

(2020) 09 SHI CK 0456

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2492, 3471 Of 2020

State Of H.P. And Others

APPELLANT

Vs

Dr. Sanjeev Mahajan And Others

RESPONDENT

Date of Decision : 30-09-2020

Acts Referred:

Citation : (2020) 09 SHI CK 0456

Hon'ble Judges : Sureshwar Thakur, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : Ajay Vaidya, Hemant Vaid, Himanshu Mishra, J. S. Guleria, Vikrant Chandel, Rajiv Jiwan, Ajit Sharma

Final Decision : Allowed

Judgement

Sureshwar Thakur, J

1. Since, both writ petitions, respectively bearing CWP No. 2492 of 2017, and, CWP No. 3471 of 2020, are, directed against the orders, made by the learned erstwhile H.P. State Administrative Tribunal, upon, TA No. 4631 of 2015, (i) wherethrough, the impugned thereat orders of termination, made, upon, one Dr. Sanjeev Mahajan, and, as embodied in Annexure P-11, became quashed, and, set aside, and, a direction was meted, upon, the respondent, to reinstate the afore in service, from 8.5.2006, hence both are amenable for a common verdict, becoming recorded thereon.

2. The challenge, made, by the State of Himachal Pradesh, vis-a-vis, the afore made orders, by the learned erstwhile H.P. State Administrative Tribunal, is, grooved (a) in the factum, vis-a-vis, there being a complete failure of the learned erstwhile H.P. State Administrative Tribunal, in, not appreciating, vis-a-vis, hence valid retrospective effect(s) being amenable, to, be assigned, to, orders of termination, made upon him, by the respondent, as, it become founded, upon, his indulging in a heinous crime, (b) and, per-se thereupon there is no necessity, for, theirs adhering to the relevant provisions, borne in the CCS & CCA Rules, (c)

hence rather enjoining the conducting, of, an inquiry, appertaining to the apposite misconduct rather prior thereto. On the other hand, the writ petitioner in CWP No. 3471 of 2020, one Dr. Sanjeev Mahajan, seeks expurgation of the last line, in the sentence, occurring in paragraph-9, of the orders, rendered on 4.5.2017, upon, TA No. 4631 of 2015, by the learned erstwhile H.P. State Administrative Tribunal, wherein a perennial power becomes vested in the respondent, to, de hors Annexure P- 11, becoming quashed, and, set aside, theirs hence holding leverage to proceed, in accordance with law, against, the applicant.

3. Mr. Ajay Vaidya, the learned Senior Advocate General appearing for the State, on the afore ground contends, that, the impugned order hence warrants interference. However, his afore made espousal is lacking in legal vigour, and, also consequently becomes rudderless, in the face of the appointment letter, issued to the respondent Sanjeev Majahan, apparently displaying, vis-a- vis, his service being governed by the relevant CCS & CCA Rules, (i) and, thereupon, even, if at the relevant time, Dr. Sanjeev Majahan did allegedly commit any heinous crime,

(ii) yet alleged commission thereof, did encumber, upon, the respondent/ disciplinary authority, to prior to its, his proceeding to terminate him from service, hence hold an inquiry, vis-a-vis, any purported misconduct, becoming committed by him, during the phase, of, his serving the respondent. Obviously, with the afore statutory mandate, becoming breached, and, rather the respondent revoking the suspension, of, the respondent, thereupon the afore made submission, does not carry any legal weight, and, reiteratedly, is, straightway rejected.

4. Further strengthened reason(s), for, making the afore conclusion, become spurred from the respondent, in their reply to the afore transferee petition, acquiescing therein, the factum of the afore Dr. Sanjeev Mahajan, becoming completely exonerated, from, the apposite charges, becoming drawn against him, through a verdict, made by the criminal court of competent jurisdiction, (a) and, since the verdict made by the criminal court, has not been demonstrated, to, become set aside, by the appellate Court, (b) thereupon, it holds binding, and, conclusive force, and, therethrough, the purported guilt attracted, vis- a- vis, the petitioner, Sanjeev Mahajan, and, arising from his reiteratedly, committing a heinous crime, become(s) thoroughly effaced, (c) nor hence the respondents contention that, yet, any absolute right inheres, in the respondent, to, hold any domestic inquiry, against the petitioner Dr. Sanjeev Majahan, vis-a- vis, the afore predominant factum, holds any vigour (d) nor also the afore last sentence occurring in paragraph-9, of, the impugned order, as, made by the learned erstwhile H.P. State Administrative Tribunal, can assume any aura of validity. Conspicuously also when, unless the afore direction, is, made, thereupon, the very edifice, of, service jurisprudence enshrining, the, twin principle(s) (a) there being an enlivened cause of action, (b) the conduct, of, a domestic inquiry being in contemporaneity with, the holding, of, the apposite

trial, by a criminal court, hence, in accordance with law, would rather, become an inapt casualty. Significantly, also when, the, relevant cause, of, action has become deadened, hence, for the afore reason.

5. Consequently, CWP No. 3471 of 2020 is allowed to the extent that the last sentence, occurring in paragraph-9, becoming quashed and set aside. However, CWP No. 2492 of 2017, preferred by the State of H.P., is dismissed, and, the order of 4.5.2017, made by learned erstwhile H.P. State Administrative Tribunal, is, modified to the above extent. All pending applications, if any, also stand disposed of.