
(2014) 07 SHI CK 0150
In the High Court Of Himachal Pradesh
Case No : CWP No. 9473 of 2013-H

Rajinder Kumar Kashyap

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Citation : (2014) 07 SHI CK 0150

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : M.L. Sharma, Sr. Advocate and Onkar Jairath, Advocate for the Appellant; Vivek Singh Attri, Deputy Advocate General, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sureshwar Thakur, J.—Learned counsel for the petitioner, during the course of hearing the matter, has, urged before this Court, that since the reliefs, as existing at clauses (i) and (ii), have come to be afforded in his favour, consequently it is urged that he, is, not pressing the reliefs recited, at, clause (i) and (ii) of the prayer clause of the writ petition. The only surviving relief which, is, pressed, is, at clause (iii) of the relief clause.

2. Preceding to the issuance of Annexures P-1 and P-4, by the disciplinary authority, upon the delinquent/petitioner, the disciplinary authority/respondents, had carried out an inquiry against the petitioner/delinquent comprised, in, Annexure R-1. Initially, it is necessary, to, unveil on a reading of Annexure R-1, as, also on a reading of Annexures P-1 and P-4, as, to whether both relate to the same subject matter or not. A perusal of Annexure R-1, records the fact of the disciplinary authority, having proceeded against the delinquent/petitioner, for, certain omissions, lapses and shortcomings, arising from his purported negligence, in, pursuing Arbitration case No. 37 of 2011, titled as Mahesh Puri versus State of H.P. and Arbitration case No. 33 of 2011 titled as Kamlesh Puri versus State of H.P. A comparative reading of Annexure R-1 and of Annexures

P-1 and P-4, brings to the surface the fact of both, reciting therein, relating to a similar or an analogous subject matter, in, as such, as, both having proceeded and now proposing or contemplating to proceed against the petitioner for purported omissions, lapses and shortcomings, arising from his purported negligence, in, pursuing Arbitration cases No. 33 and 37 of 2011. In the face of similarity or analogous of the subject matter comprised in Annexure R-1 and of the one comprised in-4, it is necessary, to, determine, on, a discerning circumspective study of the material on record, as, to whether the contemplated or proposed denovo inquiry, by the disciplinary authority, against the petitioner/delinquent, comprised, in, issuance of Annexures P-1 and P-4, is tenable or vindicable. In rendering determination qua the facet, it is necessary to peruse Annexure R-1.

3. A perusal of Annexure R-1, discloses that the Inquiry Officer, while proceeding, to, consider the material, as, placed on record before him, qua the purported misconduct comprised, in, shortcomings, lapses, inertia, as well, as, the purported negligence on the part of petitioner/delinquent, to, pursue Arbitration case Nos. 33 and 37 of 2011, had recorded a conclusion of the petitioner/delinquent being exonerable of the charge, as, leveled against him. Besides, the Inquiry Officer had recorded findings, that lapse, if any, in the inefficacious handling of the aforesaid Arbitration cases, was on the part of the Divisional Officer, Accounts Branch and that the omissions were committed by the Divisional Accounts Officer and dealing Sr. Assistants, who were well aware about the urgency of the cases. There is no reflection or recital, in, Annexure R-1, of the Inquiry Officer, having, hence, concluded that there was any lapse or shortcoming or negligence on the part of the delinquent/petitioner, in, inexpeditious as well as inefficacious handling the Arbitration cases referred, to, hereinabove.

4. Nonetheless the respondent/disciplinary authority proceeded to issue Annexures P-1 and P-4. It is settled law, as, laid down in a judgment reported in 1997 (5) SLR 508 titled as R. Rama Rao versus A.P. State Agro Industries Development Corporation Ltd & Anr., that once the disciplinary inquiry, is, conducted and concluded, unless the service rules mandate, initiating or holding of de nove inquiry, into the same charges, it is, not open for the disciplinary authority/respondents, to proceed to order the holding of a de nove inquiry, qua, similar or analogous imputation of misconduct/charge.

5. While revering the above view, as, taken by the Andhra Pradesh High Court, this Court, is, for the reasons to be recorded hereinafter, constrained, to, hold that the action of the Disciplinary authority/respondents, in, proceeding to issue Annexures P-1 and P-4 upon the delinquent/petitioner, in, the face of Annexure R-1, having previously recorded, an exoneration of the delinquent/petitioner, qua, analogous or similar charges, infects both Annexures P-1 and P-4, with the vice of thorough non-application of mind:-

(a) A perusal of record of the case omitting to divulge the existence of any rules applicable to, and applicable to, the petitioner/delinquent and theirs investing a

power in the respondent/Disciplinary authority, to, order to hold a denovo inquiry, especially when preceding to its, being ordered to be so, held the inquiry officer, on a consideration of entire material on record, qua allegations similar or analogous to the one which are now contemplated and proposed to be re-inquired into, had, concluded that there was, no, omission, lapse, shortcoming and negligence on the part of petitioner/delinquent in pursuing the two Arbitration cases. Consequently, when Rules are mandated to exist for vesting a right in the Disciplinary authority for ordering a denovo inquiry, hence, when no demonstrable Rules have been placed on record, revealing vestment of powers in the Disciplinary authority to reopen an inquiry previously concluded, the action on the part of Disciplinary Authority, in, contemplating or proposing to hold a denovo inquiry, is, to be construed to be beyond the contemplation of law, hence, lacking in legal tenacity.

(b) A thorough and threadbare perusal and scanning of the file also, does not unfold or divulge that even de-hors any rules, investing a power in the Disciplinary authority/respondent to order, to, conduct or hold denovo inquiry, qua similar and analogous charges previously inquired into and sequencing exoneration of the petitioner, the disciplinary authority had discovered or disinterred sufficient material or evidence which would, hence, necessitate the holding of a fresh denovo inquiry previously concluded.

6. The petitioner/delinquent, in, the face of the respondents/disciplinary authority having proceeded to order a denovo inquiry would be doubly jeopardized which misfortune ought not to fall upon the petitioner unless the service rules applicable to the petitioner permit so. However, as divulged hereinabove, respondents have omitted to place on record any service rules permitting the holding of a denovo inquiry. In the respondents/disciplinary authority, having proceeded to issue Annexures P-1 and P-4 upon the petitioner even when prior to their issuance, he, stood exonerated in a detailed inquiry conducted qua similar or analogous imputation of mis-conduct portrays sheer, non-application of mind. As a sequel then the petitioner would be subjected to doubly jeopardy which ought misfortune not to be fall upon him, as the service rules applicable to the petitioner do not warrant the holding of a denovo or fresh inquiry against him qua analogous and similar charges, previously inquired into and concluded, even though, the learned Deputy Advocate General has concerted, to, vigorsly project before this Court, that, the previous inquiry in which the petitioner/delinquent stood exonerated was merely a fact finding inquiry or a preliminary inquiry, and, hence it did not debar the respondent/disciplinary authority, to, proceed, on theirs having come to be dis-satisfied qua the findings previously recorded, hence, being constrained to disconcur with the findings recorded by the inquiry officer in Annexure P-1, to, hence re-hold a final inquiry into the allegations of mis-conduct, though previously inquired into. However the above contention raised before this Court, by the learned Deputy Advocate General stands to be discountenanced, in, as much, as, a reading of the communication addressed by the Inquiry officer to the Engineer-in-Chief,

PWD Shimla, unveils and unfolds, the fact of the inquiry officer having forwarded, to, the latter, a, detailed "Inquiry Report". The respondent/Disciplinary authority has not been able, to, place on record any material, to, rebut the fact, that, the communication forwarded or addressed by the inquiry Officer to the Engineer-in-Chief, comprised in Annexure R-1, alongwith accompanying material, was, not a detailed inquiry, on, the imputation of mis conduct, which were then inquired into by the Inquiry Officer. Consequently, in face of, no, material to oust the factum recorded in Annexure R-1, of, the Inquiry Officer, having conducted a detailed inquiry into the imputation of mis-conduct leveled against the petitioner/delinquent qua which he stood exonerated, it, has to be thus concluded, that, Annexure R-1 was not a preliminary or a fact finding inquiry, rather it was a detailed inquiry. Therefore it, is, reinforcingly concluded that the contention of learned Deputy Advocate General, that, the preceding inquiry comprised in Annexure R-1 was a preliminary fact finding inquiry, hence, it did not debar the disciplinary authority/respondent, to, order a fresh denovo inquiry into similar and analogous imputation of mis-conduct previously inquired into by the Inquiry Officer, wherein the petitioner/delinquent stood exonerated, stands to be irrevered. Rather it has to be concluded that previous inquiry was a detailed final inquiry.

7. The effect of above discussion, is, that in the respondent/disciplinary authority having ordered the issuance of Annexures P-3 and P-4, upon the petitioner/delinquent, have thoroughly mis-appraised its powers to proceed to do so, especially when no rules are vested in them to order to hold a denovo or fresh inquiry. Preponderantly there, also, being no communication existing, in, the file divulging, that, the respondent/disciplinary authority, in, proceeding to order the issuance of Annexures P-1 and P-4 upon the petitioner/delinquent, had, recorded satisfaction about the findings recorded in Annexure R-1 to be wholly merit less, as such, founderable, being not anvilled upon any sustainable material on record. Absence of such apposite communications, in the records/files, too, does galvanize a formidable inference that the respondent/disciplinary authority had proceeded to disconcur with the previous findings recorded in Annexure R-1, merely in a perfunctory and desultory fashion and as such necessitates interference by this Court. In the exercise of its authority by the respondent/disciplinary authority, in such, a, perfunctory manner connotes and bespeaks of both arbitrariness and capriciousness on their part. Even though, the jurisdiction vested in this Court, to, quash the issuance of show-cause notice or the issuance of memorandum of charge, against the petitioner, is, a limited jurisdiction and is to be sparingly resorted to, unless, there is material on record, pronouncing the fact of the subsequent show cause notice and memorandum of charge accompanying it, being actuated by malafides or sequelling harassment, victimization and humiliation of a public official or where the subsequent denovo inquiry would be, a, mere farcical show. For concluding that the subsequent Annexures P-1 and P-4, per se magnify and portray malafides as well, as, in theirs being permitted to proceed, it, would subject the delinquent/petitioner to

humiliation, as well as harassment, besides, it would be a farcical exercise, an advertence, to, the fact recorded and annexed to Annexure P-4 is necessary as it portrays the respondent/disciplinary authority proposing, to, prove the imputation of mis-conduct by relying upon the same witnesses as were previously examined by the Inquiry Officer, who, held a detailed inquiry and rendered a conclusion comprised in Annexure R-1, in, as much, as, the re-examination of a similar set of witnesses by the respondent/disciplinary authority, hence would be mere a repetitive exercise, on, the part of respondents/disciplinary authority, to, by proposing to examine same and similar witnesses seeking rendition of similar depositions by them on same and similar fact. Hence, when their deposition on same and similar facts, have been considered earlier and found not to be unraveling any material so as to substantiate the charge against the petitioner/delinquent, their re-examination would obviously also lead, to, a similar conclusion, as, recorded earlier. As such, it would be merely a farcical show. Moreover when the holding of denovo inquiry has been concluded by this Court to be borne out or engendered by sheer non-application of mind, as such, arbitrary, as also, when it acquire a concomitant smear of malafides, obviously it would subject the petitioner/delinquent, to, humiliation as well as harassment which ought to be obviated and aborted.

In view of above, petition is allowed, and memorandum dated 24.8.2013 (Annexure P-4) is quashed and set aside. All pending applications, stand disposed of.