
(2010) 04 P&H CK 0350
In the Punjab And Haryana At Chandigarh

Dr. R.S. Jhas

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Citation : (2010) 04 P&H CK 0350

Hon'ble Judges : Alok Singh, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred against order of learned Single Judge dismissing the writ petition of the appellant seeking quashing of order dated 8.12.2005, Annexure P.23 imposing punishment of stoppage of one increment and quashing of adverse remarks against his integrity and work and conduct for the year 2001-02

2. Case of the appellant is that he was posted as Assistant Director in the department of Animal Husbandry in the State of Haryana. He was earlier working as Farm Manager with the Haryana Dairy Development Cooperative Federation. Vide scheme dated 31.3.1994, the farm on which the appellant was working was taken over by the State of Haryana and the appellant was absorbed in the Animal Husbandry department as Assistant Director. Later he was ranked as Veterinary Surgeon by being relieved from the post of Assistant Director, vide order dated 5.12.1996. The appellant challenged the said order by filing CWP No. 19283 of 1996. This Court set aside the order holding that the appellant was working on a post higher than that of Veterinary Surgeon before his absorption in the government service and merely because persons who had done graduation in the year 1974 were still working on the post of Veterinary Surgeon in the Government was no ground to place him in the pay scale of Veterinary Surgeon. He was given higher post of Farm Manager which benefit could not be taken away. The post of Farm Manager was re-designated as Assistant Director vide order dated 7.8.1995 and on that basis, the appellant had been absorbed in the

Animal Husbandry department as Assistant Director. He had, thus, to be taken to be Assistant Director as on 7.8.1995 with protection of pay and given resultant promotion on that basis. Accordingly, this Court directed re-fixation of the seniority and pay of the appellant vide order dated 13.1.1997, Annexure P.3.

3. Further case of the appellant is that he had a seniority dispute with certain officers including Dr. K.S. Dangi, Director, Animal Husbandry on account of which Dr. K.S. Dangi victimised the appellant. Earlier, similar adverse remarks for the year 1997-98 recorded by previous Director Dr. H.S. Dahiya were expunged. Similarly, for the year 1998- 99, the report was treated as blank. Adverse remarks for the year 1999-2000 were also expunged. The petitioner also filed CWP No. 19283 of 1996 against his reversion which was allowed by this Court vide order dated 13.1.1997 Annexure P.3. The petitioner also filed CWP No. 6603 of 1999 which was allowed on 10.1.2000 and CWP Nos. 4908 of 2001 and 745 of 2002 were still pending. On account of this background, adverse remarks were given in the ACRs. His representation against adverse remarks for 1997-98 was accepted. For the other adverse ACRs, the petitioner was informed that his grievance was under consideration. Vide order dated 2.12.2005, Annexure P.12, representation of the petitioner against adverse remarks for the year 2001-02 was rejected. Order dated 8.12.2005 was passed imposing punishment of stoppage of one increment. Under the Government instructions dated 4.10.1956, specific instances of corruption were required to be mentioned, while in the present case, not even a warning was given. The officer who recorded the ACR was of the rank of Assistant Director, officiating as Deputy Director and was junior to the appellant. Charge sheet issued to the appellant was unfounded and related to functions of the appellant which were fully justified.

4. The writ petition was contested by submitting that the adverse remarks for the year 2001-02 were justified and his representation were rightly rejected on 2.12.2005. His earlier ACRs for the years 1992-93 and 1993-94 were below average and average respectively. The punishment order dated 8.12.2005 was passed after charge was proved during departmental enquiry. The officer working as Deputy Director could have initiated the ACR being senior to the appellant. Warning Annexure R.V dated 10.9.2001 was issued to him. Similarly, he was asked to achieve targets by letter dated 31.1.2002, Annexure R.VI. The appellant was not victimised.

5. Learned Single Judge dismissed the writ petition. It was observed:

The contention of the learned Counsel that the Annual confidential reports of the petitioner were not recorded by the concerned Administrative Secretary of the department cannot at all be countenanced inasmuch as the then administrative Secretary had retired from service and the officer, who was holding the post of Director of the Animal Husbandry department, Haryana, Chandigarh, namely, Dr. K.S. Dangi, against whom writ petition was filed by the petitioner seeking seniority above him, who has recorded adverse remarks regarding his integrity doubtful in the Annual confidential report for the year 2001 -02 after adjudging

the overall work and conduct of the petitioner, is held to be fully competent to write the Annual Confidential report of the petitioner. Ultimately, after the retirement of the concerned Administrative Secretary of the department, in my considered view, some officer of the rank of Director was to write the Annual Confidential Report of the petitioner, who, unluckily, was not of the liking of the petitioner. The petitioner has raised a hue and cry regarding the competency of the reporting officer and thereby assailing the Annual Confidential report for the year 2001-02 on the grounds that the Reporting officer is required to give a definite opinion on the integrity of his subordinate while writing the annual confidential report, much less supporting such an allegation with any material. Secondly, there is no material to substantiate the remark of copying of record and bluffing the superiors or not perfect in field work nor there is any forewarning on this account. All these pleas raised by the petitioner in the petition cannot be accepted since the conduct of the petitioner against his superiors, in the light of what had been observed above cannot at all be said to be cordial. For one reason or the other, they were dragged in some kind of litigation for a long period and thereby creating such an atmosphere at the working place, which was unbecoming on the part of the petitioner, who was holding an esteemed post in the department and thereby compelling the competent authority to record adverse remarks in the Annual Confidential report for the year 2001 -02 resulting in stoppage of one annual grade increment without cumulative effect by passing an order dated 8. 12.2005(Annexure P.23). The action of the respondent authorities in recording adverse remarks in the annual confidential report of the petitioner for the year 2001-02 and imposition of penalty of stoppage of one annual grade increment without cumulative effect cannot at all be said to be unjustified, which may warrant interference by this Court.

6. We have heard learned Counsel for the parties and perused the record.

7. Learned Counsel for the appellant raised following contentions:

i) Recording of ACR by officer of the same rank was against the principles of natural justice. Officer writing ACR should show objectivity, impartiality and fair assessment. The object of the report was to give opportunity to improve. Reliance has been placed on judgments of the Hon''ble Supreme Court in State Bank of India etc., Vs. Kashinath Kher and others, etc.,, and State of Haryana Vs. P.C. Wadhwa, IPS, Inspector General of Police and Another, .

ii) Adverse ACR should be given only on the basis of tangible material. Reliance has been placed on judgments of this Court in Kartar Singh v. State of Haryana 1996 (1) SCT 206, State of Haryana v. Ram Partap 1996(2) SCT 473, State of Haryana v. Suraj Paul 1999(3) PLR 425 and judgment of Hon''ble Supreme Court in State of UP v. Yamuna Shankar Misra and Anr. 1997(3) RSJ 33.

iii) The officer who may have last seen the work of the officer/official for the reporting year should write the report if there were more than one supervising

officers under instructions Annexure P.29 dated 14.2.1977. In the present case, after retirement of the then Administrative Secretary, another Administrative Secretary was available, who should have recorded the ACR.

iv) Order dated 8.12.2005, Annexure P.23 was without any legal basis.

8. Learned Counsel for the State supported the impugned judgment and submitted that the report was written by officer of higher rank at the relevant time which was confirmed by still higher officer. The report was fair and based on specific instances in respect of which warning was given to the appellant. Punishment had also been imposed against him. There were earlier adverse reports against him. The matter has been duly considered by the officer of the rank of Financial Commissioner and his representation was rejected. In any case, interference by this Court was not called for.

9. Question for consideration is about validity of ACR for the year 200 1-02 and order dated Annexure P.23 imposing punishment of stoppage of one increment. Since adverse remarks for the year in question have been justified on the basis of order dated 8.12.2005, it may be appropriate to consider the said order.

10. The charges which led to the passing of the said order are as under:

1. that Dr. R.S. Jhas did not allow Shri J.S. Gill, Assistant Manager Poultry Extension centre, Ambala to join on the post of Manager Poultry Farm, Ambala in compliance of Director, Animal Husbandry and Dairying Haryana's order dated 17.7.1998.

2. that Dr. R.S. Jhas ordered at his own level the transfer of Sh. J.S. Gill, Assistant Manager in the office of Piggery Development Officer vide his order dated 17.7.1998.

3. that Dr. R.S. Jhas did not disburse the salary to Sh. J.S. Gill, Assistant Manager for the month of June 1998 and also for the period from 18.7.1998 to December 1998 despite repeated orders from the competent authority.

4. that Dr. R.S. Jhas kept his own service book in his personal custody and did not make the same available to the authorities for deciding his absence period despite repeated reminders. 5. that Dr. R.S. Jhas did not submit his self appraisal for the years 1997-98 and 1998-99 despite repeated reminders owing to which writing of his ACRs was delayed.

6. that Dr. R.S. Jhas failed to maintain cordial and harmonious relations with his juniors as well as seniors and often did not maintain his headquarters.

11. The Enquiry Officer in his report dated 11.2.2004 held that only charges 2, 3 and 5 were proved i.e. ordering of transfer of Shri J.S. Gill, not disbursing salary to him for the period in question and did not submit self appraisal report. Charge No. 1 that the appellant did not allow Shri Gill to join, was, thus, not proved. As regards the charges alleged to have been proved, contention raised on behalf of the appellant is that relieving of Shri J.S. Gill was neither misconduct nor caused

any loss and the appellant was competent to relieve him. Referring to the reply to the Show Cause Notice, Annexure P.20A and note of submissions at the time of personal hearing Annexure P.22, learned Counsel for the appellant points out that there were two posts of the rank of VLDS (Class III) at the Government Poultry Farm. Ramesh Chander, VLDA was looking after Hatchery, stores etc. and J.S.Gill, VLDA was incharge Poultry Extension Centre. The posts were interchangeable. Ramesh Chander was ordered to be transferred vide order dated 8.5.1998 (A-7) from Ambala to Shahbad vice Yoginder Parshad, Poultry Assistant and Rajpal Verma was transferred vice longer stay incumbent to Poultry Farm, Ambala. J.S.Gill was longer stay incumbent and the appellant vide letter dated 3.6.1998 (A-10) sought clarification from the Director and in absence of any clarification being received till 16.7.1998 and Rajpal Verma having joined on 16.7.1998, J.S.Gill had to be relieved. In this factual background, the appellant could not be held to have ordered transfer of J.S.Gill at his own level, as alleged in Charge No. 2. Charge No. 3 was consequential. As regards Charge No. 5, it is pointed out in the stand of the appellant that the self appraisal report was duly sent.

12. From the impugned order, stand of the appellant is not shown to have been, in any manner, considered. Explanation of the appellant has not been rebutted by any material on record in absence of which impugned order of punishment was perverse. Since adverse order against his integrity and work and conduct for the year 2001-02 is also sought to be justified on the basis of order of punishment dated 8.12.2005, we are of the view that both the orders are liable to be reconsidered. In this view of the matter, other contentions raised on behalf of the appellant need not be gone into at this stage.

13. Accordingly, we allow this appeal and quash order of punishment dated 8.12.2005, Annexure P.23 and adverse remarks against integrity of the appellant for the year 2001-02 with liberty to the concerned authority to pass fresh order in accordance with law, after considering the stand of the appellant.