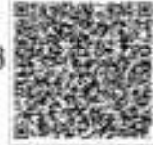


2024:PHHC:167764-DB



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

**CWP-23280-2021 (O&M)
Reserved on : 20.11.2024
Date of decision:16.12.2024**

Ved Pal Gupta

....Petitioner

Versus

High Court of Punjab and Haryana and another

..Respondents

**CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. Gurminder Singh, Senior Advocate
with Mr. Jatinder Singh Gill, Advocate for the petitioner

Mr. Ranjit Singh Kalra, Advocate

Mr. Karan Sharma, Advocate for respondent no.1

Mr. Deepak Balyan, Addl. AG, Haryana

ANIL KSHETARPAL, JUDGE

1. Factual Matrix:-

1.1 The petitioner herein is a former District Judge, who was compulsorily retired from service as the charges were proved against him in a disciplinary inquiry. Inter alia, he prays for issuance of a writ of Certiorari to quash the charge sheet issued on 30.04.2012, inquiry report dated 24.04.2017, the recommendation of the vigilance/ disciplinary committee and the resolution of the Full Court of the High Court passed on 14.12.2020.

1.2 The disciplinary inquiry was held with respect to the following charges:-

“(A) That you joined on 30.9.1987 in H.C.S.(J.B) Service and at the time, you were having only one immovable property i.e 1/2 share in one double storied house (self) situated at Anaj Mandi Gohana. After joining service, you have acquired the following immovable properties:-

i) Residential Plot No. 798, Sector 31-32A, Gurgaon through HUDA by draw of lots under Government Employees; quota on 18.5.1990;

ii) Residential plot No.532-P, Sector 19, Faridabad in the name of your wife Mrs. Punam Gupta was got allotted out of discretionary quota from HUDA on 10.2.1992, which was cancelled in the year 1997 by the High Court on judicial side and again restored on 28.3.2002 by Hon'ble Apex Court;

iii) Membership of New Haryana Officers Cooperative Group Housing Society, Sector 27, Panchkula (Land allotted to the society on 11.2.1999);

iv) Residential Plot No.C1-2849, Sushant Lok, Gurgaon measuring 353 Sq.yards 295 Sq.meters approximately allegedly inherited on the basis of Will dated 21.10.1998 from mother of your wife and transferred in the name of your wife, namely, Punam Gupta on 24.8.2001;

v) An industrial Shed bearing No.219, Sector 7, IMT Manesar of size 450 Sq.meters, in the name of your wife namely Mrs. Punam Gupta;

vi) Residential Plot No.6, measuring 525 Sq.yards (approximately) in Amravati Enclave, Near Panchkula by way of Will dated 12.2.2008 allegedly executed by your father Sh.Ram Sarup Gupta and got transferred in your own name;

vil) Plot No.157, Sector 2, Mansa Devi Complex, Panchkula, measuring 305 Sq.meters, purchased in the name of your wife, namely Mrs.Punam Gupta;

viii) Plot No.GH-2, Sector 52, Group Housing Project of Officers Welfare Organisation, Gurgaon, purchased in the name of your wife, namely, Mrs. Punam Gupta.

You have sold the following properties:

i) Residential Plot No.798, Sector 31-32A, Gurgaon in the year 1993 allegedly through a Property Dealer;

ii) Residential Plot No.532-P, Sector 19, Faridabad, was sold in the year 2004, vide sale deed dated 23.6.2004 executed by your wife Mrs.Punam Gupta;

iii) Residential Plot No.C1-2849, Sushant Lok, Gurgaon measuring 353 Sq.yards =295 Sq.meters, on 5.9.2008, vide sale agreement dated 3.9.2008.

The acquisition of number of residential and commercial properties, one after the other, clearly suggests that these purchases were not for your bonafide personal requirement and in fact you have been indulging in the business of sale/purchase of immovable properties.

Rule 15 of the Haryana Government Employees (conduct) Rules, 1966 prohibits Govt. Employees from engaging directly or indirectly in any trade, or business except with the previous sanction of Government. You having engaged in property transactions have, thus, misconducted yourself and acted in a manner unbecoming of judicial officer and thereby misconducted yourself.

2. While posted as Additional District & Sessions Judge, Rewari, one Plot No.C1-2849, Sushant Lok, Gurgaon measuring 353 square yards, Sushant Lok Gurgaon is claimed to have been inherited by your wife Mrs. Punam Gupta from your mother-in-law Smt. Chameli Devi by way of Will dated 21.10.1998, whereas all the other daughters and sons of your mother-in-law were deprived of inheritance without any valid or just reason. It appears, prima facie, that this property (Plot No.C1-2849) was purchased by you benami in the name of your mother-in-law Smt. Chameli Devi from ill gotten money earned by you through illegal means. Thereafter, this property has been got transferred in the name of your wife Mrs. Punam Gupta on the basis of a will to the exclusion of other legal heirs. Though it is incumbent upon a judicial officer to work with utmost honesty, Integrity, you have indulged in acquiring assets through corrupt means systematically and acted in a manner unbecoming of judicial officer and misconducted yourself.

(3). Similarly, you are said to have inherited a Plot No.6 measuring 525 Sq.yards (approximately) in Amravati Enciave, near Panchkula by way of alleged

Will dated 12.2.2008 from your father Shri Ram Sarup Gupta and this will too is surrounded by suspicious circumstances as the other legal heirs were deprived of by your father, from their right to succession. The said plot was allegedly purchased by your father Sh. Ram Sarup Gupta but the total income of your father, as reflected in the income tax returns (known sources of income), shows that he was not in a financial position to purchase the plot worth ₹14,14,273/- during the period from 1999 to 2006. Prima facie, an inference can, thus, be drawn that this plot was actually acquired by you through benami transaction in the name of your father out of the money earned by illegal means and the instrument of Will was a device to legitimize the acquisition of that valuable property. Though it is incumbent upon a judicial officer to work with utmost honesty, integrity, you have indulged in corruption and acted in a manner unbecoming of judicial officer and misconducted yourself, thereby lowered the image of Judiciary in the eyes of public.

(4). That a Plot No.157, Sector-2, Mansa Devi Complex, Panchkula measuring 305 Sq.meters was purchased by your wife Mrs. Punam Gupta on 7.10.2008 from Sh. Rajesh Goyal for a consideration of 9,00,000/-, whereas the price-value of this plot at that time even as per Collector rate was 47,25,500/-. The open market value of this plot at the relevant time is estimated over one crore. The plot could not thus be purchased by your wife at such a lower price even through a distress sale. It simply suggests that either the difference of amount of sale consideration was paid under hand out of the disproportionate assets made by you beyond your known sources of income or the plot was purchased by you benami in the name of Rajesh Goyal who is your close relative by Investing ill gotten money and subsequent sale-deed was a veil of legitimacy given to the transaction. Though it is incumbent upon a judicial officer to observe utmost honesty, integrity, you have indulged in corruption and acted in a manner unbecoming of judicial officer and misconducted yourself, thereby lowered the image of judiciary in the eyes of public.”

1.3 The Departmental inquiry was held by a senior sitting Judge of the High Court, who after threadbare discussing the evidence concluded that all the four charges against the petitioner stood proved.

2. Arguments Put Forth:-

2.1 Heard the learned counsel representing the parties at length.

2.2 Sh. Gurminder Singh, the petitioner's senior counsel states that he does not wish to challenge the correctness of inquiry report or the subsequent proceedings on failure to follow the procedure or infringement of principles of natural justice. He admitted that proper procedure as prescribed in the Rules was followed in conducting the disciplinary proceedings. However, he made the following submissions:-

- i) The defence evidence produced by the charged officer has not been considered.
- ii) The inquiry report is based on assumptions and presumptions, which in the absence of cogent evidence should not have been drawn.
- iii) There were no adverse ACRs during all this while.
- iv) All these properties were acquired by taking prior permission from the High Court. Hence, issuance of charge-sheet amounts to review, which is not permissible.
- v) The petitioner has not indulged in trading of property and hence, he has never violated Rule 15 of Government Employees Conduct Rules, 1966.
- vi) Furthermore, while referring to the statements of witnesses namely Anita Sharma, Vijay Kumar Gupta and Lalit Mohan Pant, he contends that it was a case of no evidence.

2.3 Per contra, Sh. Ranjit Singh Kalra, the High Court's counsel, has taken us through the inquiry report while contending that the defence

of the petitioner was considered and it was found that he manipulated the income tax return before producing the same in his defence evidence. He submitted that at the time of entry into service, the petitioner was owner of half share of small residential property situated in Anaj Mandi, Gohana, whereas, when he was charge sheeted, it was found that he acquired a significantly large number of properties, which were valuable particularly properties at Gurugram, Panchkula and Faridabad and mere permission given by the Court on the administrative side to purchase/sell/transfer the property does not result in certificate of genuine transaction. He also brought attention of the Court to the fact regarding scope of interference in exercise of power of judicial review under Article 226 of the Constitution of India while relying upon the various precedents.

3. Discussion and Analysis:-

3.1 Before analysing the arguments of the learned counsel representing the parties, this Court proposes to examine the scope of interference while exercising jurisdiction of judicial review under Article 226/227 of the Constitution of India. Para 12 of the judgment in **Union of India and another vs. P.Gunasekaran (2015) 2 SCC 610**, the Supreme Court in the following manner delineated its scope:-

12. 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, reappreciating even the evidence before the enquiry officer. The finding on Charge 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 Articles 226/227 of the Constitution of India, shall not

venture into reappreciation 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.*

13. *Under Articles 226/227 of the Constitution of India, the High Court shall not:*

- (i) reappreciate 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.”*

3.2 Similar view was expressed in **State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaiya (2011) 4 SCC 584** and in **Deputy General Manager (Appellate Authority) and others vs. Ajay Kumar Srivastava (2021) 2 SCC 612**.

3.3 It is well settled that power of judicial review is analysing the judicial process and not the merits of the decision itself. While

exercising jurisdiction under Article 226 of the Constitution of India, the Court does not hear the matter as an Appellate Authority over the decision of the disciplinary authority. Furthermore, in a departmental inquiry proceeding, strict rules of evidence are not applicable, however, the allegations against the delinquent must be established by producing evidence, through which a prudent person acting reasonably and with objectivity is in a position to come to a conclusion.

3.4 Learned senior counsel representing the petitioner has relied upon some of the judgments which in the opinion of the Court are distinguishable. In **Narinder Mohan Arya vs United Indian Insurance Co. Ltd. and others (2006)4 SCC 713**, the Court came to conclusion that the inquiry report is based upon no evidence and the inquiry officer has travelled beyond the charges and mere on hypothesis. Similarly, in the case of **Kuldeep Singh vs. Commissioner of Police and others (1999) 2 SCC 10**, the Court came to the conclusion that it was a case of no evidence to support the findings recorded by the inquiry officer and the findings were perverse or made at the direction of the superior authority. In **Nirmala Jhala vs. State of Gujarat (2013) 4 SCC 301** the Court found that the order is based on extraneous ground. Hence, the court after noticing that the court will normally refuse to exercise the power of judicial review, choose to exercise the same in accordance with law. In exercise of power of judicial review the court is required to deeply examine the matter, however, cautiously treat it on the basis of well settled principles of law while taking into consideration that jurisdiction under Article 226 is not akin to appellate jurisdiction.

3.5 This Court has carefully read the inquiry report. The inquiry officer has not only noticed the evidence given by all five witnesses examined by defence but also analysed oral as well as documentary evidence. Hence, the first argument lacks substance.

3.6 Disciplinary inquiry is a fact finding inquiry, which is not governed by strict rules of the Evidence Act. Reading of the report shows that the conclusions drawn are based upon material produced on the file and not merely on the basis of inference. With respect to charge no.(ii), it has been found that mother-in-law of the charged officer/petitioner purchased the property on 2.04.1998 at Sushant Lok, Gurugram and within a period of six months, she bequeathed the same in favour of her daughter (petitioner's wife), particularly when she had three sons, family of predeceased fourth son and four daughters excluding petitioner's wife. On being called upon, the petitioner failed to produce the income tax record of his mother in law Smt. Chameli Devi. The enquiry officer also examined the Will and found that all other immovable properties have been bequeathed by late Smt. Chameli Devi in favour of her three sons and family members of predeceased son. The property located in Sushant Lok has been bequeathed in favour of the petitioner's wife whereas the remaining four daughters have not been given any share in the immovable property except jewellery, which has been bequeathed in favour of all five daughters equally including petitioner's wife. Thus, the petitioner's wife was preferred and favoured for a valuable endowment, although there is no recital that Smt.Chameli Devi has some special love and affection for

petitioner's wife. The petitioner also failed to prove that Smt. Chameli Devi has sufficient sources of income to purchase the property and bequeath the same within six months in favour of petitioner's wife.

3.7 Similarly, with respect to charge no.(iii) which is with respect to plot measuring 525 sq. yards located at Amrawati Enclave, Panchkula, which has been bequeathed by the petitioner's father in favour, the charged officer (the petitioner), it has been found that late Sh.Ram Sarup Gupta, the petitioner's father was not a man of means who could invest such amount particularly when Rs.9,52,297/- was paid with respect to the plot between 1999-2006 when he purchased two shops at Jaipur, a house in Azadpur, Delhi and a shop at Rohtak. As per income tax return, his net income in the assessment year 2000-2001 to 2008-09 was Rs.14,14,273/- whereas he invested much more than the assessed income. It was also found that the petitioner has relied upon unaudited returns, though auditing was compulsory at that point in time. The inquiry officer found that the income tax record produced by the petitioner in the beginning and the one produced subsequently was at variance and the returns have been fabricated or manipulated in order to show availability of the funds. It was also found there is discrepancy in the 'cash in hand' shown in the chart which was produced by the petitioner and audited balance sheet and there was manipulation in the income tax returns, profit and loss account and the balance sheet. The petitioner's father had existing liability of more than Rs.17 lacs, however, he was shown to be investing in various properties including plot in Panchkula two shops in Jaipur a house in Azadpur, and a shop in

Rohtak. He executed three Wills within a period of fortnight in favour of his three children including the petitioner, who are all judicial officers. Late Sh. Ram Sarup has five sons and two daughters out of which three are judicial officers, two in Haryana and one in Delhi. While highlighting the glaring difference in audited account and balance sheet, the inquiry officer drew the following tabulated information which is extracted as under:-

Particulars	As per Audited Accounts (Ex.DW-2/16)	As per Balance Sheet Mark A
a) Gross profit	Rs.856360	Rs.758157
b) Net Profit	Rs.169054	Rs.235778
c) Fixed assets	Rs.245230	Rs.470742
d) Capital A/c	Dr.(-) Rs.137544	Cr(+) Rs.537966
e) Investment in Amravati Plot	Nil	4,50,000

3.8 Similarly, while analysing the discrepancies with respect to cash in hand shown in chart Mark Y and audited balance sheets of late Sh.Ram Sarup Gupta, the inquiry officer compiled the information in a table which is extracted as under:-

Accounting year	Cash in hand as per chart Mark DY	Cash in hand as per audited balance sheet
31.3.1997	205199	78862 (Ex.DW-2/2)
31.3.1998	137469	45934(Ex.DW-2/4)
31.1.1999	30730	104492 (Ex.DW-2/6)
31.3.2000	141664	126270(Ex.DW-2/8)
31.3.2001	206767	164060(Ex.DW-2/9)
31.3.2002	372216	248124(Ex.DW-2/12)
31.3.2003	316448	43864(Ex.DW-2/14)
31.3.2004	521134	148673(Ex.DW-2/16)
31.3.2005	757583	72512(Ex.DW-2/18)

3.9 Learned counsel representing the petitioner did not make an attempt to challenge the correctness of aforesaid tabulated compilation.

3.10 With respect to charge no.(iv), the inquiry officer found that the petitioner's wife who was a home-maker purchased a 300 sq. yard plot in Mansa Devi, which abuts Chandigarh for a paltry sum of Rs.9 lakhs and subsequently, paid instalments of Rs.7,56,683/- particularly, when as per the Collector's rate the price of the plot comes to be Rs.47 lakhs, whereas its market value was Rs.1 crore. The plot was purchased from son-in-law of the petitioner's wife's brother, who has appeared in evidence. Ex.PY is the collector's rate whereas a property broker was examined to prove that the market value of the plot was Rs.1 crore. Moreover, it has come in evidence that Sh.Rajesh Goel, the son-in-law of the petitioner's wife's brother purchased the property in 2006 whereas he transferred the plot in favour of Smt. Punam Gupta in 2008. Thus, the petitioner's counsel is not correct in contending that the inquiry report is based on conjectures and surmises and it's a case of no evidence.

3.11 With reference to the argument of the petitioner's counsel about the clean service record, it is pertinent to note that in the Annual Confidential Report for the year 1993-94, 1994-95, the Inspecting Judge advised the petitioner to improve as his work was not found satisfactory. Subsequently, the petitioner was warned by Hon'ble Chief Justice for not vacating the earmarked Govt. accommodation which was duly conveyed to the petitioner on 22.04.2009. In the ACR for the year 2010-11, against the column of integrity the Administrative Judge recorded

that there were certain complaints. Similarly, for the year 2015-16, it was finally recorded that departmental inquiry is pending. In any case, the entries in the Annual Confidential Report has not being used against the petitioner by the Disciplinary Authority.

3.12 Moreover, the permission granted by the High Court on administrative side to purchase, sell or transfer the property does not debar the disciplinary authority to inquire into the genuineness of the transaction. As per Employees Conduct Rules, 1965, the Govt. employee is prohibited from acquiring, disposing any immovable property except with the knowledge of the prescribed authority. At the time of permission, the competent authority only examines it in context of knowledge and not in the context of genuine resources of the employee and its impact.

3.13 Similarly, the reliance placed by the learned counsel on a Division Bench judgment in **Sarv Mittar Sharma vs Punjab and Haryana High Court 1992(3) SCT 392** is not applicable because in that case the successor, the then Chief Justice recalled the earlier order passed by his predecessor. In that context the Court held that subsequent order amounts to reviewing of earlier decision, which was not appropriate. However, as already noticed, in this case, the aforesaid judgment is not applicable because there is no recall or review of the previous order by the disciplinary authority.

3.14 This Court has also examined the depositions of Anita Sharma with Vijay Kumar Gupta and Lalit Mohan Pant. They have been cross examined by the petitioner and his counsel during the disciplinary

inquiry. Isolated/selected portion of the deposition, which is out of context cannot be relied upon. Their oral testimony cannot be preferred in view of documentary evidence which has been produced and proved. Hence, the argument lacks substance.

3.15 With regard to submission no.(v), it can be noticed that inquiry officer has also not held that the petitioner has indulged in trading of property.

3.16 Keeping in view the foregoing discussion, there is no scope for interference in the opinion formed by the disciplinary authority. Hence, the writ petition is dismissed.

(ANIL KSHETARPAL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

16.12.2024

rekha

Whether speaking/reasoned : Yes

Whether reportable : No