



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-18617-2020 (O&M)

Date of decision: 20.08.2024

R.S. Verma

...Petitioner

VERSUS

Haryana Right to Service Commission and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Sukhandeep Singh, Advocate for
Ms. Amrita Nagpal, Advocate for the petitioner.

Mr. Pankaj Mulwani, DAG Haryana.

Ms. Shreyansi Verma, Advocate for respondent No.2
Legal Aid Counsel (through V.C.).

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the order dated 11.06.2018 (**Annexure P-8**) passed by respondent no. 1 i.e. Haryana Right to Service Commission whereby the Commission, while acting upon the complaint given by respondent no. 2 and on exercising its power under Section 17(1) (d) of the Haryana Right to Service Act, 2014 (hereinafter referred as HRSC Act, 2014), has recommended disciplinary action to be initiated against the petitioner for dereliction of his statutory duties.

Facts of the case: -

2. Respondent No 2 submitted a letter dated 17.11.2017 in the Estate Office of HSVP, Hisar requesting therein for correction of the account statement and refund of the excess amount in respect of SCO No. 50, UCE-1, Hisar which was allotted to him vide allotment letter dated 14.10.1981 (**Annexure P-1**). In



the meanwhile, when his application was under consideration as the allotment was of the year 1981, respondent no. 2 hurriedly filed an appeal dated 22.12.2017 under HRSC Act, 2014 before the First Appellate Authority-cum-Administrator, HUDA, Hisar (**Annexure P-2**).

3. The Learned First Appellate Authority-cum-Administrator, HUDA, Hisar vide order dated 11.01.2018 disposed off the first appeal on the ground that the same is not covered under the HRSC Act, 2014. However, the Learned First Appellate Authority while disposing off the appeal, directed the Estate Officer, Hisar for issuing strict direction to the concerned official for taking action on the letter dated 17.11.2017 of respondent no. 2 and to correct the account statement to the extent as to whether any extra amount is to be paid or not and directed that the action be taken in accordance with HUDA rules at the earliest (**Annexure P-3**).

4. In compliance of the order dated 11.01.2018, the Estate Officer, Hisar vide memo No 1785 dated 25.01.2018 (**Annexure P-4**) supplied the required account statement along with a cheque bearing no. 001235 dated 25.01.2018 of Rs 12,893 drawn on HDFC Bank to the respondent no. 2 against the letter dated 17.11.2017.

5. Respondent no.2, not being satisfied by the account statement and refund, preferred 2nd appeal (**Annexure P-5**) under HRSC Act, 2014 before the office of the petitioner who was then posted as Administrator (HQ), HSVP, Panchkula and the same was received in the office of the petitioner on 08.02.2018 and on the same day it was down marked to the concerned officer.



Thereafter the appeal was forwarded to Chief Architect, HSVP, Panchkula being the nodal officer. The said nodal officer down marked the file for comments from the concerned quarter and was put up again before the petitioner on 13.04.2018, however, till then the 60 days time-period of deciding Appeal, as per the HRSC Act, 2014, had already lapsed.

6. However, without waiting for the period of 60 days to lapse from the date of 2nd Appeal as provided under the HRSC Act, 2014, respondent no. 2 approached respondent no. 1 for redressal of his grievances on 15.03.2018 (**Annexure P-6**), who while exercising the powers under Section 17 (1) (b) of the HRSC Act, 2014 issued notice to the petitioner.

7. The petitioner filed his reply before respondent no. 1 on 11.06.2018 (**Annexure P-7**), however, the Commission vide order dated 11.06.2018 imposed penalty of Rs. 5000 on the Estate officer and directed initiation of disciplinary action against the petitioner exercising of power granted under section 17 (1) (d) & (h) of the HRSC Act, 2014 (**Annexure P-8**).

Arguments by the Petitioner: -

8. Learned Counsel for the petitioner contends that the First Appeal preferred by the respondent no. 2 was disposed of vide order dated 11.01.2018 after observing that the Appeal preferred by respondent no. 2 does not come under the purview of the HRSC Act, 2014 and it was only on humanitarian grounds that a direction was issued to the Estate Officer to direct the concerned official for correction of account statement of the respondent no. 2 as raised/asked by him vide letter dated 17.11.2017. He contends that while



complying with the order of the Learned First Appellate Authority, memo no. 1785 dated 25.01.2018 was issued by the Estate Officer whereby refund of the excess amount of Rs. 12,893 in respect of SCO No. 50, UCE-1, Hisar was issued to respondent no. 2 vide cheque bearing no. 001235 drawn on HDFC Bank.

9. He further contends that notwithstanding a clear finding of non-maintainability of the Appeal preferred by the respondent no. 2 being recorded, respondent no. 2 preferred Second Appeal before the Second Appellate Authority under the HRSC Act, 2014 which came before the petitioner by virtue of him being the Administrator (HQ), HSVP, Panchkula on 08.02.2018. He contends that the petitioner immediately took the requisite action required and on the same day it was down marked to the concerned officer. Thereafter the appeal was forwarded to Chief Architect, HSVP, Panchkula being the nodal officer. The said nodal officer down marked the file for comments from the concerned quarter and the same was put up again before the petitioner only on 13.04.2018.

10. However, notwithstanding that a prompt action was already taken by the petitioner on the Second Appeal preferred by respondent no. 2 and the redressal of the same was in process, the said respondent approached the Commission i.e. respondent no. 1 on the ground that the Second Appeal preferred was not decided in the time bound manner as prescribed under the HRSC Act, 2014 and a further prayer to take action against the erring officials was also made. Learned Counsel for the Petitioner contends that respondent no.1 passed the impugned order without appreciating the facts and the reply filed by



the petitioner. He contends that the HRSC Act, 2014 provides a mechanism for redressal of grievance in case any party is denied any notified service within the specified time, however, in the present case respondent no. 2, even after getting the service as was asked for, has raised disputed question of facts with regard to calculation and refund, which ought not to be decided under the provisions of HRSC Act, 2014.

11. He further contends that respondent no.1 has not considered the explanation given by the petitioner and that the appeal had been filed before the Commission even prior to the expiry of 60 days period as provided under section 7 (2) of the HRSC Act, 2014. He states that the respondent no. 1 has failed to consider that the period of 60 days provided for deciding the second appeal is in fact directory in nature and not mandatory as is clear from the bare reading of the same. To buttress his submission, he has placed reliance on the Judgment of the Hon'ble Supreme Court in the matter of **C. Bright vs. District Collector and Others** reported as **(2021) 2 SCC 392** to contend that the use of word "shall" in a statute shall not be mandatory unless language so prescribes and is directory in nature. The relevant part of the judgment is extracted as under: -

"8. A well settled rule of interpretation of the statutes is that the use of the word "shall" in a statute, does not necessarily mean that in every case it is mandatory that unless the words of the statute are literally followed, the proceeding or the outcome of the proceeding, would be invalid. It is not always correct to say that if the word may has been used, the statute is only permissive



or directory in the sense that non-compliance with those provisions will not render the proceeding invalid (State of U.P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912) and that when a statute uses the word “shall”, prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute (State of U.P. & Ors. v. Babu Ram Upadhya, AIR 1961 SC 751). The principle of literal construction of the statute alone in all circumstances without examining the context and scheme of the statute may not serve the purpose of the statute (Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. & Ors., (1987) 1 SCC 424).”

12. He further contends that not only the usage of the word “shall” but also the usage of the word “as far as possible” in Section 7(2) of the HSRC Act, 2014 makes it evident that the time limit of 60 days prescribed in the act to decide the second appeal is directory and desirable in nature and not mandatory. He places reliance on the judgment of Allahabad High Court in the case of **Raja Ram v. State Of Uttar Pradesh through Secretary Education Anubhag-10 Government Of Uttar Pradesh & Others** reported as 2015 (32) SCT 48 to further emphasize on his contention. The relevant part of the judgment is extracted as under: -

“8. *The expression 'as far as possible' inheres in it an in-built flexibility. (Osmania University v. V.S. Muthurangam &*



Ors., AIR 1997 Supreme Court 2758). Accordingly, the expression "as far as practicable" mean, practicable, feasible, possible, performable. It means, not interfering with the ration prescribed under any rule, which fulfills the interest of administration, but flexible provision clothing Government with powers to meet special situations where the normal process of the Government resolution cannot flow smooth. (N.K. Chauhan & Ors. v. State of Gujarat & Ors., AIR 1977 Supreme Court 251). Therefore, as far as possible means, so long it remains practicable and feasible. It is a discretion of the authority to carve out an exception and it is not necessary for him to give strict adherence to the statutory provisions, hence the argument in question has got no force, rejected."

13. Learned Counsel for the petitioner further states that while passing the impugned order dated 11.06.2018 the Commission committed grave error while holding that the petitioner failed to discharge his duties cast upon him under the HRSC Act, 2014. The Commission also erred in noticing the fact that the appeal filed before the commission was premature having been filed before the expiry of 60 days period.

Arguments by the Respondent: -

14. Controverting the submissions made above, Learned Counsel for the respondent contends that it was the statutory duty of the petitioner being at the helm of affairs and that the grievance addressed by respondent no. 2 should



have been redressed within the requisite time-period provided under the HRSC Act, 2014. She submits that the role and responsibility assigned to the petitioner by virtue of him being the Administrator (HQ), HSVP, Panchkula – cum - the Second Appellate Authority, he should have risen to the occasion and should have performed his duties and responsibilities in a time bound manner rather than being ministerial in his approach.

15. She submits that the object behind enactment of the HRSC Act, 2014 was to provide for the delivery of service to eligible persons within the notified time limits and for matters connected therewith and incidental thereto. She submits that Section 2(g) of the HRSC Act, 2014 provides for “right to service” whereby it has been defined to be meant as a right to obtain the service within the notified time limit”. She further contends that Section 2(l) of the HRSC Act, 2014 defines “time-limit” to be meant as the maximum time to provide the service by the Designated Officer. Therefore, the conjoint reading of the provisions and definitions given in the HRSC Act, 2014 makes it amply clear that the time-limit provided under the same is sacrosanct and to be adhered to.

16. She further submits that the contention of the petitioner that the service requested by respondent no. 2 did not fall under the category of notified services was categorically held to be false by the respondent no. 1 as the concerned service fell under the then applicable notified service at Sr. no. 137 namely “Attested copy of any documents” which had a notified period of 5 days. She submits that the argument of revision appeal being pre-mature and being preferred by respondent no. 2 without the expiry of 60 days is also false as the



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concerned notified service was provided by the petitioner only on 25.01.2018 i.e. after a considerable delay of 63 days and the same has also been duly adjudicated and dealt by respondent no. 1.

17. Learned counsel for the respondent further points out that the reason for ordering initiation of the disciplinary enquiry against the petitioner was not only the delay that was caused by him but also the fact that the petitioner being an officer of the rank of Second Grievances Redressal Authority has taken his statutory duties in such an irresponsible and casual manner thereby defeating the very purpose and object of the HRSC Act, 2014. She further contends that respondent no. 1 being the highest authority has the responsibility to make sure that the intent and purpose of the HRSC Act, 2014 for which the same is enacted is not defeated or made redundant. She further contends that the HRSC Act, 2014 provides for suo-moto powers which can be exercised by the commission is for the purpose to further the object and to provide notified services to the individuals like respondent no. 2 in a time bound manner. Therefore the order of recommending initiation of disciplinary action against the petitioner was valid in law and should not be interfered with and the petitioner should be made answerable for the dereliction in his duties.

18. No other argument or Judgment has been raised/relied upon by the respondent.

Consideration: -

19. I have heard both the parties and have carefully perused through the records available with their able assistance.



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20. Before proceeding further with the merits of the case it is relevant to produce the necessary provisions of the HRSC Act, 2014 which are necessary for the adjudication of the present case. The same are reproduced herein below:

(a) Section 2(g) - “right to service” means a right to obtain the service within the notified time limit;

(b) Section 2(l) - “time limit” means maximum time to provide the service by the Designated Officer as notified under section 3.

(c) Section 4 – Providing of service - The Designated Officer shall provide the service to the eligible person within the notified time limit.

(d) Section 7 - Second appeal. — (1) Any eligible person, whose appeal for obtaining service is rejected or who is not provided the service within the time specified in the order accepting the appeal by the First Grievance Redressal Authority under section 6, may file an appeal to the Second Grievance Redressal Authority within sixty days from the date of such rejection or the expiry of the time specified by the First Grievance Redressal Authority:

Provided that the Second Grievance Redressal Authority may admit the appeal after the expiry of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.



(2) On receipt of an appeal under sub-section (1), the Second Grievance Redressal Authority may pass a reasoned order in writing either accepting the appeal and directing the Designated Officer to provide service to the eligible person within seven working days or within such period, as may be specified or reject the same in writing detailing the reasons for such rejection:

Provided that before rejecting the appeal, an opportunity of hearing to the eligible person shall be granted by the Second Grievance Redressal Authority:

Provided further that an order made by the Second Grievance Redressal Authority under this section shall be communicated to both the parties by registered post:

Provided further that the appeal made under sub-section (1) shall be decided by the Second Grievance Redressal Authority within a period of sixty days from the date of receipt of appeal, as far as possible.

(e) Section 17. Powers and functions of Commission. — (1) It shall be the duty of the Commission to ensure proper implementation of this Act and to make suggestions to the State Government for ensuring better delivery of services. For this purpose, the Commission may, —

(a) entertain and dispose of revisions under section 10;



(b) take suo moto notice of failure to deliver service in accordance with this Act and refer such cases for decision to the First Grievance Redressal Authority or the Second Grievance Redressal Authority or pass such order, as may be appropriate;

(c) carry out inspections of offices entrusted with the delivery of services and the offices of the First Grievance Redressal Authority and the Second Grievance Redressal Authority;

(d) recommend Departmental action against any officer or employee of the State Government, who has failed in due discharge of functions cast upon him under this Act;

(e) recommend changes in procedures and process re-engineering for delivery of services which may make the delivery more transparent and easier:

Provided that before making such a recommendation, the Commission shall consult the Administrative Secretary in-charge of the Department which is to deliver the service;

(f) recommend additional services to be notified under section 3 and may also suggest modifications in the notifications already issued for better implementation of this Act;

(g) issue general instructions, not inconsistent with the provisions of this Act for the guidance of Designated



Officers, the First Grievance Redressal Authority and the Second Grievance Redressal Authority;

(h) impose penalty on Designated Officer or any other official involved in the process of providing such service up to a sum of twenty thousand rupees, as deemed fit under the circumstances of the case and allow compensation up to five thousand rupees, to be paid to eligible person by defaulter;

(i) review its decisions, directions and orders.

(2) Where the Commission is satisfied that there are reasonable grounds to inquire into a matter arising out of the provisions of this Act, it may, suo moto, initiate an inquiry in respect thereof.

21. From the bare perusal of the above provisions, it is evident that the power of the Commission as defined and as exercised by it while passing the impugned order is not in dispute. The only question that arises for consideration before this court in the present case is that whether the time limit prescribed under Section 7 of the HRSC Act, 2014 are mandatory or directory in nature. The counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in **C. Bright (Supra)** and that of the Allahabad High court in **Raja Ram (Supra)** to contend and demonstrate that the provisions of the HRSC Act, 2014 prescribing time-limits are not mandatory in nature but are of only directory nature. On, the other hand counsel for the respondent has relied upon the bare provisions and object/purpose of the HRSC Act, 2014 to contend that the time-limit prescribed under the HRSC Act, 2014 are mandatory in nature and



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cannot be construed as directory in nature as the same will defeat the very purpose of the enactment.

22. Section 7(2) of the HRSC Act, 2014 provides that the appeal made under sub-section (1) 'shall' be decided by the Second Grievance Redressal Authority within a period of sixty days from the date of receipt of the appeal, 'as far as possible'. The usage of the word "shall" and "as far as possible" in the said provision is the bone of contention in the present matter which needs to be deliberated upon.

23. The provisions of a statute can be categorized as either mandatory or directory. Mandatory provisions are those that carry penal consequences for non-compliance, whereas directory provisions serve primarily as guidelines to be adhered to. Although no definitive rule exists for distinguishing between these types of provisions, certain terminologies can reveal the legislature's intent. When a statute grants powers or rights and mandates compliance with specific regulations or formalities, it is reasonable to enforce strict adherence to these requirements as a condition for acquiring the conferred rights or authority, suggesting that this was likely the legislature's intent. However, when a statute imposes a public duty and prescribes that it be performed in a particular manner, within a specific timeframe, or under certain conditions, such requirements may be considered directory, particularly in instances where strict enforcement would result in injustice or inconvenience to those not in control of the duty's execution.



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24. In the case of **State of Punjab v. Satyapal** reported as AIR 1969 SC 903, the Hon'ble Supreme Court clarified the distinction between mandatory and directory provisions of law. The Court observed that a mandatory provision implicitly prohibits any deviation from the prescribed procedure, whereas a directory provision is satisfied by substantial compliance with its requirements.

25. Mandatory requirements necessitate strict compliance, and failure to adhere to them may constitute a potentially vitiating defect. Conversely, directory requirements, while still requiring compliance, may be subject to judicial discretion, where substantial compliance might be deemed sufficient, or even where total non-compliance may be regarded as a non-vitiating error. The key distinction lies in the practical significance of non-compliance; on one hand the directory provisions demand substantial compliance, but on the other mandatory provisions demand strict adherence.

26. The determination of whether a specific provision in a statute, which on its face appears "mandatory" due to the use of the word "shall," is actually mandatory or merely directory, cannot be resolved by a general rule. Instead, it depends on the facts of each case, with particular attention to the purpose and objective of the statute in enacting the said provision. The primary factors for considering a rule as directory in nature include:

1. The absence of any provision addressing the consequences of non-compliance with or non-adherence to the rule, and



2. The potential for significant inconvenience and prejudice to the general public if the act in question were to be declared invalid due to non-compliance with the rule.

27. The term "shall" is a word with nuanced meaning and is not inherently decisive. Its interpretation depends on the context of the statute, the purpose behind the provision, the potential public harm from neglecting the rule, and the broader circumstances surrounding the condition's importance. The use of "shall" does not invariably indicate that a provision is obligatory or mandatory. The meaning of the term is contingent upon the legislative intent, as revealed by the statute's object, design, purpose, and scope. Each provision must be considered individually, taking into account the context in which "shall" is used, the provision's objective, and other relevant factors. These considerations may lead to the conclusion that, despite the use of "shall," the provision is merely directory. In common usage, the term is often interpreted as directory.

28. The term "as far as possible" used at the far end of the provision, makes for an interesting read and provides a broad outlook towards the intention of the legislature. The Hon'ble Supreme Court in the matter of **N.K. Chauhan & Ors. vs. State of Gujarat & Ors.** reported as (1977) 1 SCC 308 while interpreting the phrase "as far as practicable" held that similar expressions like practicable, feasible, possible, performable, are more or less interchangeable and "as far as practicable" means, not interfering with the ratio which fulfils the interest of administration, but a flexible provision clothing government with powers to meet special situations where the normal process of the government



resolution cannot flow smooth. The term “as far as practicable” came up for discussion before a Constitutional bench of the Hon’ble Supreme Court in the matter of **Direct Recruit Class II Engineering Officers’ Association vs. State of Maharashtra & Ors.** reported as **(1990) 2 SCC 715**. It was held that the object of insertion of the expression “as far as practicable” cannot be said to be merely to avoid fractions in arithmetical calculations of number of posts available to the two groups. The expression means that if it became non-feasible and impracticable for the State to fill up the requisite quota by direct recruits after making a serious effort to do so, it was free to fill the posts by promotion of suitable hands, if the filling up of the vacancies was administratively necessary and could not wait.

29. In the case of **C.N. Paramasivam vs. Sunrise Plaza** reported as **(2013) 9 SCC 460**, the Hon’ble Supreme Court, while interpreting the phrase “as far as possible”, held that the phrase may be indicative of a certain inbuilt flexibility and the scope of that flexibility extends only to what is “not at all practicable”. Thus from the above it is evident that the use of word “shall” in a statute, does not necessarily mean that it is mandatory in nature and the explanation and usage of the phrase “as far as possible” in itself provides for an inbuilt flexibility. The con-joint reading of the same brings us to the conclusion that the HRSC Act, 2014 intended to set time-limit for providing of services. However non-adherence to the said time-limit cannot be held to be as detrimental or to mean that slight delay from the time-limit provided will prove fatal and make the proceedings redundant, void or the authority as functus



officio. In the matter of **C. Bright (Supra)** that is relied upon by the counsel for the petitioner it was held by the Hon’ble Supreme Court that when the provisions of a statute relate to the performance of a public duty and the case is such that to hold acts done in neglect of this duty as null and void, would cause serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, the practice of the courts should be to hold such provisions as directory. It further held that it is a well-recognized rule of construction to observe that a statute should be construed as directory if it relates to the performance of public duties.

30. I am therefore of the opinion that the time-limit prescribed under the HRSC Act, 2014 are not mandatory but directory in nature. The time-limit provided in the HRSC Act, 2014 is to instill a confidence in individuals approaching the authorities that their grievances will be heard within a reasonable time-period, simultaneously it also imposes a duty on the authorities to make an earnest effort to comply with the mandate of the statute.

31. Thus, taking into consideration the peculiar facts and circumstances of the present writ petition, the same is allowed. The order dated 11.06.2018 passed by respondent no. 1 is set aside to the extent of recommending initiation of disciplinary proceedings against the petitioner.

(VINOD S. BHARDWAJ)
JUDGE

20.08.2024
Mangal Singh

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