 17.09.2018 raised by Sh. Amar Vivek, Advocate for the payment of Sh. Puneet Bali in respect of legal expenses incurred by the Ex. Director on his private legal cases, which were not only pending for last almost 6 months as not being endorsed by the legal cell of the Institute but also debarred by the Nodal Ministry/GoI, which funds the Institute in pursuance to Section 20 of the NIPER Act, 1998. By his act of omission and commission, Dr. A. S. Sandhu has caused a huge financial loss to NIPER and undue benefit to advocates, thus he failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming on the part of NIPER employee and thereby has contravened the provisions of Rule 3 (1) (i) (10) & (iii) of the Central Civil Services (Conduct) Rules, 1964, as made applicable to NIPER Employees.*

6. Similarly, Article V was also partly proved, which reads thus:-

Article V

That, during the aforesaid period and while functioning as Officiating Registrar of the Institute, said Dr. A. S. Sandhu committed misconduct in as much as that he deliberately committed gross defiance and insubordination of BoG, the apex body established by NIPER Act responsible for overall administration and superintendence of the Institute, in changing counsels thereby leading to varying stands by NIPER to adversely affect the legal process against the interests of BoG/Ucl whereas it is binding on the part off Registrar to implement all the directions of the BoG being ex-officio secretary of the Board as per clause 14 of NIPER Statute 2003 read with provisions contained in NIPER Act 1998. Thus by above act of omission and commission, Dr. A.S. Sandhu has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming on the part of NIPER employee and thereby has contravened the provisions of Rule 3 (1) (i) & (ii) of the employee Services (Conduct) Rules, 1964, as made applicable to NIPER Employees.

7. Articles VII and VIII also stood proved which reads thus:-

Article-VII

That, during the aforesaid period and while functioning as Officiating Registrar of the Institute, the said Dr. A. S. Sandhu committed misconduct in as much as that he has not provided the relevant supporting documents asked by the Fact Finding Committee constituted by the Chairman, BOG vide Order No. FFC NIPER/Chairman/1-6 dated 29.06.2019 against Prof. Raghuram Rao Akkinepally, Ex-Director, NIPER. Thus by above act of omission and commission and gross acts of intentional and purposeful insubordination, Dr. A. S. Sandhu has failed to maintain absolute Integrity, devotion to duty, acted in a manner unbecoming on the part of NIPER *employee, failed to maintain high ethical standards and honesty, failed to promote the principles of merit, fairness and impartiality in the discharge of duties, failed to maintain discipline in the discharge of his duties and failed to implement the lawful orders duly communicated to him and failed to perform and discharge his duties with the highest degree of professionalism and dedication to the best of his abilities and thereby has contravened the provisions of Rule 3 (1) (i), (ii), (iii), (vi), (viii), (xix) & (xxi) of the Central Civil Services (Conduct) Rules, 1964, as made applicable to NIPER Employees.*

Article-VIII

That, during the aforesaid period and while functioning as Officiating Registrar of the Institute, the said Dr. A. S. Sandhu committed misconduct in as much as that he has submitted wrong information to BOG in its 77 meeting vide agenda item No. 77.2.24 in action taken report that an LPA against the decision of Hon'ble single bench of Punjab and Haryana High Court in CWP No. 18628 of 2014 has been filed by the Institute because of the anomalies as highlighted in the above consolidated account. However, as per the records, no such LPA has been filed by the Institute. Thus by above aut of omission and commission the said Dr. A. S. Sandhu has failed to maintain absolute integrity, devotion to duty, acted in a manner unbecoming on the part of NIPER employee, failed to maintain high ethical standards and honesty, and failed to perform and discharge his duties with the highest degree of professionalism and dedication to the best of his abilities and thereby has contravened the provisions of Rule 3 (1) (i), (ii), (ili), (vi) & (xxi) of the Central Civil Services (Conduct) Rules, 1964, as made applicable to NIPER Employees.

8. Article IX was held to be partly proved which reads thus:-

Article IX

That the said Dr. A. S. Sandhu while functioning as Officiating Registrar of the National Institute of Pharmaceutical Education and Research (NIPER), SAS Nagar (Mohali) during 2019 committed grave misconduct in as much as that he wilfully and purposely acted and participated brazenly against the explicit Gazette Notification of Government of India and decision of BoG in not issuing regularization letter as recommended by the BoG in the case of Sh. Kultar Saini, Stenographer Grade 'B' and contrarily Issuing regularization letters under his seal and stamp to employees not recommended by HLC or BoG in collusion and connivance with Ex. Director with personal III motivation to confer illegal benefits to employees e.g. Sh. Inderjit Singh, Scientist Grade II, Dr. Manjinder Singh, Assistant Professor under the allbl of some purported legal advice compromising the interests of the Institute as well as public money. By this act, Dr. A. S. Sandhu violated the provisions of NIPER Act and not followed the directions of the BOG, the apex body of the Institute in the matter which is a grave misconduct. Thus by above act of omission and commission Dr. A. S. Sandhu, has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming on the part of NIPER employee and thereby has contravened the provisions of Rule 3 (1) (i) (ii) & (iii) of the Central Civil Services (Conduct) Rules, 1964, as made applicable to NIPER Employees."

9. Resultantly, the matter was placed for disciplinary action to be taken against the employee. Apparently, the copy of the inquiry report was supplied to the delinquent on 25.02.2021 vide Annexure P-9. He submitted his objections on 12.03.2021 (Annexure P-10) against the same and prayed for a personal hearing, on which no action was taken. A legal notice dated 19.08.2021 (Annexure P-16) was served upon the appellant that his retiral dues were being with held and since he had retired on 30.04.2020 and he was forced to approach this Court in CWP-10987-2023. In the meantime, without even associating with him, the BOG took a

call on 22.03.2023 (Annexure R-1) whereby, they had directed that the recovery of Rs.6,50,000/- be done from the employee and his pension be reduced by 10%. The said decision reads as under:-

"RELEVANT EXCERPTS OF MINUTES OF THE 79th MEETING OF THE BOARD OF RELVERNORS (BOARD) HELD ON 22ND MARCH, 2023 (WEDNESDAY) ATNIPER,S.A.S.NAGAR(MOHALI)

79.8 To consider taking the final decision on disciplinary proceedings Under Rule 14 of CCS (CCA) Rules, 1965 against Dr. A.S. Sandhu, Ex. Garden Supervisor concluded after his superannuation.

The Board went through the agenda thread barely. The Board asked the Secretary to read the approved/partly approved charges for the convenience of members virtually attending the meeting.

Thereafter, the Board observed that approved/partly approved charges are grave in nature, particularly the charges pertaining to loss to the Government Exchequer. The Board Inquired about the action taken against the former Director. It was apprised that since the services of Ex. Director were terminated with the approval of the Visitor, i.e. the Hon'ble President of India; hence the Institute did not maintain the employee-employer relationship, and disciplinary proceedings could not be initiated against the former Director. Whereas disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 were Initiated against Dr. A. S. Sandhu while he was in service, vide Memorandum No. F. No. 1-14(36)/2020/Estt./1167 dated 15.02.2020. It was also apprised by the Institute that it had filed a criminal/police complaint against the former Director for his various acts of omission and commission, which resulted in the loss to the exchequer, and pursuing the same presently.

The Board noted that the Disciplinary Authority had accepted the report of the Inquiry Authority at the relevant point of time.

The Board noted that as per Rule 9(2)(a) of CCS (Pension) Rules, 1972, the departmental proceedings, if Instituted while the Government Servant was in service whether before his retirement or during his re- employment, shall, after the final retirement of the Government servant. be deemed to be *proceedings under Rule 9 of CCS (Pension) Rules, 1972 and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service. Final order under Rule-9 will be issued in the name of President [(Government of India's decision (GID) No. 3 below Rule-9 of CCS (Pension) Rules, 1972 refers.*

As per the provisions of Rule-9 of CCS (Pension) Rules, 1972 following three powers are available for the President as regards pension and gratuity (refer para 9 of Chater-21 'Post Retirement Proceedings of Handbook for Inquiry Officers and Disciplinary Authorities' issued by DOPT--

a. *Withholding pension or gratuity, or both, either full or in part.*
b. *Withdrawing pension in full or in part, whether permanently or for a specified period.*
c. *Ordering recovery from pension or gratuity of the whole or part of any pecuniary loss caused to the Government.*

Powers under Rule 9 can be invoked "If, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement".

CCS (Pension) Rules, 1972 have been amended as CCS (Pension) Rules, 2021 vide Notification No. GSR 868 (E) dated 20.12.2021. Provisions of Rules-9 of CCS (Pension) Rules, 1972, have been replaced by Rule-8 of CCS (Pension) Rules, 2021. Recently, amendments in Rule-8 of CCS (Pension) Rules, 2021, have been notified vide Notification No. GSR 770 (E) dated 07.10.2022.

Approval of the President shall be required only for ordering-withholding/withdrawing pension or gratuity in the case of pensioner who retired from a post for which the President is the Appointing Authority and, in other cases, Secretary of the Administrative Ministry or Department shall be competent to order withholding/withdrawing pension or gratuity, if the pensioner is found guilty of grave misconduct or negligence during the *period of service in any departmental or Judicial proceedings.*

As per Clause 21 of NIPER Statutes, 2003, the employees of the Institute shall be governed by the CCS (CCA) Rules, 1965, as amended from time to time. The Appointing Authority of Dr. A. S. Sandhu was Director, NIPER-SAS Nagar. However, being an autonomous body, BoG, the supreme body of the Institute, may like to take the final decision in the matter.

The Board unanimously resolved to recover the full amount Rs. 6,50,000/- from Dr. A.S. Sandhu, preferably the recovery should be made from the Gratuity. The Board deliberated on the quantum of punishment to be awarded to Delinquent Officer. The Board unanimously resolved to withdraw part of the pension for the specified period. The Board noted that as per Rule 9 of the CCS (Pension) Rules P972 which reads ... Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees Nine Thousand Only (i.e. Minimum pension admissible as per revised rules). The Board decided to reduce 10% of the pension of Dr. A.S. Sandhu, Ex. Garden Supervisor for two years in pursuance to the provisions of Rule- 9 of CCS (Pension) Rules, 1972, for his acts of omission and commissions. which resulted in a loss to the Government Exchequer, while discharging the duties of Officiating Registrar at the relevant point of time."

10. The punishing authority, being the Director, thereafter implemented the order of the BOG vide order dated 01.06.2023 (Annexure P-17). The same reads as under:-

"WHEREAS, departmental proceedings have been initiated against Dr. A.S. Sandhu, Ex-Garden Supervisor Under Rule 14 of the Central Civil Services (Classification & Appeal) Rules., 1965, vide Memo of even No. dated 15.02.2020.

AND WHEREAS. Shri Rakesh Sehgal, Ex- Principal Controller of Defence Accounts (Western Command). Chandigarh was appointed as Inquiry Officer by the Disciplinary Authority to inquire into the articles of charge framed against Dr. A. S. Sandhu vide letter dated 25.03.2020 under Rule 14 (2) of CCS (CCA) Rules, 1965.

AND WHEREAS, Dr. A. S. Sandhu was superannuated on 30.04.2020 *during the pendency of inquiry proceedings and proceedings were concluded by the Inquiry Officer vide Inquiry Report dated 10.02.2021. i.e. after his superannuation.*

AND WHEREAS, as per the findings of the Inquiry Office vide Inquiry Report dated 10.02.2021, out of 11 charges framed against Dr. Sandhu, 03 charges (Article -IV, VII and VIII) were fully proved, 03 charges (Article - V. IX & XI) were partially proved and 05 charges (Article-III. VI. X) were not proved.

AND WHEREAS, since the charge sheet was issued to Dr. A. S. Sandhu while he was in service and concluded after his superannuation, hence, Inquiry Report along with all connecting documents/records of Inquiry was placed before the 79th meeting of Board of Governors (BOG) of the Institute held on 22.03.2023 for consideration and final decision of BoG.

AND WHEREAS, BoG went through the IO report dated 10.02.2021 vis-a-vis each article of charge along with all available records of the Inquiry thread bare and observed that approved/partly approved charges are grave in mature, <u>particularly the charges pertaining to loss to the tune of Rs. 6.50.000/- to the Government Exchequer (Article-IV).</u>

AND WHEREAS, the BoG unanimously resolved and decided as under:

I. to recover the full amount Rs. 6.50,000/- from Dr. A.S. Sandhu. preferably the recovery should be made from the Gratuity.

II. to reduce 10% of the pension of Dr. A.S. Sandhu for two years in pursuance to the provisions of Rule-9 of CCS (Pension) Rules. 1972. for his acts of omission and commissions, which resulted in a loss to the Government Exchequer, while discharging the duties of Officiating Registrar at the relevant point of time.

NOW THEREFORE, as per the decision of BoG in its 79in meeting dated 22.03.2023, it is ordered to recover Rs. 6,50.000/- from Dr. A. S. Sandhu, Ex-Garden Supervisor from his gratuity and to reduce 10% of his pension for a period of 02 (two) years.

Prof. Dulal Panda,
Director-cum-Disciplinary Authority"

11. It is in such circumstances this Court comes to the conclusion that the

principles of natural justice have been openly violated as the writ petitioner was never even associated with the punishment proceedings by the BOG though he had even requested for personal hearing. The judgments of the Apex Court provide that where there is violation of principles of natural justice and non-application of mind by the disciplinary authority, the writ Court would have jurisdiction to interfere. Reference can be made to the judgment of Apex Court rendered in ***Allahabad Bank and others vs. Krishna Narayan Tewari, (2017) 2 SCC 308*** in this regard. It has been settled by the Apex Court in ***Whirpool Corporation vs. Registrar of Trade Marks, Mumbai, (1998) 8 SCC 176*** and followed in ***M/s. Godrej Sara Lee Ltd. vs. Assistant Commissioner (AA) and another, (2009) 14 SCC 338*** that the availability of the alternate remedy is not a complete bar to the exercise of jurisdiction under Article 226 of the Constitution of India. The basic principles read thus:-

> *"i) Where the Writ Petition has been filed for the enforcement of any of the Fundamental rights; or*
> *ii) Where there has been a violation of the principle of natural justice; or*
> *iii) Where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."*

12. In a recent judgment of the Supreme Court in ***M/s. Radha Krishan Industries vs. State of Himachal Pradesh and others, (2021) 6 SCC 771,*** the principles of law regarding the issue in question have been discussed. The relevant extract is set out herein below:-

> *"**27.1.** The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;*
>
> ***27.2.** The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;*

Shivani Gupta
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> ***27.3.*** *Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;*

27.4. *An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;*

27.5. *When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and*

27.6. *In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."*

13. The Apex Court in the case of ***Dr. Uma Agarwal vs. State of U.P. and another, (1999) 3 SCC 438*** placing reliance upon ***State of Kerala vs. M. Padmanabhan Nair (1985) 1 SCC 429*** held that the grant of pensionary benefits is not a bounty, but a right of the employee and as such cannot be denied without proper justification. Relevant paragraph reads thus:-

"We have referred in sufficient detail to the Rules and instructions which prescribe the time- schedule for the various

steps to be taken in regard to the payment of pension and other retiral benefits. This we have done to remind the various governmental departments of their duties in initiating various steps atleast two years in advance of the date of retirement. If the rules/instructions are followed strictly much of the litigation can be avoided and retired government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the rules/instructions apart from other relevant factors applicable to each case."

14. This Court cannot turn a blind eye to the woes/distress of a retired employee who was constrained to approach the Court as the employer failed in its duty to disperse his retiral benefits since April 30, 2020.

15. Further, Section 4(6) of the Payment of Gratuity Act, 1972 lays down the circumstances under which gratuity of an employee can be forfeited, either wholly or partially by the employer. Relevant provisions of the said Act are reproduced as under:-

"4(6) Notwithstanding anything contained in sub-section (1), -

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee may be wholly or partially forfeited] -

> *(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or*
>
> *(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."*

16. The petitioner herein has been superannuated from service. His service was not terminated by the employer for any act, willful omission or negligence and, therefore, no amount could have been deducted from gratuity amount.

17. The argument raised that the matter should have been referred to the Appellate Authority being the Chairman of the BOG as such would be of no assistance as apparently from the minutes of the meeting of the BOG, it would be clear that the BOG itself is a supreme body of the Institute which is headed by the Chairman under Section 15 of the NIPER Act, 1998. The stand taken in the reply also is that the available remedy has not been exhausted of filing an appeal with the Appellate Authority as prescribed under the CCS (CCA) Rules, 1964. The specific authority as such is not being mentioned. Once the principles of natural justice as such have been violated in spite of the fact that personal hearing was asked for, we are of the considered opinion that the writ Court would have jurisdiction. We are also not inclined to give an opportunity as such to the appellant as such to reconsider the issue at this point of time keeping in view the fact that the disciplinary authority is bound by the decision of the BOG and the dispute which has arisen out of the *inter se* disciplinary action which was being taken was regarding the other employees namely the Ex-Director and the Chairman.

18. In such circumstances, we feel that the learned Single Judge was well justified in quashing the order dated 01.06.2023 (Annexure P-17) and we find no

reason to interfere in the same. Accordingly, the present appeal stands dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

10.04.2024
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(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking Yes
Whether reportable Yes