

Court and moved an application. She was directed to appear before the Ballabgarh Court and the date given was March 16, 1974. Long before that date the Ballabgarh Court had already taken cognizance and having found the absence of the complainant on March 1, 1974, closed her case. It is thus evident that the complainant was not to be blamed in any manner. That is the additional ground in support of the complainant.

(6) The Learned Magistrate could discharge the accused under section 259 Cr. P.C., but that he could do only before the charge was framed. In the instant case, the stage was after the framing of the charge and as such section 259 Cr. P.C. had no application. It is, therefore, evident that the order of the learned Magistrate cannot be sustained in the eye of law. It has got to be set aside.

(7) The appeal is, therefore, allowed and the order passed by the learned Magistrate is set aside. The case is remitted to the learned Magistrate to proceed in accordance with law.

N.K.S.

Before Surinder Singh, J.

BHUPINDER SINGH SANDHU—*Petitioner.*

versus

STATE OF PUNJAB and others—*Respondents*

Civil Writ Petition No. 4228 of 1976

and

C. M. No. 2023 of 1977

October 19, 1978.

Constitution of India 1950—Article 226 (3)—Punjab Civil Service (Punishment and Appeal) Rules 1970—Rules 5, 14, 15 and 21—Order passed against a civil servant governed by the Rules—Power of review conferred by Rule 21—Whether a statutory alternative remedy under Article 226 (3)—Writ Petition against such order without exhausting the remedy—Whether barred.

Held, that rule 21 of the Punjab Civil Services (Punishment and Appeal) Rules 1970 does not deal only with a case where a penalty is

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imposed, but it covers all types of orders which are proposed to be reviewed. There is no manner of doubt that rule 21 does confer a statutory power of review in case of all orders passed by any authority under the Rules. Rule 21 specifically provides a statutory remedy conferring the powers of review upon the Governor or the appellate authority or some authority specified in this behalf by the Governor in the case of civil servants who are governed by the Rules. The opening words of rule 21 "Notwithstanding anything contained in these rules" give an overriding effect to this rule. Again, it cannot be said that this power of review can be exercised by the Governor or the appellate authority only *suo motu* and not on the application of an aggrieved party, as there is no bar to the filing of a petition by the affected person for the exercise of these powers. Rule 21 does afford a statutory alternative remedy which is open to the petitioner before invoking the extraordinary powers of the High Court under Articles 226 and 227 of the Constitution of India 1950. The writ petition against the order without exhausting the alternative remedy available under rule 21 is, therefore, barred under Article 226(3) of the Constitution.

(Paras 4 and 5).

Petition under Articles 226 and 227 of the Constitution of India praying that the petition be accepted, records of the case be called for and :—

- (a) a writ in the nature of certiorari be issued quashing impugned orders Annexures P-20 awarding censure to the petitioner and charge-sheet, Departmental Enquiry Proceedings Annexure P-14 which is malicious and baseless and illegal, quashing the order of decrease in the subsistence allowance Annexure P-13 be issued;
- (b) a writ in the nature of mandamus be issued directing respondents not to harass the petitioner and discriminate against him and to release his subsistence allowance immediately.
- (c) any other writ, order or direction deemed fit in the circumstances of the case be issued;
- (d) costs be awarded to the petitioner; and
- (e) further enquiry proceedings before Shri Pritam Singh Bala, Enquiry Officer be stayed during the pendency of the writ petition, and petitioner be reinstated; and
- (f) production of certified copies/originals of Annexures 'P-2, 3, 5, 8 to 13 and 15 to 20' be exempted.

Application under Order 6 Rule 17 C.P.C. read with Section 151 C.P.C. praying that the amended writ petition be allowed to be placed on the record alongwith Annexure P/20 and the prayer for quashing Annexure P/20 instead of Annexure P/10 has already been made in the amended writ petition.

Hari Singh Mann, Advocate, for the Petitioner.

Jagat Singh Bawa, Advocate for A.G. (Pb.), for respondent 1, 2 and 5.

Jawahar Lal Gupta, Advocate, for respondents 3 & 4.

JUDGMENT

Surinder Singh, J.

(1) This is a petition under Article 226 and 227 of the Constitution of India, praying for the issuance of a writ in the nature of *certiorari*, quashing the impugned order imposing a penalty of censure (copy Annexure P/20) and impugned charge-sheet (copy Annexure P/14) and also for writ of *mandamus*, directing the respondents not to proceed with the enquiry pending against the petitioner. As the Writ Petition is to be disposed of on a preliminary objection raised on behalf of the two sets of respondents, i.e., respondents Nos. 1, 2 and 5 and respondents Nos. 3 and 4, the facts as alleged may only be noticed briefly. It is the case of the petitioner that after the merger of the Pepsu with Punjab State, he joined as a District Sports Officer, Class II, in the Directorate of Social Welfare on February 17, 1959. His appointment was later on regularised as Sports Officer in the Sports Department, Punjab, with effect from November 24, 1961. According to the petitioner during the tenure of his service as above, he earned good reports and conducted himself with credit at various National and International matches where he worked as a Hockey Coach as well as Umpire. The petitioner claimed that he was senior to respondent No. 4 but respondent Nos. 2 and 3 wanted to ignore his seniority in favour of the respondent No. 4. The petitioner then filed Writ Petition in this Court which was dismissed on January 28, 1971. Another Writ Petition was filed by him again on the publication of a second seniority list, but the same was also dismissed. Ultimately, the petitioner sought his remedy by means of a civil suit which is said to be pending. The petitioner then went on to level certain personal allegations of bias against the respondents in the selection of the members of the Indian team. After making certain other similar allegations, he alleged that he was suspended

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vide orders copy annexure P/2. Later on, a charge-sheet (copy Annexure P/3) was also served upon him for holding an enquiry against him in connection with mishandling of the contract of catering given to one Harbans Lal in a hockey tournament held at Ludhiana during the year 1972. The allegations of misconduct against him were also supplied to him and a copy thereof is Annexure P/5. The petitioner submitted his reply to the charge-sheet and after consideration thereof, a notice was issued to him to show cause (copy Annexure P/7) in which it was proposed to take action against him under rule 5 of the Punjab Civil Services (Punishment and Appeal) Rules 1970 (hereinafter referred to as the Rules), with a view to stop his two increments with cumulative effect. In the wake of this sequence of events, the petitioner approached this Court by means of the present Writ Petition.

(2) When the Writ Petition was taken up for hearing on the earlier date, the learned counsel for the contesting respondents forthwith raised a preliminary objection that the present petition was not entertainable in view of the bar contained in the amended provisions of Article 226(3) of the Constitution of India inasmuch as the petitioner had not exhausted the alternative remedy available to him under the statutory rules of his service before coming to this Court. The learned counsel for the petitioner sought an adjournment to prepare himself on this point. I have today heard the learned counsel for the parties on the above preliminary objection.

(3) There is no gain saying that under Article 226(3) of the Constitution of India, no petition for the redress of any injury referred to in sub-clauses (b) and (c) of clause (1) of the Article shall be entertained if any other remedy to such redress is provided for by or under any other law for the time being in force. In the foremost, the learned counsel for the petitioner has attempted to avoid the brunt of this embargo by contending that the Writ Petition had been admitted at the Motion stage and hence it had already been entertained. The argument, therefore, is that the Writ Petition should now be heard only on merits without considering the preliminary objection. The contention is palpably untenable. The mere admission of a case at Motion stage does not invest a party with any right to avoid any objection which may be raised at the time of final hearing. I have no hesitation in repelling this contention.

(4) We have now to consider the merits of the preliminary objection raised by the respondents. Before this is done, a reference

will have to be made to the relevant Rules which are admittedly applicable to the service of the petitioner, namely, the Punjab Civil Services (Punishment and Appeal) Rules, 1970. Rules 14, 15 and 21 may be reproduced *in extenso* for facility of reference :

“14. *Orders against which no appeal lies* — Notwithstanding anything contained in this part, no appeal shall lie against—

- (i) any order made by the Governor ;
- (ii) any order of an interlocutory nature or of the nature of step-in-aid to the final disposal of a disciplinary proceedings other than an order of suspension ;
- (iii) any order passed by an inquiring authority in the course of an inquiry under rule 8.

15. *Orders against which appeal lies* — Subject to the provisions of rule 14, a Government employee may prefer an appeal against all or any of the following orders, namely:—

- (i) an order of suspension made or deemed to have been made under rule 4 ;
- (ii) an order imposing any of the penalties specified in rule 5 whether made by the punishing authority or by any appellate or reviewing authority ;
- (iii) an order enhancing any penalty imposed under rule 5 ;
- (iv) an order which—
 - (a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement ;
 - (b) interprets to his disadvantage the provisions of any such rule or agreement ;
- (v) an order—
 - (a) stopping him at the efficiency bar in the time scale of pay on the ground of his unfitness to cross the bar ;

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- (b) reverting him while officiating in a higher service, grade or post to a lower service, grade or post, otherwise than as a penalty ;
- (c) reducing or withholding the pension or denying the maximum pension admissible to him under the rules ;
- (d) determining the substance and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof ; or
- (e) determining his pay and allowances—
 - (i) for the period of suspension ; or
 - (ii) for the period from the date of his dismissal, removal or compulsory retirement from service, or from the date of his reduction to a lower service, grade, post, time scale or stage in a time scale of pay to the date of his retirement or restoration to his service, grade or post, or
- (f) determining whether or not the period from the date of his suspension or from the date of his dismissal, removal, compulsory retirement or reduction to a lower service, grade, post, time scale of pay or stage in a time scale of pay to the date of his reinstatement or restoration to his service, grade or post shall be treated as a period spent on duty for any purpose.

Explanation — In this rule—

- (i) the expression 'Government employee' includes a person who has ceased to be in Government Service ;
- (ii) the expression 'pension' includes additional pension, gratuity and any other retirement benefit.

21. Review — (1) Notwithstanding anything contained in these rules —

- (i) the Governor; or
 - (ii) the appellate authority, within six months of the date of the order proposed to be reviewed, or
 - (iii) any other authority, specified in this behalf by the Governor by a general or special order, and within such time as may be prescribed in such general or special order ;
- (a) confirm, modify or set aside the order ; or
 - (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
 - (c) remit the case to the authority which made the order or to any other authority directing such authority to make further inquiry as it may consider proper in the circumstances of the case; or
 - (d) pass such other orders as it may deem fit ;

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of rule 5 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses no such penalty shall be imposed except after an inquiry in the manner laid down in rule 8 and after giving a reasonable opportunity to the Government employee concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the Commission, where such consultation is necessary."

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Rule 14 *ibid* enumerates the orders against which no appeal lies, while rule 15 provides a list of appealable orders. Even on behalf of the respondents, it is not disputed that the three impugned orders in the present Writ Petition, namely, (1) order framing a charge-sheet against the petitioner (Annexure P/14), (2) order directing a decrease in his subsistence allowance (Annexure P/13), and (3) order imposing upon him a penalty of censure (Annexure P/20) are not appealable inasmuch as these orders have been passed by the Government itself and no other authority has been specified by the Governor by a general or special order for hearing an appeal against such orders. In this situation, the only point which requires consideration is as to whether the power of review as contemplated under rule 21 of the Rules tantamounts to an alternative remedy in this behalf or not. According to the interpretation placed upon this rule by the learned counsel for the petitioner, the rule would come into force only in case penalty is imposed upon the Government Officer and as further contended by him, the framing of the charge-sheet and directing a decrease in the subsistence allowance do not tantamount to imposition of a penalty. I am afraid, I cannot appreciate the logic of this argument. A perusal of rule 21, reproduced above would show that the rule postulates four different types of eventualities as enumerated in sub-clause (a), (b), (c) and (d). For the purpose of sub-clause (a), the power of review extends to the confirmation, modification or setting aside of any order which is proposed to be reviewed. It is only sub-clause (b) which makes a reference to the various penalties which may be imposed on a delinquent. Under sub-clause (c) the authority reviewing the matter may even remit the case to the authority which had passed the original order directing it to make further inquiry into the matter as it may consider proper in the circumstances of the case. Under sub-clause (d), wide powers have been conferred upon the reviewing authority to pass such orders as it may deem fit. It is manifest that rule 21 does not, therefore, deal only with a case where a penalty is imposed, but it covers all types of orders which are proposed to be reviewed. There is, therefore, no manner of doubt that rule 21 does confer a statutory power of review in case, of all orders passed by any authority under the Rules.

(5) The only other argument of the learned counsel for the petitioner in answer to the preliminary objection is that the power of review by its very nature is merely a concession which is inherent in all authorities and Tribunals and such a power cannot be

deemed to be an alternative remedy to which recourse may be had as a matter of right. Here again the argument is misconceived. The present is not a case of an inherent power of review which is vested in all authorities generally, but it is a case of statutory remedy specifically provided under rule 21 conferring the powers of review upon the Governor or the appellate authority or some authority specified in this behalf by the Governor in the case of civil servants who are governed by the Rules aforesaid. The opening words of rule 21 "Notwithstanding anything contained in these rules" give a further indication in regard to the over-riding effect of this rule. Again, it cannot be said that this power of review can be exercised by the Governor or the appellate authority only *suo motu* and not on the application of an aggrieved party, as there is no bar to the filing of a petition by the affected person for the exercise of these powers. I am quite convinced in my mind that rule 21 does afford a statutory alternative remedy which was open to the petitioner before invoking the extraordinary powers of this Court under Articles 226 and 227 of the Constitution of India. In passing, it may be observed that no authority expressing a view contrary to the one taken by me has been brought to my notice.

(6) The learned counsel for the respondents have also stated at the bar that all the incumbents of the Directorate of Sports including the Secretary to the Government, Education Department, and the Minister concerned have since been changed and the ground of *mala fides*, as alleged in the petition is not available to the petitioner any longer. I do not, however, want to express any opinion in this behalf as the Writ Petition has to fail solely on the preliminary objection considered above.

(7) The Writ Petition is dismissed, but with no order as to costs.

(8) No arguments have been addressed in Civil Miscellaneous No. 2023 of 1977, which has in any case become infructuous and is dismissed.