

CWP-9078 of 1999 (O&M)

2024:PHHC:11961/



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

CWP-9078 of 1999 (O&M)

Reserved on: 27.08.2024

Pronounced on: 10.09.2024

Municipal Corporation, Ludhiana

.....Petitioner

Versus

Shri Roshan Lal and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. A.K. Bazaz, Advocate,
for the petitioner.

Mr. Abhimanyu Kalsy, Advocate,
for Mr. A.K. Kalsy, Advocate,
for the respondent No.1.

NAMIT KUMAR, J.

1. The present petition has been filed by the petitioner-Municipal Corporation, Ludhiana, impugning the order dated 08.02.1999 (Annexure P-1), passed by the Commissioner, Patiala Division, Patiala being Appellate Authority, whereby the order of dismissal of respondent no.1 has been set aside and it has been directed to the petitioner-Corporation, to allow respondent No.1 to join as IDA Assistant and to release the payment of all consequential dues in his favour.

2. The brief facts as have been pleaded in the petition are that Roshan Lal-respondent no.1 was appointed as Oilman in the Municipal Corporation, Ludhiana, on 10.02.1977 and subsequently he was posted as Chowkidar on 22.07.1980. Thereafter, he was posted to work under Sh. G.S. Lal, the then Executive Engineer (since retired) and he



allowed him to work on the post of Assistant IDA at his own level. He also recommended directly to the Government for creation of post of Assistant IDA w.e.f. 12.10.1984 in the year 1991. Thereafter, respondent No.1 filed CWP No.3288 of 1991 before this Court challenging the order dated 18.12.1990 vide which he was asked to join as Chowkidar in Zone No.8 and for issuance of directions for his regularization as Assistant IDA w.e.f. 10.10.1984 i.e. the date from which he had been working in that capacity. Petitioner-Corporation in the said writ petition took the stand that no post of Assistant IDA was in existence and, therefore, he could not be adjusted or regularized as Assistant IDA. The said petition was disposed of by the Division Bench of this Court vide order dated 02.12.1991 by passing the following order: -

“Learned counsel for the respondent Nos.2 and 3 stated that there is no post available similar to the one held by the petitioner against which he may be accommodated. The respondents are directed to adjust the petitioner according to the instructions as and when any post similar to the one held by him falls vacant. The respondent further undertakes to pay arrears of wages, if any, due to the petitioner till the date he worked.”

It was also pleaded before this Court in the said writ petition that the Local Government vide memo dated 18.12.1990 created the post of Assistant IDA for specific period commencing from 12.10.1984 to 30.11.1990. Consequently, the petitioner was paid salary in compliance to the order passed by this Court dated 02.12.1991 and it was further ordered that the petitioner will remain as Chowkidar w.e.f.



01.12.1990. In this manner, a sum of Rs.77,453.90 was paid to respondent No.1 for the period from 12.10.1984 to 30.11.1990. However, respondent No.1 did not join on the post of Chowkidar. Consequently, the Commissioner vide letter dated 31.01.1994 directed respondent no.1 to report to his duties with Sh. B.S. Ahuja, Executive Engineer WSSA. However, he refused to accept the orders of the Commissioner as the said letter was sent through one Sh. Chaman Lal, Sewadar, who reported that he went 2/3 times to deliver the letter to respondent no.1 but he refused to accept the same. Thereafter, an attempt was made to send the letter by registered post, which was returned with the report (N.D.) and in this manner, respondent no.1 intentionally refused to accept the letter which is an act of insubordination knowing fully well that he was directed to obtain orders from Sh. B.S. Ahuja as Chowkidar. Consequently, respondent no.1 was placed under suspension vide order dated 15.04.1994. Even the said letter was not received by respondent no.1 and the same was pasted on the door of his house. Thereafter, respondent no.1 was issued chargesheet dated 05.07.1994. In the said chargesheet, following charges were framed against him: -

“LIST OF CHARGES

That Shri Chaman Lal, Sewadar was assigned the duty, by the Commissioner, Municipal Corporation, Ludhiana to deliver a letter No.708/P.S. dated 31.1.94 to you. He submitted his report on 1.2.94, that he went two-three times to deliver this letter to you, but you refused to receive this letter. Thereafter, having no other alternative to deliver this letter to you, this letter was sent through



registered post (through post), which came back with the report (N.D) of the postal authority.

It is clear from the above, that you have intentionally refused to receive the letter, which is a grave mis-conduct and you have violated the orders of your higher authorities by not receiving the letter. As such, you have made yourself liable for the charges, for which you are fully responsible.

*Sd/-
Commissioner,
Municipal Corporation, Ludhiana”*

Respondent no.1 even refused to accept the said chargesheet and the same was served by process of pasting on the door of his house. Thereafter, Sh. Gagandeep Singh, PCS, Assistant Commissioner, was appointed as an Inquiry Officer to hold inquiry and Sh. Ashok Kumar, Establishment Superintendent, was appointed as Presenting Officer. The Inquiry Officer issued letter to respondent no.1 on 28.06.1995, directing him to appear in his office for inquiry at 3.00 p.m. on 10.07.1995 and the said letter was sent through Sh. Makhan Singh, Sewadar, who reported vide his report dated 28.06.1995 that respondent no.1 refused to receive the letter and he was served by pasting the letter at the main door of his house. In response thereto, respondent no.1 appeared on 10.07.1995 before the Inquiry Officer. The Inquiry Officer asked respondent no.1 as to whether he admits the imputation of charges levelled against him or he denies the same. He insisted for reading the charges and inspection of file. The Inquiry officer directed the Establishment Superintendent to read out the charges to respondent no.1 and allow him the inspection of the file.



Thereafter, respondent no.1 was asked to make statement with regard to denial or admission of the charges. He plainly refused to get his statement recorded to admit or deny the charges. Thereafter, the Presenting Officer was asked to bring the departmental witnesses on the next date i.e. 18.07.1995 at 3.00 p.m. and respondent no.1 was directed to sign the proceedings and to note down the next date, which he refused to sign. He was again served with a letter dated 14.07.1995, directing him to appear on 18.07.1995 before the Inquiry Officer at 3.00 p.m., however, he refused to accept the letter and Makhan Singh, Sewadar, reported that letter has been pasted on the main gate of the house of respondent no.1. On 18.07.1995, respondent no.1 again appeared and statements of departmental witnesses Sh. Daljit Singh, P.A. to the Commissioner; Sh. Chaman Lal, Sewadar, Commissioner's office and Smt. Gursharan Kaur, Receipt and Despatch Clerk, Commissioner's office, were recorded. After recording the statements of these three departmental witnesses, respondent no.1 was asked to cross-examine these witnesses. In response, respondent no.1 stated that he was not willing to cross-examine those witnesses nor he wanted to get his statement recorded. Presenting Officer Ashok Kumar stated before the Inquiry Officer that no other witness is required to be examined and thereafter 25.07.1995 was fixed for bringing the defence witnesses or documents by the defence side. Respondent no.1 refused to sign the proceedings. Again a letter dated 19.07.1995 was sent to respondent no.1 informing him that all departmental witnesses have to be examined and he is given an opportunity to present his witnesses or



any document on 25.07.1995 at 3.00 p.m. However, he refused to receive the said letter and consequently, the same was also pasted on the main door of his house by Sh. Makhan Singh, Sewadar. On 25.07.1995, respondent no.1 was present along with Presenting officer. Respondent no.1 stated that he did not want to present any defence witness or present any defence documents. He also stated that he did not want his own statement to be recorded and he would not like to sign any proceedings. The Inquiry Officer after considering the evidence, vide his report dated 02.08.1995 proved the charges beyond doubt against respondent no.1. Thereafter, respondent no.1 was issued a show-cause notice dated 04.08.1995 along with copy of the inquiry report as to why he should not be dismissed from service. He refused to accept even the said show-cause notice dated 04.08.1995. Consequently, the order dated 21.11.1995 was passed, dismissing respondent no.1 from service.

Respondent no.1 filed appeal before the Commissioner, Patiala Division, Patiala, challenging the order of his dismissal dated 21.11.1995. The Commissioner vide his order dated 26.11.1996 set aside the order of dismissal. The said order dated 26.11.1996 was challenged by the petitioner-Corporation before this Court in CWP No.15928 of 1997. The said writ petition was disposed of by the Division Bench of this Court vide order dated 28.10.1998 and the order dated 26.11.1996 was set aside and the matter was remitted back to the Commissioner, Patiala Division, Patiala, with a direction to re-decide



the appeal filed by respondent no.1, within a period of three months.

The said order dated 28.10.1998 passed by this Court reads as under: -

“Municipal Corporation Ludhiana aggrieved of order Annexure P-01 dated November 29, 1996 vide which respondent No.1 has been reinstated on the post of Chowkidar, by setting aside the order of his dismissal, had filed present petition under Article 226 of the Constitution of India.

Operative part of order Annexure P-1 reads thus:-

"I have heard the learned counsel for the parties and have also gone through the record of the case carefully. From the perusal of the record, I find that the appellant was not given any opportunity to examine any record on the basis of which the charges against him were framed although he repeatedly asked for it. The fact that the appellant was not allowed to examine the record on the basis of which the charges were framed against him and that the witnesses mentioned in the charge-sheet were not examined, nor any reasons mentioned in the inquiry report for not doing so, shows that the proceedings were vitiated and the extreme punishment of dismissal can not be justified for the guilt of previous litigation. Therefore, I accept the appeal, set aside the impugned order dated 20.11.1995 passed by the Commissioner, Municipal Corporation, Ludhiana and reinstate the appellant in service from the period he remained out of service and the period may be treated as on duty."

Mr. Kumar, learned counsel for the petitioner vehemently contends that the entire record was shown to respondent No.2 and full opportunity was given to him to defend his case and all the witnesses were examined in the



presence of respondent No.1 and it may be a different matter that he did not cross-examine the said witnesses. After hearing learned counsel for the parties and going through the records of the case, we are of the view that the Commissioner, Patiala Division, Patiala, while passing the impugned orders, reached at the conclusions as reproduced above, not on the basis of any material on the records and without proper application of mind. The interest of justice would be met if order, Annexure P-1 is quashed and the matter is remitted to the Commissioner, Patiala Division, Patiala with a direction to redécide the appeal filed by respondent No.1. So order. We reasonably expect that the Commissioner, Patiala Division, Patiala respondent No.2 herein would give his findings on the basis of material as may be available on records of the case. Respondent No.2 would decide the matter as expeditiously as possible and preferable within three months from the date a copy of this order is received by him.

Parties through their counsel are directed to appear before the Commission, Patiala Division, Patiala on November 23, 1998.”

Thereafter, appeal was heard by the Commissioner, Patiala Division, Patiala, and vide order dated 08.02.1999, the appeal preferred by respondent no.1 has been accepted, the order of dismissal of respondent no.1 has been set aside and it has been directed to the Commissioner, Municipal Corporation, Ludhiana, to allow respondent No.1 to join as IDA Assistant and to release the payment of all consequential dues in his favour. The said order has been impugned by the Corporation in the present writ petition.



3. Respondent no.1 has filed a detailed written statement and contested the claim of the petitioner-Corporation. It has been stated in the written statement that respondent no.1 was working as Assistant IDA, therefore, he was wrongly directed to join the post of Chowkidar and the order passed by the Commissioner, Patiala Division, Patiala, dated 08.02.1999 (Annexure P-1) is perfectly legal and valid and is liable to be upheld.

4. The stand of respondent no.1 has been refuted by the petitioner-Corporation by filing a replication to the written statement filed by respondent no.1.

5. Learned counsel for the petitioner, while referring to the impugned order dated 08.02.1999 (Annexure P-1), has submitted that the issue before the Appellate Authority i.e. Commissioner, Patiala Division, Patiala, was as to whether the punishment awarded to respondent no.1 was legal and valid, whereas the said authority has gone on a different footing by recording a finding that the order of punishment passed by the Commissioner, Municipal Corporation, Ludhiana, is against the spirit of the order passed in CWP-3288 of 1991. He further submitted that the punishment of dismissal was imposed upon respondent no.1 after following the due procedure of law as all reasonable opportunities were granted to respondent no.1 to defend himself in the inquiry proceedings, however, respondent no.1 neither filed any reply to the chargesheet nor led any defence evidence before the Inquiry Officer and since in the inquiry proceedings the charges levelled in the chargesheet have been proved against



respondent no.1, therefore, the order of dismissal has been passed and the same has wrongly been set aside by the Appellate Authority.

6. *Per contra*, learned counsel for respondent no.1 has submitted that since the petitioner was working as Assistant IDA, therefore, he was wrongly directed to join the post of Chowkidar and for the said reason, respondent no1 did not participate in the inquiry proceedings.

7. I have heard learned counsel for the parties and perused the record.

8. The facts which have emerged from the abovesaid pleadings are that respondent no.1 was initially appointed as Oilman on 10.12.1977 and thereafter he was posted as Chowkidar on 22.07.1980. He worked as Assistant IDA from 12.10.1984 to 30.11.1990 and he has also been paid the salary for the said post in pursuance to the orders dated 02.12.1991 passed by this Court in CWP No.3288 of 1991. The said petition was disposed of by this Court vide order dated 02.12.1991 by recording the statement of the counsel for respondents no.2 and 3 (Municipal Corporation) whereby it was stated that there is no post available similar to the one held by respondent no.1 against which he may be accommodated and this Court directed the Corporation to adjust the petitioner (respondent no.1 herein) according to the instructions as and when any post similar to the one held by him falls vacant. The Corporation further gave undertaking to pay arrears of wages, if any, due to respondent no.1 till the date he worked as Assistant IDA. The second part of the order has been complied with by



the petitioner-Corporation by making a payment of Rs.77,453.90 as arrears of wages for the period from 12.10.1984 to 30.11.1990 when he worked as IDA Assistant. However, with regard to the first part of the order whereby this Court directed the Corporation to adjust respondent no.1 according to instructions as and when any post similar to the one held by him falls vacant is concerned, it has been stated that the post having scale of more than Rs.1,000/- can only be created by the Government and since neither any such post has been created by the Government nor respondent no.1 has been adjusted against a similar post of IDA Assistant, therefore, respondent no.1 was duty bound to perform his duty on the substantive post of Chowkidar and when he was directed to perform the duties of the post of Chowkidar vide letter dated 31.01.1994 (Annexure P-4), respondent no.1 refused to even accept the said order and thereafter has not performed the duties. Consequently, he was placed under suspension vide order dated 15.04.1994 followed by chargesheet dated 05.07.1994. No reply to the chargesheet was filed by respondent no.1 nor he participated in the inquiry proceedings in an effective manner as no defence evidence was led by him, though on one or two occasions he did appear before the Inquiry Officer. The charges levelled in the chargesheet have been proved against respondent no.1 and after following the due procedure, he has been dismissed from service vide order dated 21.11.1995. No fault can be found with the inquiry proceedings held against respondent no.1.



9. The Hon'ble Supreme Court in ***State of Andhra Pradesh and others v. S. Sree Rama Rao, AIR 1963 Supreme Court 1723*** has held that the High Court is not a Court of appeal which examines the merits of the findings recorded in the departmental inquiry and the power of judicial review is confined to; whether the inquiry was held by a competent authority; according to the procedure prescribed and whether rules of natural justice have been followed.

10. The Hon'ble Supreme Court in ***Union of India and another v. P. Gunasekaran, 2015(1) SCT 5*** while considering the scope of interference under Articles 226/227 of the Constitution of India has held as under: -

“13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether :

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*



- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i. the finding of fact is based on no evidence.*

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;*
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii). go into the adequacy of the evidence;*
- (iv). go into the reliability of the evidence;*
- (v). interfere, if there be some legal evidence on which findings can be based.*
- (vi). correct the error of fact however grave it may appear to be;*
- (vii). go into the proportionality of punishment unless it shocks its conscience.*

*14. In one of the earliest decisions in **State of Andhra Pradesh and others v. S. Sree Rama Rao, AIR 1963 Supreme Court 1723**, many of the above principles have been discussed and it has been concluded thus :*



"7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a



matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

15. In **State of Andhra Pradesh and others v. Chitra Venkata Rao**, (1975)2 SCC 557, the principles have been further discussed at paragraph-21 to 24, which read as follows :

"21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High



Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

22. Again, this Court in ***Railway Board, representing the Union of India, New Delhi v. Niranjana Singh*** said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In *Niranjana Singh* case this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shut-down of an air compressor at about 8.15 a.m. on May 31, 1956. This Court said that the Enquiry



Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or



inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan.

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do."

These principles have been succinctly summed-up by the living legend and centenarian Justice V. R. Krishna Iyer in State of Haryana and another v. Rattan Singh, (1977) 2 SCC 491. To quote the unparalleled and inimitable expressions:

"4. in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence



provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. ..."

11. To the similar effect is the judgment of the Hon'ble Supreme Court in ***Central Industrial Security Force and others v. Abrar Ali, 2017(1) SCT 682*** wherein it has been held as under: -

*"8. Contrary to findings of the Disciplinary Authority, the High Court accepted the version of the Respondent that he fell ill and was being treated by a local doctor without assigning any reasons. It was held by the Disciplinary Authority that the Unit had better medical facilities which could have been availed by the Respondent if he was really suffering from illness. It was further held that the delinquent did not produce any evidence of treatment by a local doctor. The High Court should not have entered into the arena of facts which tantamounts to re-appreciation of evidence. It is settled law that re-appreciation of evidence is not permissible in the exercise of jurisdiction under Article 226 of the Constitution of India. In **State Bank of***



Bikaner and Jaipur v. Nemi Chand Nalwaiya reported in 2011(2) S.C.T. 782 : 2011(3) Recent Apex Judgments (R.A.J.) 28 : (2011) 4 SCC 584, this Court held as follows:

*"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic inquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide **B.C. Chaturvedi v. Union of India, 1996(1) S.C.T. 617 : (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44, Union of India v. G. Ganayutham, 1997(4) S.C.T. 214 : (1997) 7 SCC 463 : 1997 SCC (L&S) 1806, Bank of India v. Degala Suryanarayana, 1999(3) S.C.T. 669 : (1999) 5 SCC 762 : 1999 SCC (L&S) 1036 and High Court of Judicature at Bombay v. Shashikant S. Patil."***



The said view has recently been reiterated by the Hon'ble Supreme Court in ***Deputy General Manager (Appellate Authority) and others v. Ajai Kumar Srivastava, 2021(1) SCT 285*** and in the said judgment it has been held as under: -

*“23. The power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities discharged by constitutional Courts under Article 226 or Article 32 or Article 136 of the Constitution of India is circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority which has been earlier examined by this Court in ***State of Tamil Nadu v. T.V. Venuaopalan, 1994(6) SCC 302*** and later in ***Government of T.N. and Another v. A. Rajapandian, 1995(1) SCC 216*** and further examined by the three Judge Bench of this Court in ***B.C. Chaturvedi v. Union of India and Others, 1995(6) SCC 749*** wherein it has been held as under:-*

*"13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In ***Union of India v. H.C. Goel [(1964) 4 SCR 718]*** this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of*



the record or based on no evidence at all, a writ of certiorari could be issued."

24. *It has been consistently followed in the later decision of this Court in **Himachal Pradesh State Electricity Board Limited v. Mahesh Dahiya**, 2017(1) SCC 768 and recently by the three Judge Bench of this Court in **Pravin Kumar v. Union of India and Others**, 2020(9) SCC 471.*

25. *It is thus settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The Court/Tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.*

26. *When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the Court is to examine and determine: (i) whether the enquiry was held by the competent authority; (ii) whether rules of natural justice are complied with; (iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.*



27. It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the findings recorded by the former, in case of disagreement, the disciplinary authority has to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry.

28. It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.

29. The Constitutional Court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of malafides or perversity, i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.”

12. Concededly, the petitioner-Corporation had made various communications for effecting service upon respondent no.1, which are



at Annexures P-5 and P-6 as he always refused to receive the letters etc. addressed to him and in the course of inquiry he adopted attitude of complete non-cooperation and the same are reproduced as under: -

“ANNEXURE P-5

ORDER

NO: 19/PS

Dated 15.4.94

Shri Roshan Lal, Chowkidar was to be served with letter No. 708/PS dated 31.1.94 requiring him to report to Sh. B.S. Ahuja, Executive Engineer, WSSA, of the Municipal Corporation, for taking further order as Chowkidar. Efforts were made to serve the letter through my office peon Shri Chaman Lal and according to his reported dated 1.2.94, he went to deliver letter to Shri Roshan Lal, Chowkidar two/ three times, but Sh. Roshan Lal, Chowkidar refused to receive the said letter. As it was not possible to serve him in the ordinary course of business, so registered letter at his last known postal address was sent. This letter was received back from the postal authorities, with the remarks "N.D." Under the circumstances, I find that he is intentionally evading to receive the letter and thus has acted in a manner not befitting an employee of Municipal Corporation, Ludhiana. Finding any other way, Shri Roshan Lal, Chowkidar, is hereby placed under suspension with immediate effect.

This order be sent to him through registered cover and a copy be affixed at the outer gate of his residence, at the address known to the Corporation. He will be entitled to receive suspension allowance under rules.

Sd/-
Commissioner,
Municipal Corporation.
Ludhiana. 14.4.94

ANNEXURE P-6

Office Order No. 243/General Department Dated: 15.4.94

Commissioner, vide his order dated 14.4.94 ordered for suspension of Shri Roshan Lal, Chowkidar on account of not receiving letter/Order No. 708/P.S. dated 31.1.94 and intentionally refused to receive the same when sent through registered post. Because this act reflects indiscipline. Alongwith this order, it is hereby ordered in case the employee refuses to receive this order, the same may be pasted in front door of his residence.

*Sd/-
Establishment Superintendent
Municipal Corporation,
Ludhiana*

x x x x x”

Reference is made to Affidavit dated 26.10.1999 (Annexure P-12) given by respondent No.1 to the Commissioner, Municipal Corporation, Ludhiana, at one point of time whereby he has requested the petitioner-Corporation to reinstate him as Chowkidar.

“Annexure P-12

*To
Commissioner,
Municipal Corporation,
Ludhiana.*

Subject: Request for reinstatement.

Affidavit

I Roshan Lal Son of Ram Bharose resident of 2440, Rajesh Nagar, Ludhiana solemnly declare as under:-

That I joined Municipal Corporation Ludhiana 10.2.77 as Oilman which is class IV post. Afterwards on 22.7.80, I was deputed as Chaukidar. In 1984, I was



attached to the Executive Engineer looking after the I.D.A. Project. From 12.10.1984 to 30.11.1990 work of Senior Assistant was taken from me. After that, I requested that I be paid salary of Assistant but the office did not pay me the same. Later on for taking salary of Assistant, I filed writ petition No. 3288 in the Hon'ble High Court. This writ petition was decided on 21.12.1991, in which it was directed that from 12.10.1984 to 30.11.1990, I should be paid the salary of Assistant, after deducting the pay of Chaukidar received by me. The court also directed that whenever a vacancy of Assistant or a similar post became vacant, I should be adjusted against that. The Commissioner in the year 1994 passed an order (after which I came to know later on that I should perform the duty of Chaukidar with the Executive Engineer). Thereafter, on 15.4.94, I was placed under suspension. After departmental enquiry, I was dismissed from service vide order dated 21.11.95. I filed departmental appeal before the Divisional Commissioner, Patiala against order dated 21.11.95. The Learned Divisional Commissioner accepted the appeal on 26.11.96 and reinstated me and directed that the period of absence be treated as on duty. Against the order dated 26.11.96, the Municipal Corporation Ludhiana filed C.W.P. No. 15928 of 1997. This writ petition was accepted and it was directed that the Divisional Commissioner re-consider the matter. The Divisional Commissioner, Patiala, vide his order dated 8.2.99 decided that I be reinstated. Municipal Corporation Ludhiana filed writ petition against the said order. The Hon'ble High Court vide order dated 8.2.99 passed in writ petition No. 15908 of 1999 that the operation of the order be stayed. The writ petition is still pending.

That I am a poor man and I request that keeping in view my poverty I may be reinstated. I request that I may



be appointed against the post of Chaukidar which my substantive cadre. I would request that the date of appointment as Class IV be determined as 10.2.77 and on the basis of that seniority, whatever post I am entitled to as per rules, may be given to me. I am graduate. I assure you that I shall not give you any cause of complaint. I shall discharge my duties honestly and deligently. In case, you accept my said request, I shall not claim any right in the Court or Tribunal against the administration in any case or appeal. I am making this request at my own level. I hope that I shall be given a chance to serve you. The C.W.P. No. 15908 of 1999 which the Municipal Corporation Ludhiana has filed against the orders of Divisional Commissioner, Patiala and is pending shall also be disposed off in terms of my above request I do not propose to file a reply in the said writ petition after my reinstatement and appointment since 10.2.1977 as class IV, the order dated 8.2.90 of Divisional Commissioner Patiala shall come to an end automatically. I also given undertaking that the period I have remained absent after August 1999 be treated as extra-ordinary leave. From 1.12.1990, I have not been paid my full salary as Chaukidar although the Commissioner had reinstated me on the post of Chaukidar However I was not paid my salary. The bill may be passed after office verification and the salary may be paid to me. In this manner, I shall work all the more deligently. I have already requested that I am a very poor man. I shall perform my duties honestly and deligently.

Thanking you

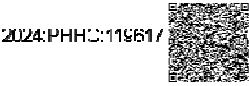
Yours faithfully

Sd/-

(Roshan Lal)

O&M Cell

*Municipal Corporation,
Ludhiana."*



Respondent No.1 had been paid wages for the period from 12.10.1984 to 30.11.1990 when he worked as Assistant. The Government had directed to fix the responsibility of those concerned who proceeded for creation of the post as the posts having scale of more than Rs.1,000/- were required to be created by the Government. A letter bearing No.1514/WRD dated 10.10.1984 issued on account of his appointment as IDA has not been placed on record by respondent No.1. Whereas petitioner-Corporation in its replication has even denied the existence of such letter. He was a Class-IV employee working as Chowkidar and intended to be promoted as Assistant directly particularly when he ranked quite junior in the seniority list.

13. In view of the foregoing discussion, the present writ petition is allowed and the impugned order dated 08.02.1999 (Annexure P-1) passed by the Commissioner, Patiala Division, Patiala, is quashed and set aside.

14. Pending application(s), if any, stand disposed of.

10.09.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No