

Smt. Bishan Devi and another (13) I do not find any substance in this submission as well. It is well settled that if a Court has acted with material irregularity in the exercise of its jurisdiction an aggrieved party can always file a revision to this Court. In the present case, as already mentioned above, the petitioner had the knowledge of the date of hearing but he failed to appear in the Court on that date. He in order to delay the proceedings, filed the application for setting aside *ex parte* decree after more than one and a half years. The appellate Court without taking into consideration the second proviso to rule 13 *ibid* set aside the decree passed against the defendant-respondent. In the circumstance, in my view, the revision petition is maintainable. In *Nem Chand's case* (*supra*) the learned Chief Justice refused to interfere with the order of the trial Court because he was of the view that substantial justice had been done between the parties. It is sufficient to observe that the facts of both the cases referred to above are distinguishable and, therefore, the observations therein are of no assistance to Mr. Majithia.

(12) For the aforesaid reasons, I accept the revision petition with costs, set aside the order of the Additional District Judge and restore that of the trial Court. Counsel's fee Rs. 400.

H.S.B.

Before : M. R. Agnihotri, J.

MADAN LAL,—*Petitioner.*

versus

PUNJAB STATE ELECTRICITY BOARD and

another,—*Respondents.*

Civil Writ Petition No. 4472 of 1979

December 19, 1986

Punjab Civil Services (Punishment and Appeal) Rules, 1970—Rule 5 and 8—F.I.R. under Corruption Act registered against official—Said official also charge-sheeted on same charge—No

Madan Lal v. Punjab State Electricity Board and another
(M. R. Agnihotri, J.)

challan filed in the criminal case and delinquent official also exonerated in the departmental enquiry—Department subsequently withdrawing the first charge-sheet and issuing a fresh one—Issuance of second charge-sheet—Whether justified—Departmental proceedings initiated thereby—Whether liable to be quashed.

Held, that the gravamen of the charge against the official in the first charge-sheet, the First Information Report lodged a long time ago and the second charge-sheet being the same, and since the criminal case was kept pending at the investigation stage and no challan could be filed, and the departmental inquiry duly held on the basis of the earlier charge-sheet did not procure any material result, there is neither any legality nor propriety in favour of the department to withdraw the first charge-sheet and serve a fresh one. Neither in substance nor in form, there appears to be any technical defect, justifying the withdrawal of the earlier charge-sheet and issuance of the latter. It is a settled rule of law and administration of justice that in order to ensure confidence in the services, if any lapse is found against a defaulter, then action should be taken against him promptly. If, after a thorough consideration of the case, it is found that no action can be taken, then the matter should be dropped and buried for ever. It cannot be reopened and the Damocles' sword should not be permitted to hang on the head of the official for all times to come. As such the issuance of the second charge-sheet is absolutely arbitrary and cannot be justified and as such the departmental proceedings initiated thereby are liable to be quashed.

(Para 5).

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari thereby quashing the order of Respondent No. 2, dated 1st August, 1975 (Annexure P/11), 19th September, 1979 (Annexure P/14), charge-sheet (Annexure P/16), and statement of allegations (Annexure P/17) and a writ in the nature of mandamus and prohibito thereby restraining the Respondents in particular respondent No. 2 from proceeding any further with the disciplinary proceedings which have been ordered de novo against the petitioner and any other appropriate writ order or direction deemed fit and proper in the circumstances of the case may very kindly be issued and costs of this writ petition may also be awarded to the petitioner.

It is, further prayed that pending final disposal of this writ petition, further proceedings in pursuance of the charge-sheet, etc. (Annexure P/16 and P/17) may very kindly be ordered to be stayed.

It is still further prayed that issuing and serving of notices of stay on the respondents may very kindly be ordered to be dispensed with.

R. P. Bali, Advocate, for the Petitioner.

Jasbir Singh, Advocate, for Sarup Singh, Advocate, for the Respondent.

JUDGMENT

(1) Petitioner Madan Lal, Revenue Accountant, working in the Punjab State Electricity Board has filed this writ petition under Articles 226 and 227 of the Constitution of India *inter alia* praying for the quashing of orders dated 1st August, 1975 (Annexure P/11), and dated 19th September, 1979 (Annexure P/14) and also the order dated 19th September, 1979 (Annexure P/15) with which the statement of charges (Annexure P/16) and the statement of allegations (Annexure P/17) had been forwarded to the petitioner, serving him a charge-sheet "under the Punjab Civil Services (Punishment and Appeal) Rules, 1972, or the Punjab State Electricity Board Employees (Punishment and Appeal) Regulations, 1971." At the motion stage, further proceedings in pursuance of the impugned charge-sheet had been stayed by this Court on 17th December, 1979, to which full seven years have elapsed.

(2) The grievance of the writ petitioner is that while he was working as Revenue Accountant, a complaint was made against him on the basis whereof a case was registered under section 5 (2) of the Prevention of Corruption Act,—*vide* F.I.R. No. 25, dated 5th February, 1970, at Police Station, Siri Hargobindpur. However, after keeping the case pending for more than two years, it was filed on 14th February, 1972, under the orders of the Ilaco Magistrate. Thereafter, on 3rd May, 1973, the petitioner was served with a charge-sheet consisting of four charges and a statement of allegations in support thereof. After obtaining the reply to the charge-sheet on 23rd August, 1973, the Deputy Secretary of the Punjab State Electricity Board was appointed as Inquiry Officer to hold an inquiry into the matter. The said inquiry was accordingly held and a report was submitted to the Chief Accounts Officer of the Punjab State Electricity Board, Patiala. Since the report was in favour of the petitioner and no charge stood proved against him, respondent No. 2 (Chief Accounts Officer) ordered reinstatement of the petitioner in service,—*vide* his order

Madan Lal v. Punjab State Electricity Board and another
(M. R. Agnhotri, J.)

dated 25th April, 1975 (Annexure P/9). So far as the question of payment or otherwise of the arrears of salary in addition to the subsistence allowance which the petitioner had already been disbursed during the period of suspension is concerned, decision was to be taken by the competent authority later on. This decision was ultimately communicated to the petitioner on 1st August, 1975, intimating that he shall not be paid anything more than the suspension allowance already drawn by him. Against this order of 1st August, 1975, the petitioner submitted his representations on 12th August, 1975 and 12th February, 1976. But on 7th December, 1979, the petitioner was intimated that the original memorandum of charge-sheet dated 18th May, 1973 (Annexure P/4) along with the statement of charges (Annexure P/5) and the statement of allegations (Annexure P/6), had been withdrawn, and a fresh charge-sheet was issued to him. It is these fresh communications dated 19th September, 1979, along with statement of allegations, charge-sheets, etc., Annexure P/14 to P/17, which are the subject-matter of the present writ petition.

(3) The principal submission of the learned counsel for the petitioner, Mr. R. P. Bali, is that once the matter had already been finally decided and previous charge-sheet had been withdrawn, the same could not be reopened, much less without any fresh material on the record. In nutshell his argument is that in applying the principle of constructive *res judicata*, the matter should be permitted to assume finality. The second submission, of course, is with regard to his grievance about the payment of arrears of salary which had been withheld by the Punjab State Electricity Board by confining the same to the subsistence allowance alone during the period of suspension. Broadly, the claim has been founded on the principles of natural justice, which, according to the learned counsel for the petitioner, have not been observed in the present case.

(4) Though the case has been contested by the Punjab State Electricity Board by filing the written statement, yet the factual position have been almost admitted. In para 9 of the written statement, it has been admitted that the criminal case was received back from the Superintendent of Police, Gurdaspur, on 24th November, 1971, as untraceable due to non-availability of sufficient evidence for filing the challan in the Court. It is also admitted in para 4 thereof that the Inquiry Officer submitted his report on 26th February, 1975 and the petitioner was reinstated

thereafter. However, reopening of the matter is sought to be justified by taking the plea in para 20 (a) of the written statement that if due to any technical mistake, the charge-sheet is defective, the employer can withdraw the same and on the same cause of action issue the second charge-sheet after correcting the mistake. Therefore, the doctrine of constructive *res judicata* has no application in the matter.

(5) After hearing the learned counsel for the parties and after going through the record, I am of the view that the action of respondents is wholly arbitrary and without any legal justification. The gravamen of the charge against the petitioner in the present impugned charge-sheet, the earlier charge-sheet and the First Information Report lodged against him more than fifteen years ago, is the same. Since the criminal case was kept pending for two years at the investigation stage and no challan could be filed, and the departmental inquiry duly held by the Deputy Secretary of the Punjab State Electricity Board on the basis of the earlier charge-sheet, did not procure any material result, except a warning to the petitioner, there is neither any legality nor propriety in favour of the respondent Board to withdraw the charge-sheet and serve a fresh one. Neither in substance nor in form, there appears to be any technical defect, justifying the withdrawal of the earlier charge-sheet and issuance of the latter. It is a settled rule of law and administration of justice that in order to ensure confidence amongst the services, if any lapse is found against a defaulter, then action should be taken against him promptly. If, after a thorough consideration of the case, it is found that no action can be taken, then the matter should be dropped and buried for ever. It cannot be reopened and the Damocles sword should not be permitted to hang on his head for all times to come.

(6) So far as the claim of the petitioner to the difference of salary for the period of suspension is concerned, no material whatsoever has been placed by the respondent Board on the record in order to justify the withholding thereof. An independent decision has to be taken under law by the competent authority in order to disclose the reasons on the basis whereof full salary for the period of suspension is not to be granted to the defaulter and as to why only the suspension allowance has to be considered enough during the suspension period. Since the petitioner could not be prosecuted in the Court of law, in pursuance of the First Information Report lodged against him, nor could he be subjected to any

Bimal Kaur Khalsa v. Union of India and others
(D. S. Tewatia, C.J.)

punishment in the departmental inquiry, there was hardly any justification for not releasing the arrears of salary for the period of suspension in addition to the subsistence allowance already drawn by him.

(7) Consequently, the impugned orders Annexures P/11 and P/14 to P/17 are hereby quashed as the action of the Punjab State Electricity Board in reopening the matter is wholly violative of the principles of natural justice. As a result thereof, a writ of *mandamus* is hereby issued against the respondents to grant to the petitioner the following relief forthwith:—

- (1) Arrears of salary (difference between the actual salary and the subsistence allowance already drawn during the period of suspension from 3rd May, 1973 to 25th April, 1975); and
- (2) Fixation of pay by adding annual increments from 1973 onwards, subject, of course, to the consideration of his service record for the purposes of crossing the efficiency bar, etc.

The departmental proceedings sought to be initiated in pursuance of the fresh charge-sheet are also hereby quashed and the respondents are restrained from reopening the matter against the petitioner.

(8) In the result, the writ petition succeeds and is hereby allowed. In the circumstances of the case, there is no order as to costs.

H.S.B.

FULL BENCH

Before : D. S. Tewatia, C.J., S. S. Kang and M. R. Agnihotri, JJ.

BIMAL KAUR KHALSA,—Petitioner.

versus

UNION OF INDIA and others,—Respondents.

Civil Writ Petition No. 3761 of 1986

October 20, 1987

Constitution of India, 1950—Articles 14, 19, 21, 22, 50, 226, 227, 228, 233 and 235—Terrorist and Disruptive Activities (Prevention) Act (XLVI of 1987)—Sections 9, 10, 11(2), 16, 19 and 20(4), (7) and