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(5) In the result, there is no merit in either of the writ petitions and both of them stand dismissed. Since the management has not so far implemented the award of the Labour Court dated 5th August, 1993, I direct the management to implement the same within a period of months from the date of receipt of a copy of this order. This direction will, however, be subject to any order that may be passed by this Court in Civil Writ Petition 13358 of 1993 in which the award has been challenged by the management.

(6) The parties are left to bear their own costs.

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R.N.R.

Before Hon'ble M. S. Liberhan & M. L. Koul, JJ.

KULTAR SINGH KULTAR,—Petitioner.

*versus*

STATE OF PUNJAB & ANOTHER,—Respondents.

C.W.P. No. 10052 of 1995.

12th September, 1995.

*Constitution of India, 1950—Art. 226—Dismissal—Petitioner charge-sheeted—Enquiry report absolved him of charges—Report accepted by State—However still dismissed from service on recommendation of Punjab Public Service Commission—Challenge made to dismissal order—Held Punjab Public Service Commission is a mere advisory authority—Approval granted not a mandate for the punishing authority—State is the acting authority—Competent to award lesser punishment or no punishment.*

*Held, that mere granting of approval by an advisory authority as Public Service Commission cannot be termed as mandate for proposing the act by the punishing Authority. Approval by itself is not mandatory for the Punishing Authority.*

(Para 3)

*Further held, that approval of an act does not mean performance of the act. Doing an act and approval before or after the act are two distinct acts envisaged by law. Public Service Commission is only an advisory authority whose approval is required to act, while the State is infact the acting authority. No power has either been delegated by the State to the Public Service Commission to act on its behalf nor it is even remotely referred to during the course of*

arguments. Thus the impugned order cannot be sustained on the grounds, it was attempted to be sustained.

(Para 3)

P. S. Patwalia, Advocate, for the Petitioners.

M. C. Berri, DAG, Punjab, for the Respondents.

#### JUDGMENT

M. S. Liberhan, J.

(1) Factual matrix is not in dispute in the writ petition. Petitioner joined as Sub-Divisional Engineer on 5th September, 1972 and was promoted as Executive Engineer in 1986. The petitioner alongwith his subordinates was charge-sheeted for embezzlement. Enquiry Officer found the petitioner not guilty of the charges attributed. Punishing Authority did not agree with the enquiry report and proposed dismissal from service of the petitioner. Approval of the Punjab Public Service Commission for the proposed punishment was sought. In the meanwhile parallel proceedings were initiated against the petitioner by issuing a fresh charge-sheet, including the earlier charges. Enquiry Officer found him not guilty of charges attributed,—*vide* his report dated 30th September, 1992. The said report was accepted by the State Petitioner challenged the issuance of show-cause notices dated 31st May, 1991 and 26th July, 1991 by way of a Civil Suit. The Subordinate Court passed a decree in favour of the petitioner quashing the charge-sheet and show-cause notices issued to him. Petitioner was dismissed from service,—*vide* impugned order dated 30th June, 1995 annexure P-16.

(2) The respondents made a feeble attempt to support the order of dismissal, *inter alia*, contending, since the Punjab Public Service Commission granted approval for dismissal of the petitioner, therefore, he was dismissed from service. The sum and substance of the arguments put forth is that though the Government did not favour the impugned dismissal of the petitioner yet since the Public Service Commission granted the approval of his dismissal, consequently as a natural corollary thereof, the impugned order of removal from service of the petitioner was passed.

(3) We find no force in the submission of the learned counsel for the respondents. Mere granting of approval by an advisory authority as Public Service Commission cannot be termed as mandate for proposing the act by the Punishing Authority. Approval

by itself is not mandatory for the Punishing Authority. In spite of the approval of the proposed punishment the Punishing Authority is competent to award lesser or no punishment. Approval of an act does not mean performance of the Act. Doing of an act and approval before or after the act are two distinct acts envisaged by law. Public Service Commission is only an advisory authority whose approval is required to act, while the State is in fact the acting authority. No power has either been delegated by the State to the Public Service Commission to act on its behalf nor it is even remotely referred to during the course of arguments. Thus the impugned order cannot be sustained on the grounds, it was attempted to be sustained.

(4) Petitioner cannot be tried twice over on the same charges. Once the petitioner was found not guilty of the attributed charges by the Enquiry Officer, whose report was accepted by the Punishing Authority, he cannot be punished for the same charges as an enquiry though held prior in time than the one, when he was found not guilty of these very charges. It is the final decision which brings down the curtain on the charges attributed. State cannot be permitted to keep open its options on an enquiry held earlier on the charges and proceed with another enquiry on the same charges along with some new charges. Charges having been found not proved, the State cannot be permitted to pass two contradictory orders one holding the petitioner guilty and the other not guilty. The respondents cannot be permitted to approbate and reprobate with respect to the same charges in the same breath. It is well established that a person cannot be tried twice on the same charges.

(5) In view of the observations made above, the impugned order (copy Annexure P-16) cannot be sustained and the same is quashed. The writ petition is allowed. The petitioner is reinstated with all the consequential reliefs. No order as to costs.

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*J.S.T.*

*Before Hon'ble S. P. Kurdukar, C.J. & V. K. Bali, J.*

*M/S JINDAL STRIPS LIMITED, THROUGH SHRI SHAM LAL  
GUPTA & ANOTHER,—Petitioners.*

*versus*

*STATE OF HARYANA & OTHERS,—Respondents.*

*C.W.P. No. 1898 of 1992.*

*15th September, 1995.*

*Constitution of India, 1950—Art. 226—Haryana General Sales Tax Act, 1973—S. 4—Central Sales Tax Act, 1956—Ss. 6-A, 9(2)—Central Sales Tax Rules, 1956—Rl. 12(5), Form 'B' Branch Transfer—Consignment Sales—Petition filed against assessment order alleging*