

cannot succeed. To the similar effect is the other two Single Bench Authorities of this Court reported in case *S. K. Ahooja v. State of Haryana and another* (3) and *A. L. Batra v. State of Haryana* (4).

(10) Before parting with the judgment, competent/Appointing authority may take appropriate action against the Insecticide Inspector concerned for lapse on his part in not filing the complaint in the court immediately after sanction of competent authority to launch prosecution dated 9th March, 1990 had been received by him.

(11) For the foregoing reasons, the complaint, summoning order dated 21st June, 1991 as well as consequent proceedings against the present petitioners are ordered to be quashed. However, it would be open to the trial court to proceed on the basis of the complaint against the other accused according to law. A copy of this order be sent to the court concerned as well as to the Secretary Agricultural Department, Punjab, for compliance.

(12) This petition is accordingly allowed.

J.S.T.

Before : A. L. Bahri & V. K. Bali, JJ.

ANAND PARKASH,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Amended Civil Writ Petition No. 11936 of 1991.

7th January, 1992.

Constitution of India, 1950—Art. 226—Reversion—Petitioner promoted for one year on probation—Work and conduct not found satisfactory on promotional post—Annual Confidential Report not recorded—Not necessary for authorities to wait in routine for recording A.C.R. to revert the probationer—Reversion justified.

Held, that the previous history of working of the petitioner as Superintending Engineer was also noticed in the office note and subsequent work and conduct of the petitioner as Chief Engineer was also considered. Ultimately, the authorities considered appropriate to revert the petitioner during the period of probation. Obviously at the time when the order of reversion was passed, A.C.R. had

(3) 1989 R.C.R. 596.

(4) 1991 (2) C.L.R. 614.

been recorded, but A.C.R. as such was not considered. It is not necessary in the case of a probationer that the authorities should wait in routine for recording A.C.R. to revert the probationer if otherwise his work and conduct is not considered satisfactory to retain him on the promotional post. We are of the considered opinion that the kind of allegations that have been noticed by the Chief Administrator on May 21, 1991 and with which the higher authorities agreed, the action of reversion was entirely justified.

(Para 5)

Civil Writ Petition Under Articles 226/227 of the Constitution of India, praying that, this Hon'ble Court be pleased to send for the records and after the perusal of the same:—

- (i) *issue a writ of Certiorari quashing the impugned order of reversion dated 31st July, 1991 (Annexure P-4 and Annexure P-5);*
- (ii) *issue a writ of prohibition restraining the respondents from reverting the petitioner;*
- (iii) *direct the respondent Board to send back the respondent No. 4 to his parent Department;*
- (iv) *direct the respondent Board to reinstate the petitioner on the post of the Chief Engineer, with all consequential benefits;*
- (v) *dispense with the filing of advance notices and filing of certified copies of the Annexures;*
- (vi) *issue any other writ, order or directions as this Hon'ble Court may deem fit in the facts and circumstances of the case;*
- (vii) *costs of the writ petition be also awarded to the petitioner.*

J. N. Kaushal, Sr. Advocate with V. K. Sharma, Advocate, for the petitioner.

Anand Swaroop, Sr. Advocate with Sunidh Kashyap, Advocate and Alok Jain, Advocate, for respondent No. 2.

Rajiv Atma Ram, Advocate with Puneet Kansal, Advocate, for respondent No. 4.

V. K. Jain, Addl. A.G. Haryana, for respondents No. 1 & 3.

JUDGMENT

A. L. Bahri, J.

Anand Parkash was promoted as Chief Engineer on December 5, 1990, and placed on probation for one year,—*vide* order Annexure P-1. He stands reverted to his substantive rank of Superintending

Engineer,—*vide* order dated July, 31, 1991, Annexure P-4. This order has been challenged by the petitioner through this writ petition. Averments were made that this action was taken on the basis of charge-sheets, Annexures P-2 and P-3 on account of certain allegations regarding his conduct while he was working as Superintending Engineer and the order of reversion is not simple in nature but is by way of punishment. The stand taken up by the official respondents in the written statement is that the order of reversion has been passed after taking into consideration the work and conduct of the petitioner while he worked as Chief Engineer. The action was not taken on account of charge-sheets, Annexures P-2 and P-3. Since certain disputed facts were raised, records were called. The official respondents have produced the record. The salient features from those records be briefly noticed.

(2) The Chief Administrator initiated action on May 21, 1991. Since the matter was to be put up before the Commissioner Agriculture on June 25, 1991, he ordered that the same be put up before his successor. It appears that the aforesaid officer was to be transferred or was under orders of transfer. Subsequently again the matter was put up and the Chief Minister on July 25, 1991, as per note approved the action.

(3) A.C.R. for the year 1990-91 was initiated by the Director Shri N. K. Jain on July 10, 1991, which was seen and approved by the Commissioner Agriculture on July 25, 1991.

(4) The contention of Shri Jagan Nath Kaushal, Senior Advocate, appearing on behalf of the petitioner is that the order of reversion was passed by way of punishment as the authorities took into consideration certain lapses alleged to have been committed by the petitioner while he was working as Superintending Engineer. With respect to recording of A.C.R., it is stated that the same was recorded after the order of reversion was passed and the dates were changed. An opportunity should have been afforded to the petitioner regarding the adverse entries recorded in the A.C.R. so that the petitioner could challenge the same by filing a representation; the A.C.R. having been communicated in the month of September 1991 and the purpose of communicating the A.C.R. was to afford an opportunity to the officer concerned to improve. Reliance in support of this contention has been placed on the decision of the Supreme Court in *Brij Mohan Singh Chopra v. State of Punjab* (1). We have given due consideration to these arguments.

(1) A.I.R. 1987 S.C. 948.

It is not necessary to refer to the decision of the Supreme Court in *Brij Mohan Singh Chopra's* case in detail as the principle laid down therein cannot be made applicable to a person on probation having been reverted. The Supreme Court laid down the law as under:—

“Whenever an adverse entry is awarded to Government servant it must be communicated to him. The object and purpose underlying the communication is to afford an opportunity to the employee to improve his work and conduct and to make representation to the authority concerned against those entries. If such a representation is made it is imperative that the authority should consider the representation with a view to determine as to whether the contents of the adverse entries are justified or not. Making of a representation is a valuable right to a Government employee and if the representation is not considered, it is bound to affect him in his service career, as in Government service grant of increment, promotion and ultimately premature retirement all depend on the scrutiny of the service record. Adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. The same consideration must apply to a case where the adverse entries are taken into account in retiring an employee prematurely from service.”

Since the order of reversion of a probationer ordinarily is not to be considered as order of punishment, the observations aforesaid in the case of *Brij Mohan Chopra* will not be applicable.

(5) After going through the record produced, we find that the previous history of working of the petitioner as Superintending Engineer was also noticed in the office note and subsequent work and conduct of the petitioner as Chief Engineer was also considered. Ultimately, the authorities considered appropriate to revert the petitioner during the period of probation. Obviously at the time when the order of reversion was passed, A.C.R. had been recorded, but A.C.R. as such was not considered. It is not necessary in the case of a probationer that the authorities should wait in routine for recording A.C.R. to revert the probationer if otherwise his work and conduct is not considered satisfactory to retain him on the

promotional post. It is true that certain matters relating to working of the petitioner as Superintending Engineer were also noticed while initiating action for reversion of the petitioner during the period of probation, as per note prepared by the Chief Administrator dated May 21, 1991. As per averments made in the written statement, adverse reports of the petitioner escaped the notice of the authorities at the time when he was promoted. That alone would not come in the way of the respondents in reverting the petitioner, particularly when matters relating to his functioning as Chief Engineer were considered threadbare at the time of passing the impugned order. Matters relating to functioning of petitioner as Superintending Engineer, which were noticed in the office noting, were not such matters which came to light after the promotion of the petitioner. As already stated above, such material was available, however, escaped notice. No penal consequences follow. After going through the record that has been produced today in the court by the official respondents, we are of the considered opinion that the kind of allegations that have been noticed by the Chief Administrator on May 21, 1991, and with which the higher authorities agreed, the action of reversion was entirely justified. That being so, it is not a fit case for interference in the writ jurisdiction of this Court and, therefore, the present writ petition is dismissed in limine. No order as to costs. The record is returned.

J.S.T.

Before : S. S. Sodhi & K. P. Bhandari, JJ.

M/S PUNJAB OIL MILLS, SARNA.—Petitioner.

versus

THE STATE OF PUNJAB,—Respondent.

General Sales Tax Reference No. 2 of 1985.

20th January, 1992.

Punjab General Sales-tax Act, 1948—S. 11-A—Partnership firm making transaction of sale to another partnership firm having same partners but with different percentages of shares—Whether such transactions valid.

Held. that as a matter of law there can be a transaction of a sale or purchase by one firm to another where the partners of both the firms are the same, but whether or not the two entities are separate