

Before Rajesh Bindal, J.

BALDEV SINGH RATHORE—Petitioner.

versus

**PUNJAB SCHOOL EDUCATION BOARD
AND OTHERS—Respondents**

CWP No. 9534 of 2009

5th July, 2012

Constitution of India, 1950 - Art. 226 - Writ Jurisdiction - Service Law - Punjab School Education Board Act, 1969 - S. 4 & 18(5) - Punjab School Education Board Employees (Punishment & Appeal) Regulations, 1978 - Authority competent to punish employee - Chairman prescribed as punishing authority and Board as Appellate Authority - Constitution of Board defined under Section 4 of the Act, 1969 - Delegation of Authority by Board, while hearing statutory appeal, to Committee constituted by it - Whether proper - Held, no - Holding departmental proceedings, and recording of finding of guilt against any employee, imposition of punishment for the same and hearing of departmental statutory appeal is a quasi judicial function and not administrative function - Such essential quasi judicial function cannot be delegated in absence of enabling provision in the Acts and Rules - Impugned orders of dismissal set aside.

Held, That the Rule making authority had prescribed the punishing authority as well as the Appellate Authority to impose punishment and hear appeals against orders inflicting punishment on an employee. The punishing authority as well as the Appellate Authority are prescribed considering the nature of the offence and the level at which the employee is working. It is totally misconceived to opine that the Appellate Authority can delegate the power to hear the appeal to any of the Committee and on the basis of report thereof to finally decide the appeal. Holding departmental proceedings and recording of a finding fairly of guilt against any employee, imposition of punishment for the same and hearing of departmental statutory appeal is a quasi judicial function and not administrative. Reference can be made to *Vijay Singh vs State of U.P.* 2012 (5) SCC 242. Such an essential

quasi judicial function of hearing the appeal filed by an employce by the Appellate Authority, cannot possibly be delegated in the absence of a specific enabling provision to that effect.

(Para 10)

Rajiv Atma Ram, Senior Advocate with Nikhil Chopra, Advocate,
for the petitioner.

Kanwaljit Singh, Senior Advocate with Tarun Jaitley, Advocate, *for
the respondents.*

RAJESH BINDAL J.

(1) Challenge in the present petition filed by the petitioner is to communication dated 8.5.2009 (Annexure P-22), whereby the decision of the respondent-Board in the appeal filed by him against his dismissal from service, was communicated to him.

(2) The petitioner, who was working as Clerk in the Punjab School Education Board (for short, 'the Board'), was dismissed from service vide order dated 24.5.1993 (Annexure P-11) against which he filed appeal. As the order of dismissal was passed by the Chairman of the respondent-Board, the appeal against that order is maintainable before the Board. While hearing the appeal as the Chairman had participated in the meeting of the Board, in a challenge by the petitioner to the order passed in the appeal, this court vide order dated 17.10.2008 in Civil Writ Petition No. 7761 of 1994 Baldev Singh Rathore vs Punjab School Education Board and others set aside that order and remitted the matter back to the Appellate Authority for decision of the appeal afresh.

(3) Thereafter, the petitioner was heard by the Board in the meeting held on 26.2.2009 in which Chairman of the Board did not participate. A decision was taken to constitute a Committee for considering the case of the petitioner minutely and submit a report to the Board. On 2.4.2009, the Committee, consisting of Vice-Chairman, one Principal, one Head Mistress and one Evaluation officer of State Council of Education, Research and Training, Punjab, heard the petitioner and found that the punishment awarded to the petitioner was justified. The aforesaid report of the Committee was

approved by the Board in its meeting held on 4.5.2009 and the decision was communicated to the petitioner vide letter dated 8.5.2009 (Annexure P-22). It is this communication which is under challenge in the present petition.

(4) Learned counsel for the petitioner submitted that as per provisions of the Punjab School Education Board Employees (Punishment and Appeal) Regulations, 1978 (for short, 'the Regulations'), the authority competent to punish an employee and also the Appellate Authorities have been defined. As the petitioner was in the scale of pay more than ' 1,200/-, the Chairman has been prescribed as the punishing authority and the Board as the Appellate Authority. The Constitution of Board in the present case has been defined in Section 4 of the Punjab School Education Board Act, 1969 (for short, the Act).

(5) It was further submitted by learned counsel for the petitioner that procedure followed by the Board while hearing statutory appeal of the petitioner was totally illegal as the Board could not delegate the authority to hear appeal to a Committee constituted by it. The regulation provided for hearing of the appeal by the Board. In the present case, the Board had not heard the petitioner before taking any decision in the appeal, rather it merely constituted a Committee and ultimately accepted the report of the Committee. The order of dismissal communicated to the petitioner vide letter dated 8.5.2009 is totally non-speaking as the grounds raised in the appeal and at the time of oral submissions before the Committee, were not considered.

(6) Learned counsel for the respondents submitted that after the matter was remitted back by this Court, the Chairman of the Board did not participate in the meeting. The meeting was presided over by the Vice-Chairman. The Vice-Chairman and members of the Board heard the petitioner and decision was taken to constitute a Committee to consider the case of the petitioner minutely and submit a report to the Board for the purpose. The Vice-Chairman of the Board, who was chairing the meeting was authorized to constitute the Committee. The aforesaid Committee was only to assist the Board. On 2.4.2009, the Committee constituted by the Board heard the petitioner in person and found that the punishment awarded to the petitioner was justified. The aforesaid report of the Committee was

accepted by the Board in the meeting held on 4.5.2009. In terms of Section 18 (5) of the Act, the Board had been given the power to constitute committees or councils for carrying out various functions. Hence, constitution of the Committee or the procedure adopted by the Board cannot be faulted with.

(7) Heard learned counsel for the parties.

(8) The relevant provisions of the Act and the Regulations are extracted below:-

Section 4 of the Act

“4. Constitution of the Board. - (1) The Board shall consist of a Chairman, Vice-Chairman and the following members:-

- (a) ex-officio members, namely
 - (i) Vice-Chancellors of all the universities established or that may be established by law in the State;
 - (ii) Secretary to Government in the Department of Education or an officer of that Department not below the rank of a Deputy Secretary nominated by him;
 - (iii) Director of Public Instructions (Colleges), Punjab.
 - (iv) Director of Public Instructions (Schools), Punjab.
 - (v) Director, State Council of Educational Research and Training, Punjab.
- (b) seven members to be nominated by the State Government out of the following categories of persons, namely:-
 - (i) one member from amongst the District Education Officers and Circle Education Officers;
 - (ii) two members from amongst the Principals of Colleges affiliated to the universities established by law in the State;

- (iii) one member from amongst the lecturers of Colleges affiliated to the universities established by law in the State;
- (v) one member from amongst the Heads of Senior Secondary School affiliated to the Board;
- (vi) one member from amongst the Heads of High Schools affiliated to the Board;
- (vii) one member from amongst the School lecturers and teachers who are State or National awardees;
- (c) one eminent scholar or writer or scientist, as may be nominated by the State Government; and
- (d) the Legal Remembrancer, Punjab or the Advocate General, Punjab as may be nominated by the State Government:

Provided that the Legal Remembrancer, Punjab, if nominated as ex-officio member by the State Government, may depute his nominee not below the rank of a Deputy Legal Remembrancer and Deputy Secretary to Government of Punjab to represent him on the Board; and

- (e) three members of the Punjab Legislative Assembly to be nominated by the Speaker of the Punjab Legislative Assembly.
- (2) The Chairman and the Vice-Chairman shall be appointed by the State Government upon such terms and conditions as it may think fit.
- (3) xxx xxx xxx
- (4) The appointment of the Chairman and Vice-Chairman and the nomination of every member shall be notified by the State Government in the Official Gazette.”

Section 18.5 of the Act

“18 (5) The Board may, for the purpose of carrying out the provisions of this Act and the regulations made thereunder, set up in addition to the committees and council referred to in sub-section (1), such committees or councils as it may think fit or as may be prescribed.”

(9) In terms of the provisions of the Regulation, the Chairman has been prescribed to be the Punishing Authority, where the employee is in pay scale of more than ' 1,200/- and the Board has been prescribed as the Appellate Authority. The Constitution of the Board has been provided in Section 4 of the Act. It consists of Chairman and Vice-Chairman, who are appointed by the Government, whereas the other ex-officio members, include Vice-Chancellors of all the universities established or that may be established by law in the State; Secretary to Government in the Department of Education or an officer of that Department not below the rank of a Deputy Secretary nominated by him; Director of Public Instructions (Colleges), Punjab, Director of Public Instructions (Schools), Punjab, Director, State Council of Educational Research and Training, Punjab. In addition to that there are seven members to be nominated by the State Government under Section 4 (b), which include one member from amongst the District Education Officers and Circle Education Officers; two members from amongst the Principals of Colleges affiliated to the universities established by law in the State; one member from amongst the lecturers of Colleges affiliated to the universities established by law in the State; one Member from amongst the Heads of Senior Secondary School affiliated to the Board; one member from amongst the Heads of High Schools affiliated to the Board; one member from amongst the School lecturers and teachers who are State or National awardees; one eminent scholar or writer or scientist, as may be nominated by the State Government; and the Legal Remembrancer, Punjab or the Advocate General, Punjab as may be nominated by the State Government and three members of the Punjab Legislative Assembly to be nominated by the Speaker of the Punjab Legislative Assembly.

(10) The Rule making authority had prescribed the punishing authority as well as the Appellate Authority to impose punishment and hear appeals against orders inflicting punishment on an employee. The punishing authority as well as the Appellate Authority are prescribed considering the nature of the offence and the level at which the employee is working. It is totally misconceived to opine that the Appellate Authority can delegate the power to hear the appeal to any of the Committee and on the basis of report thereof to finally decide the appeal. Holding departmental proceedings and recording of a finding fairly of guilt against any employee, imposition of punishment for the same and hearing of departmental statutory appeal is a quasi judicial

function and not administrative. Reference can be made to **Vijay Singh versus State of U.P. (1)**. Such an essential quasi judicial function of hearing the appeal filed by an employee by the Appellate Authority, cannot possibly be delegated in the absence of a specific enabling provision to that effect. The regulation clearly provides that Board is the Appellate Authority. As has already been referred to above, the Board consists of very senior officers working with different educational institutions in the State. The object apparently is to have independent assessment of the entire matter to opine as to whether the punishing authority had appropriately dealt with the matter or not. There should not be any delegation of the authority even to assist the Board for submission of report after affording hearing to an employee in an appeal. This essential function has not been discharged by the Board. No doubt, an appellate authority is competent to seek assistance of any person on behalf of the employer at the time of hearing of the appeal in the presence of the employee or his representative. Reliance of Section 18 (5) of the Act for the purpose is totally misplaced as the Committees/ Councils constituted under this Act are only to advice on financial/ academic/ examinations matters. The right of appeal is a statutory right of an employee.

(11) In the present case, the Board after hearing the petitioner merely constituted a Committee. The recommendations of the Committee is merely an opinion of the Committee on the dismissal of the petitioner, which was accepted by the Board in its meeting dated 4.5.2009. The order was communicated to the petitioner vide letter dated 8.5.2009 (Annexure P-22).

(12) The impugned order/ communication even otherwise is not a speaking order. The contentions raised by the petitioner challenging his dismissal have not been dealt with by the Board. It had merely accepted the report of the Committee. The report of the Committee is also on the same lines as it does not refer to any contention raised by the petitioner. The same is violative of principles laid down on the subject. Reference can be made to **Kranti Associates (P) Ltd. versus Masood Ahmed Khani (2)**, **Oryx Fisheries (P) Ltd. versus Union of India (3)**, **State of Uttranchal versus Sunil Kumar Vaish (4)**, **Syed Mehaboob versus New India Assurance Co. Ltd. (5)**.

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- (1) 2012 (5) SCC 242
 - (2) 2010 (9) SCC 496
 - (3) 2010 (13) SCC 427
 - (4) 2011 (8) SCC 670
 - (5) 2011 (11) SCC 625

(13) In view of the aforesaid circumstances, the impugned order passed by the Board and communicated to the petitioner vide letter dated 8.5.2009, is set aside. The appeal of the petitioner shall be considered by the Board and decided on merits by passing a speaking order. The same shall be decided by the Board within six months from the date of receipt of certified copy of this order.

(14) The writ petition stands disposed of in the above terms.