Bhupinderpal Singh Gill vs The State Of Punjab on 20 January, 2025

Author: Dipankar Datta

Bench: Dipankar Datta

REPO

2025 INSC 83

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.183 OF 2025
[Arising out of SLP(C) NO. 17120 OF 2022]

BHUPINDERPAL SINGH GILL … APPEL

VERSUS

STATE OF PUNJAB AND OTHERS …RESPOND

JUDGMENT

DIPANKAR DATTA, J.

FACTS

1. The appellant was at the twilight of his long career of 34 (thirty-four) years in public service. At the relevant time, he was holding the post of Senior Medical Officer, CHC, Dirba, District Sangrur, under the JATINDER KAUR Health and Family Welfare Department, Government of Punjab 1. Date: 2025.01.20 17:54:04 IST Reason:

> GoP Eleven days prior to the appellant's retirement on superannuation on 31st March, 2017, he was served with a charge-sheet dated 20th March, 2017 in connection with disciplinary action that was proposed against him under Rule 8 of the Punjab Civil Services (Punishment & Appeal Rules, 1970).

2. The charge-sheet alleged that the appellant had committed misconduct by (i) not complying with the direction of the Election Commission; (ii) proceeding on leave without sanction thereof; (iii) failing to take part in the pulse polio programme and giving threats for legal action to the Senior Assistant of the Civil Surgeon, Sangrur2; and

(iv) not complying with the orders of the superior officers.

3. Consequent to pendency of the disciplinary proceedings, an order was issued on 31st March, 2017 refusing the appellant extension of service; instead, the appellant was relieved of his duty and made to retire on 31st March, 2017 (afternoon). It was recorded in the said order that such retirement would not affect the disciplinary proceedings pending against the appellant; also, if any amount is recoverable from him, the GoP would have the right to recover such amount.

4. Almost a year lapsed, since the charge-sheet was issued to the appellant, without any development. As late as on 23rd February, 2018, a retired bureaucrat (a member of the Indian Administrative Service) was appointed as the Inquiry Officer.

5. The appellant, despite not having responded to the charge-sheet, diligently participated in the inquiry before the Inquiry Officer. While Civil Surgeon refuting the charges levelled against him, the appellant cross-

examined the two witnesses produced on behalf of the prosecution in support of the charges. The appellant also furnished an explanation vis-à-vis the incidents before he proceeded on leave. Upon purported consideration of the evidence led by the prosecution and the explanation furnished by the appellant, the Inquiry Officer submitted a report of enquiry concluding as follows:

> "Keeping in view the above, all the charges No. 1 to 4 levelled in the charge-sheet against Sh. Bhupinder Singh Gill. Service No. 3674, Senior Medical Officer (Retd) are proved, but so far as the matter of giving threat to take legal action against the Assistant of the office of Civil Surgeon that is not proved."

6. The report of the Inquiry Officer was furnished to the appellant vide a memo dated 7th September, 2018 and his comments were sought. By his reply dated 9th September, 2018, the appellant sought to highlight the infirmities in the inquiry report and prayed that the disciplinary proceedings be dropped.

7. The Principal Secretary of the Health and Family Welfare Department, GoP3, passed a final order dated 11th October, 2019 upon purported consideration of the charge-sheet, the evidence led in course of the inquiry by the prosecution, the defence of the appellant, the inquiry report and the response of the appellant thereto. He ordered a cut in pension based on the observations/findings made by him. The contents of the said order will be noticed at a later part of this judgment. Disciplinary Authority PROCEEDINGS BEFORE THE HIGH COURT

8. The order of the Disciplinary Authority dated 11th October, 2019, ordering a cut of 2% pension with cumulative/permanent effect, was challenged by the appellant in a writ petition4 before the High Court of Punjab and Haryana at Chandigarh5. A single Judge of the High Court, vide judgment and order dated 26th February, 2021, dismissed the writ petition.

9. Aggrieved thereby, the appellant presented an intra-court appeal6. The Division Bench of the High Court by its judgment and order dated 19th April, 2022 allowed the appeal in part by modifying the punishment imposed upon the appellant by the Disciplinary Authority. Instead of the penalty of 2% pension cut with cumulative/permanent effect, the same was altered to 2% pension cut for a period of 5 years whereafter the appellant was made entitled to full pension upon "completion of five years period from the date the inflicted punishment has been effected".

THE CHALLENGE

10. This appeal, by special leave, mounts a challenge to the said judgment and order dated 19th April, 2022 of the Division Bench of the High Court, although partial relief was granted thereby to the appellant. CWP-34272-2019 (O&M) High Court CONTENTIONS OF THE PARTIES

11. Mr. Patwalia, learned senior counsel appearing for the appellant, contended that having regard to the materials on record it is clear as crystal that the appellant did not commit any misconduct warranting punishment. According to him, the disciplinary proceedings were initiated by the respondents to teach the appellant a lesson for having questioned their actions before the High Court in several proceedings. Reference was made by him to proceedings instituted by the appellant before the High Court alleging contempt against some of the high- ranking officials of the GoP. In pursuance thereof, the respondents had to cough up in excess of Rs. 3,00,000/- (three lakh) to the appellant, of which he had been illegally deprived. Our attention was further invited to the evidence led on behalf of the prosecution as well as the specific defence taken by the appellant to demonstrate the perversity in the findings of the Inquiry Officer as well as the order of penalty passed by the Disciplinary Authority.

12. Mr. Patwalia also submitted that the appellant having been in public service in excess of three decades without blemish, the governmental action of initiating disciplinary proceedings a few days prior to his retirement and imposing on him the unwarranted penalty of ordering of a cut in pension, which is the source of his sustenance in the winter years of his life, is absolutely arbitrary apart from smacking of mala fide, which the High Court failed to take note of. He, thus, prayed that the orders of the Disciplinary Authority, the Single Judge and the Division Bench be set aside and all benefits be restored in favour of the appellant to which he was legitimately entitled.

13. Per contra, appearing for the respondents, Ms. Nupur, learned counsel contended that inquiry was conducted by the Inquiry Officer by granting reasonable, sufficient and adequate opportunity to the appellant to defend himself. There has been no breach of principle of natural justice in proceeding against the appellant and rightly, the appellant has not so alleged. The findings returned by the Inquiry Officer are based on legal evidence and the order of the Disciplinary Authority imposing penalty demonstrates application of mind to the materials on record. Thus, no

interference is called for.

14. Our attention was drawn by Ms. Nupur to the order dated 28th July, 2021 issuing notice on the intra-court appeal. According to her, limited notice was issued to the effect that 2% cut in pension could have been for a limited period and not with cumulative/permanent effect. Relief having been provided by the Division Bench by the impugned order, she concluded by submitting that the appellant can have no cause for any further grievance.

THE ISSUES

15. The broad issue emerging for decision is, whether the impugned order of the High Court, in which the Disciplinary Authority's order imposing penalty and the order of the Single Judge dismissing the writ petition of the appellant have merged, warrants any interference on any of the grounds available for judicial review. Besides, we are also tasked to decide the objection that limited notice having been issued at the time of admission of the intra-court appeal and the appellant's grievance being addressed, this Court ought not to enlarge the scope of the appeal.

ANALYSIS

16. We have perused the documents on record including the inquiry report and other relevant materials.

17. At the outset, we propose to deal with the objection raised by Ms. Nupur.

18. It is true that limited notice was issued by the Division Bench while admitting the intra-court appeal. However, a reading of the impugned order does not reveal that the Division Bench while disposing of such appeal considered the sole point on which limited notice was issued; on the contrary, arguments were advanced by the parties on similar lines as advanced before us and after noting the rival claims, the Division Bench proceeded to dispose of the appeal by holding as follows:

> "In the present case also, the petitioner has put in service of 34 years and not an iota of material has been brought on record to even remotely suggest that the writ petitioner had been a trouble maker or undisciplined employee or habitual of absenting himself from work without permission. On the contrary, the factors that ostensibly appear to have influenced the competent authority have also been candidly pleaded and brought on record i.e. actively pursuing litigation in which the highest authority of the department i.e. Principal Secretary, Health and Family Welfare Department, Punjab was as such a party respondent by name, as contemnor, in COCP No.2304 of 2013 titled 'Dr. Bhupinder Pal Singh Gill vs. Smt. Vini Mahajan and others'. No material has been brought to our notice that the aforesaid factual aspect was ever denied or refuted or appropriately dealt with, at the time of imposing the punishment.

Keeping in view the above discussion, the material available on record, ratio of the judgments referred to and the peculiar facts and circumstances, we are of the considered opinion that the punishment inflicted on the writ petitioner being a 2% cut in pension, in perpetuity, even if the finding with regard to the charges is left untouched, is disproportionate to the misconduct and is sufficient to shock the conscience of the Court. Thus, the writ petitioner does not deserve to be treated any differently and as such taking a consistent view, the present appeal is liable to be allowed partly and the order of punishment deserves to be modified accordingly. Therefore, the ends of justice would be met if the impugned punishment is modified to be for a limited specific period other than being in perpetuity i.e. with cumulative effect. None the less, the same would still act as a deterrent for other employees to discharge the duties in a proper manner and remain careful to follow all instructions issued from time to time.

Accordingly, the order dated 26.02.2021 and the order dated 28.04.2021 passed by the writ Court are set aside and the order dated 11.10.2019 (Annexure P-13) passed by Principal Secretary, Punjab Government, Health and Family Welfare Department, imposing 2% cut in pension with cumulative/permanent effect, is modified to that of 2% cut in pension for a period of 5 years. Consequently, full pension would be restored on the completion of give years period from the date the inflicted punishment has been effected." (emphasis supplied) In view of the approach adopted by the Division Bench in examining the contentious issues arising before it, we consider the objection of Ms. Nupur to be without substance.

19. Even otherwise, issuing limited notice at the stage of admission does not bar a Constitutional Court having inherent powers to pass such orders as the justice of the case before it demands to enlarge the scope of a petition/appeal at the stage of final hearing. Any observation that the court may choose to make while entertaining the petition/appeal by issuing limited notice ought to be regarded as tentative. Such observation cannot limit the court's jurisdiction to consider the controversy, as raised, in its entire perspective. Whether or not the court would enlarge the scope is, however, a question which is largely dependent on the facts and circumstances of each case. If the court seized of the petition/appeal considers that the justice of the case before it demands enlargement of the scope, notwithstanding that a limited notice had been issued earlier, the court's powers are not fettered particularly when enforcement of any Fundamental/Constitutional right is urged by the party approaching it. We, therefore, see no reason to accept the objection of Ms. Nupur and show the appellant the door at the threshold.

20. Having dealt with the objection, it is now time to consider the merits of the appellant's claim and decide the broad issue.

21. The appellant applied on 27th January, 2017 for availing leave on 28th, 30th and 31st, January, 2017 to attend proceedings pending before the High Court. Since the details of the proceedings have been noted by the Division Bench and the same have not been disputed by the respondents, we refrain from referring to it here.

22. The case of the prosecution was that the appellant had proceeded on leave without the same being sanctioned, defying the directions of the Election Commission and the higher authorities, and

without participating in the pulse polio programme.

23. The allegation levelled against the appellant was sought to be established by the prosecution by examining two witnesses, (i) a clerk (PW-1) in the office of the Civil Surgeon and (ii) a senior assistant (PW-2) in the branch office of the Director, Health and Family Welfare.

24. Referring to the records, PW-1 gave a statement that the appellant proceeded on leave on 27th January, 2017 without getting his casual leave sanctioned and without handing over charge of his post to anyone. The appellant was informed of non-sanction of his leave by the Senior Assistant in the office of the Civil Surgeon on telephone to which the appellant responded by saying that he be not harassed by making phone calls and also that since he has no duty for the pulse polio programme, he would take legal action. Reference was then made by PW-1 to a letter dated 06th January, 2017 of the Secretary, Health and Managing Director, Punjab Health System Corporation, Punjab7 to the effect that grant of leave was closed due to Election Code in Punjab and that directions had been made by the appropriate authority of the Election Office, keeping in view the Election Code, that leave be not granted to any officer/official; however, despite knowledge of the same, the appellant had proceeded on leave.

25. In course of cross-examination, PW-1 stated that no call detail is available regarding the telephonic message purportedly given by the Senior Assistant to the appellant and it is only the Senior Assistant who would be in a position to throw light because PW-1 did not have any record of conversation. It was also admitted that on cancellation of leave, separate letter was not written to the appellant; also that, as per the record, no duty had been assigned to the appellant in the pulse M.D., PHSC polio programme from 29th January, 2017 to 31st January, 2017 or by the Election Commission. The letter dated 6th January, 2017 of the M.D., PHSC did not prohibit grant of leave to Senior Medical Officer; however, it prohibited grant of leave to specialist Doctor/General Medical Officer and para-medical staff, and leave to them could only be granted in special situations upon obtaining the approval of the Director, Health. PW-1 reiterated, while responding to a question as to the time when leave of the appellant was cancelled, that the Civil Surgeon cancelled the leave on 27th January due to Election Code and pulse polio programme but that there is no record regarding time. He also admitted the absence of any Government Order requiring communication of non-sanction of leave through telephone and not in writing. He was unaware as to whether the appellant had been charge- sheeted for keeping him away “from the fruits of extension in service”.

26. As PW-2, the Senior Assistant produced a document dated 30 th January, 2017 (Ex.PW/2/1) of the Civil Surgeon which was addressed to the Additional Chief Secretary (Health) conveying that the appellant proceeded on leave on 27th January, 2017 without such leave being sanctioned, without informing anybody and without handing over charge to anybody. Further, PW-2 stated that due to Election Code “the leave were closed” and that the Senior Assistant of the Civil Surgeon had informed the appellant regarding cancellation of leave on telephone owing to Election Code and pulse polio programme from 29 th January, 2017 to 31st January, 2017.

27. In course of cross-examination by the appellant, PW-2 admitted that in the letter of the Civil Surgeon, being Ex.PW/2/1, call record of the Senior Assistant, call details and confirmation of calls

made are not available.

28. According to the appellant, he personally visited the office of the Civil Surgeon on 27th January, 2017 at 3.00 pm. As per the procedure of the GoP, he gave his leave application to the Receipt Clerk and obtained a receipt. On such application, the Medical Officer, Dental, CHC, Dirba put her signature. The appellant waited till 5.00 pm but since the Civil Surgeon was not available in the office from 3.00 pm to 5.00 pm, he was asked to go on leave. It was the further case of the appellant that during the long 34 (thirty-four) years of his service, he was never given any letter sanctioning his leave. It was also his version that he had not received any telephonic message from anyone in the office of the Civil Surgeon asking him not to proceed on leave and, therefore, he went on leave. He had also not received any letter regarding non-sanction of his leave. Further, he was not given election duty by the Election Commission of India nor was he assigned duty from 29th January, 2017 to 31st January, 2017 for the pulse polio programme.

29. The Inquiry Officer, prior to recording his conclusion as extracted in paragraph 5 (supra) found the following facts to have come to light. We consider it appropriate to reproduce the same from the report, reading as follows:

> "1.The Delinquent officer on 27-1-2017 after getting the leave of 28-1-2017, 30-1-2017 and 31-1-2017 along with station from 27-1-2017 to 2-2-2017 received in the office of Civil Surgeon, Sangrur, went on leave without getting the same sanctioned, when in those days election code was going on and pulse polio programme was also going on. In this regard, as per the directions issued by Election commission/Health Department, the leave only could only be availed, in special circumstances, after getting prior permission from Director, Health Services. As per the rules, no leave can be availed as a right. Powers are empowered to the competent authority to sanction or not to sanction the leave. The argument by the Delinquent that there was no duty of him in election and pulse polio, is not acceptable. During the election and pulse polio, it is the duty of the supervisory officer to maintain the health services and to provide duties to the departmental employees and to assure the regular supply of medicines and to maintain cold chain etc. Being Senior Medical Officer and being incharge of an organization, it was the duty of the Delinquent officer that he during the elections and pulse polio programme, leads the officers/officials of his department and supervise their works so that these important programmes of the Government can be fulfilled successfully. But on the part of Delinquent officer, this was not done and did not take part in pulse polio programme. So far as the charge to give threat to take legal action against Sh. Rakesh Kumar , Senior Assistant office of Civil Surgeon, Sangrur, in this regard neither the concerned Senior Assistant has been produced as a witness nor any record or detail of call regarding conversion on telephone with the Delinquent has been produced by the Prosecution. Because the conversation of the concerned Senior Assistant of the office of Civil Surgeon had taken place 'With the Delinquent, which, as per the record, was brought by him in the notice of Civil Surgeon. But hear say evidence as per the Indian Evidence Act cannot be admitted as a proof. Therefore, to give threats from the Delinquent Doctor to

> Senior Assistant, office of Civil Surgeon, Sangrur to take legal action, due to non-submission of any proof by the PO, this charge is not proved."

30. As noted, the inquiry report was accepted by the Disciplinary Authority. Paragraph 2 of the said order being relevant, reads as follows:

> "2. Doctor Bhupinder Pal Singh Gill while giving his explanation dated 19-9-2018 with ref. to Memo. No. 17/34/17-4H1/3226 dated 07-09-2018 of Govt, refused to accept the report and by telling him innocent, before taking any decision in this regard, requested for personal hearing to submit his defence. While considering the explanation submitted by the Doctor, the competent authority vide Govt. Memo. No. 17/34/17-4S1—3568 dated 17-10-2018, he was given personal hearing. During the personal hearing, the arguments put by the Doctor and facts were not acceptable. Therefore, the charges mentioned in the charge-sheet which have been proved by the Inquiry Officer in his report, after consideration of the same, it has been decided to make a tentative cut of 2% out of the pension of Doctor Bhupinder Pal Singh Gill. In this regard vie Govt. letter No. 17/34/17- 4H1/1073 dated 12-04-2019, approval of P.P.S.C, Patiala had been sought which has been received vide this letter No. Dis.321/2019/-7/1950 dated 19-07-19, keeping in view this, as per the decision taken by the Govt., permission is granted of 2% pension cut with cumulative/permanent effect out of the pension of Dr. Bhupinder Pal Singh Gill."

31. These are the bare facts triggering the challenge by the appellant to the order of penalty imposing a cut in pension for the remainder of the period he would receive pension, which partially succeeded before the Division Bench of the High Court and was modified to a period of 5 (five) years.

32. Before we embark on a judicial review of the decision taken by the Disciplinary Authority to penalise the appellant and examine the correctness of the impugned order, we need to remind ourselves of the well-settled principles relating to interference with decisions taken in pursuance of disciplinary proceedings to discipline and control errant employees.

33. Certain generic principles governing interference with orders of punishment that are passed following inquiry proceedings have evolved over a period of time. Law is well settled that an administrative order punishing a delinquent employee is not ordinarily subject to correction in judicial review because the disciplinary authority is the sole judge of facts. If there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the high court in a writ petition filed under Article 226 of the Constitution. However, should on consideration of the materials on record, the court be satisfied that there has been a violation of the principles of natural justice, or that the inquiry proceedings have been conducted contrary to statutory regulations prescribing the mode of such inquiry, or that the ultimate decision of the disciplinary authority is vitiated by considerations extraneous to the evidence and merits of the case, or that the conclusion of the disciplinary authority is ex facie arbitrary or capricious, so much so that no reasonable person could have arrived at such conclusion, or there is any other ground very similar to the above, the high court may in the exercise of its

discretion interfere to set things right. After all, public servants to whom Article 311 of the Constitution apply do enjoy certain procedural safeguards, enforcement of which by the high court can legitimately be urged by such servants depending upon the extent of breach that is manifestly demonstrated.

34. It would further be of immense profit, at this stage, to consider a specific principle which is tailored to the particular situation and could clinch the issue. The Constitution Bench of this Court, speaking through Hon'ble P.B. Gajendragadkar, J., in Union of India v. H.C. Goel8 laid down a specific test which could be applied if a contention were raised that the conclusion is based on no evidence. Relevant passages from the said decision evincing one of the two questions arising for decision and the answer thereto, read as follows:

> "1. Two short questions of law arise for our decision in the present appeal. The first question is ... ; and the other question is whether the High Court in dealing with a writ petition filed by a Government Officer who has been dismissed from Government service is entitled to hold that the conclusion reached by the Government in regard to his misconduct if (sic, is) not supported by any evidence at all. As our judgment will show, we are inclined to answer both the questions in the affirmative. Thus, the appellant, the Union of India, succeeds on the first point, but fails on the second. ...
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> 20. ... It still remains to be considered whether the respondent is not right when he contends that in the circumstances of this case, the conclusion of the Government is based on no evidence whatever. It is a conclusion which is perverse and, therefore, suffers from such an obvious and patent error on the face of the record that the High Court would be justified in quashing it. In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract Article 311(2), the High Court under Article 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charges framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings, which is the basis of his dismissal, is based on no evidence. ...
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> 23. ... In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the (1964) 4 SCR 718 sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted

> as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence illegally (sic, legally) the impugned conclusion follows or not. ...
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> 26. ... Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquires held under the statutory rules. ... " (emphasis supplied)

35. It also needs to be emphasised that although the traditional concept of natural justice comprises of the two rules that prohibit anyone from being condemned unheard and anyone from being a judge of his own cause, jurisprudence on natural justice principles have seen a distinct shift ever since the decision in Maneka Gandhi v. India9 constitutionalised principles of natural justice, as held in Madhayamam Broadcasting Ltd. v. Union of India 10. Drawing inspiration from such authorities, it would be apt to observe that in relation to disciplinary proceedings, subject to just exceptions, natural justice would envisage observance of procedural fairness before (1978) 1 SCC 248 (2023) 13 SCC 401 holding a public servant guilty of misconduct and imposing a punishment on him for such misconduct. While it is true that principles of natural justice supplement, and not supplant, the law, such principles have been declared by this Court to be a constituent feature of Article 14. Validity of any disciplinary action, whenever questioned, has to be tested on the touchstone of Articles 14, 16 and 21 as well as Article 311(2), wherever applicable. To test whether interference is warranted, this Court has laid down that the scrutiny ought to be confined to finding out whether the disciplinary proceedings have been conducted fairly; if not, an inference can be drawn that this has caused prejudice to the charged employee. Be that as it may, there can be no gainsaying that the consequences of violation of a fair procedure, which principles of natural justice embody, in a given situation has to be considered on a case-by-case basis bearing in mind that judicial review is not intended to be an appeal in disguise.

36. Though the rules closely associated with the traditional concept of natural justice may not have been breached in this case, the contention of the appellant that the process of decision-making stands vitiated for lack of procedural fairness has to be examined given the nature of challenge raised.

37. Memory refreshed; we now proceed to examine whether the appellant has set up any case for interference.

38. The second and the fourth charges levelled against the appellant that he had proceeded on leave without sanction thereof and in not complying with the orders of his superior officers seem to be the most vital charges. Undoubtedly, no public servant can claim leave as a matter of right. Leave is a

matter regulated by rules and such rules need to be duly adhered to by each public servant. While there can be no quarrel on this aspect, we have not found any such circumstance from the record to afford ground for holding that the appellant did commit a serious misconduct. In order to establish that the appellant had committed a serious misconduct by proceeding on leave without leave being sanctioned (leave cancelled as per PW-1), the prosecution endeavoured to prove that the Civil Surgeon had refused to sanction leave, prayed by the appellant, and that he was telephonically informed by the Senior Assistant of such refusal. That the appellant had visited the office of the Civil Surgeon, remained there from 3.00 pm to 5.00 pm and submitted his application for leave which was duly acknowledged, have not been disputed by the prosecution. Interestingly, the Inquiry Officer while exonerating the appellant of the second part of the third charge reasoned that neither the Senior Assistant had been produced in the inquiry as a witness nor were call details produced, and what PW-1 said is mere hearsay; hence, in the absence of proof, that part of the charge is not proved. This was a valid reason assigned by the Inquiry Officer, which the Disciplinary Authority even accepted. On the same analogy and for the same reason, the appellant could not have been held guilty in respect of the second charge. There is no record of the Civil Surgeon's refusal to sanction leave being communicated to the appellant either. In such view of the matter, we have no hesitation to hold that there was no legal evidence based whereon the appellant could have been held guilty of the second and fourth charges.

39. That the appellant did not comply with the directions of the Election Commission and did not participate in the pulse polio programme constitute the first charge and the first part of the third charge, respectively. The second part of the third charge of the appellant having threatened the Senior Assistant has not been found to be proved. It is the clear finding of the Inquiry Officer, based on the evidence on record, that the appellant was not assigned any duty in connection with election duty and pulse polio programme during the period he wished to avail leave to attend court proceedings before the High Court. Insofar as defiance of Election Commission's directions by the appellant are concerned, no such written directions were part of the documentary evidence led before the Inquiry Officer. Though the letter of the M.D., PHSC was not made part of the evidence, we shall assume that the appellant, PW-1 and the Inquiry Officer knew the contents of the said letter and were aware that in view of the ensuing elections in February, 2017, instructions had been received not to grant leave to any officer unless permitted by the Director, Health. However, the appellant's contention that public servants on the verge of retirement are not assigned election duty was not shown to be incorrect and untenable. Rather curiously, the Inquiry Officer resorted to ingenuity to hold the appellant guilty. As is evident from the report, the prosecution having failed to establish that the appellant had been assigned election duty as well as duty associated with the pulse polio programme, the Inquiry Officer went on record to hold the charges under consideration proved by referring to what was, in his perception, the duty of a senior medical officer who has been in charge of an organisation. It needs no discussion that the Inquiry Officer found the appellant guilty for a perceived failure to perform a moral duty. Not only was it completely extraneous, but such a finding was clearly at variance with the charge levelled against the appellant. We hold that holding the appellant guilty of a perceived failure to perform a duty not being the charge in respect of which any opportunity of explanation was given, such a finding could not have been taken into consideration by the Disciplinary Authority to impose penalty on the appellant.

40. The order of penalty passed by the Disciplinary Authority dated 11 th October, 2019, on another count, does not also commend to be legal and valid. A detailed response to the inquiry report had been submitted by the appellant. Dismissing the claims by a single sentence that the same are not acceptable, is not part of a fair procedure. This is a substantial ground for which appellant's grievance seems to be justified.

41. We have extracted verbatim (supra) the reasons assigned by the Division Bench in support of the ultimate order it passed modifying the penalty. It is not in doubt that in a rare and appropriate case, to shorten litigation and for exceptional reasons to be recorded in writing, a high court may substitute the punishment imposed on the delinquent employee. However, what has overwhelmed our ability of comprehension is that the Division Bench despite having returned clear findings in favour of the appellant adopted a hands-off approach by leaving the findings with regard to the charges untouched. In our considered opinion, the tenor of the impugned order does suggest that the Division Bench found the appellant to have been wronged and regard being had thereto, the Division Bench ought to have set things right by interfering with the findings and granting full relief that we intend to grant to the appellant. The impugned order, insofar as it declines to interfere with the findings on the charges, being clearly indefensible, we proceed to grant relief to the appellant as indicated hereafter.

RELIEF

42. The impugned order of the Division Bench is set aside together with the order of dismissal passed by the Single Judge. The order of penalty passed by the appellant's Disciplinary Authority also stands set aside and the writ petition is allowed. We direct that the appellant shall be entitled to full pension without any cut. Whatever quantum has been deducted from his pension shall be returned, within three months from date, together with interest @ 6% per annum.

43. The appeal stands allowed.

EPILOGUE

44. We could have ended our judgment here. However, before parting, we need to dwell on one aspect. The appellant had raised a specific plea before the Inquiry Officer that being on the verge of retirement, election duty could not have been assigned to him. True it is, he did not produce any documentary evidence in this behalf. However, in present days where one can access documents without much ado, we have been able to lay our hands on an order dated 07 th September, 2016 issued from the office of the Election Commission of India, addressed to the Chief Secretary, Punjab on the subject of General Elections in Punjab having regard to expiry of the term of the State Legislative Assembly of Punjab on 18th March, 2016 (sic, 2017). Clauses (iv) and (xii) of the said order being extremely relevant, are quoted below:

> "(iv) In any election very large number of employees are drafted for different type of election duty and the Commission has no intention of massive dislocation of state machinery by massive transfers. Hence, the aforesaid transfer policy is normally not

> applicable to officers/officials who are not directly connected with elections like doctors, engineers, teachers/principals etc. However, if there are specific complaints of political bias or prejudice against any such govt. officer which on enquiry are found to be substantiated, the then CEO/ECI may order not only for transfer of such official but also appropriate departmental actions against him.
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> (xii) Any officer who is due to retire within the coming six months will be exempted from the purview of the above-

mentioned directions of the Commission. Further officers falling in category (home/3+ criteria if they are due to retire within 6 months) shall not be engaged for performing election duties during the elections without permission of the Commission." (emphasis in original)

45. If indeed such is the stand of the Election Commission that, inter alia, doctors and officers who are due to retire within 6 (six) months next be exempted from election duty, the letter dated 6th January, 2017 of the M.D., PHSC could not have laid down a requirement contrary to what the Election Commission ordered. In all fairness, the Disciplinary Authority ought not to have initiated disciplinary proceedings against the appellant on the face of such clear order of the Election Commission. The appellant is, therefore, quite right in contending that the disciplinary proceedings culminating in the order of penalty were nothing but a ruse to wreak vengeance for he having dragged high officials of the GoP to the High Court and in tasting success to obtain his legitimate monetary dues. The Constitutional concept is that not only the country but every State in the country would be a welfare state. As the regulator and dispenser of special services and provider of a large number of benefits, none can perhaps deny that a welfare state ought to strive for achieving the maximum welfare and securing the best interests of the people. This happens to be a case where certain officials of the GoP have stooped too low to punish a senior doctor, on the verge of retirement, for no better reason than that he had dared to take on the mighty executive in a court of law. While deprecating such vile acts of the concerned officials, we see the need to adequately compensate the appellant.

46. Accordingly, we direct that the appellant shall be entitled to costs assessed conservatively at Rs.50,000/-, to be released in his favour within the aforesaid period. Should there be any default, the appellant shall be free to bring it to our notice for appropriate direction. We grant liberty to the GoP to realize the amount of costs payable in terms hereof from the persons responsible after fixing responsibility in accordance with law.

47. We must place on record that the respondents have not been alerted by bringing to their notice the aforesaid order of the Election Commission and, therefore, if they have their own version to place for our consideration, they shall be at liberty to approach us to have the order for costs set aside before expiry of the time limit fixed above.

.....J. (DIPANKAR DATTA) .....J. (MANMOHAN)
New Delhi.

January 20, 2025.