

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.R. No. 8159 of 2014 (O & M)

Date of decision: 05.02.2015

Daljit Singh Grewal

....Petitioner(s)

Versus

Sh. K.K. Attri and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. M.S. Khaira, Sr. Advocate,
with Mr. Rajesh Punj, Advocate,
for the applicant-petitioner.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 2752-CII of 2014

Application seeking exemption from filing certified copies of
Annexures P-33 and P-34 is allowed, subject to all just exceptions.

C.M. No. 2753-CII of 2014

Application for placing on record Annexures P-33 to P-34 is
allowed, subject to all just exceptions.

The said Annexures are taken on record.

C.R. No. 8159 of 2014 (O & M)

Challenge in the present revision petition filed under Article
227 of the Constitution of India is to the order dated 21.07.2014 (Annexure
P-31) whereby, the application for referring the case to this Court to carry
out the proceedings under Contempt of Courts Act, 1971 on account of
interference in the judicial process on account of issuing specific orders to
the summoned witness has been rejected which is under challenge.

The background pertains to a tussle of seniority inter se senior

officials of the home guards. The suit was filed by the petitioner for declaration whereby, he challenged the order dated 07.11.2011 and also sought seniority over various colleagues. It is pertinent to mention that the said suit stands dismissed on 31.03.2014 (Annexure P-32). In the said suit, respondent no. 2 Darshan Singh Mehmi was summoned and appeared as PW-6 when he was serving as Deputy Commandant General-II. It is to be noticed that the said respondent was also aggrieved against the seniority disputes and had filed CWP No. 14249 of 2003 against the State and also had impleaded one Tejinder Singh, Commandant as respondent no. 5 in the said writ petition, which is stated to be pending before this Court. Tejinder Singh was also defendant no. 5 in the civil suit filed by the petitioner over whom seniority was claimed. Thus, it is apparent that both the petitioner and respondent no. 2 had a similar grouse. On account of the summons received from the Court of Civil Judge (Jr. Divn.), Patiala, respondent no. 2 applied for leave on 21.05.2008 and accordingly, respondent no. 1 sanctioned his leave on the same day conditionally that he was not to divulge any unauthorized information from office records. Relevant portion of the sanction order reads this:-

“Leave sanctioned. Since petitioner has called Sh. Mehmi as his witness, he is directed to ensure that no unauthorized information from office record is divulged or produced by him and any personal capacity questions are taken up by him. He will submit a report in detail on return.”

In pursuance of the said summons, in spite of being a summoned witness, an affidavit was prepared by respondent no. 2 dated 21.05.2008 (Annexure P-33) wherein, to give support to the case of the

petitioner-plaintiff, certain allegations were made against said Tejinder Singh that he was promoted on 22.01.1991 against the post of direct recruit quota on ad hoc basis by breaking down the provisions of Class II Rules, 1988 and the instructions issued by the Government. Relevant paragraph reads thus:-

“10. That as per the post of District Commander/Bn.-II in command of (direct recruitee quota) general category was kept pending since 14.04.1987 to 30.06.1993 by giving go bye to the Class-II rules 1988. Defendant No. 6 was directly appointed in the year 1991 through Punjab Public Service Commission against the post of S.C. Category (director recruitee quota) which was vacated by the deponent on 15.10.1990. Sh. Tehinder Singh defendant No. 5 was promoted on 22.01.1991 against the post of direct recruitee quota on adhoc basis by breaking down the provisions of Class-II Rules 1988 and instructions issued by the government. The post of direct recruitee quota of (general category) has never filled since 14.04.1987 to 30.06.1993 and against this post of direct quota promotees were continuously promoted on adhoc basis.”

On account of tendering of the affidavit, he was again summoned for cross examination on 03.06.2008 and applied for leave accordingly. He was granted leave on 30.05.2008 by noticing that he was not a government spokesperson and was appearing in his personal capacity and if any affidavit is to be filed and any question is to be answered, prior permission is required. Last affidavit filed by him was being examined and accordingly, leave was sanctioned. The sanction order reads thus:-

“Yes, Mr. Mehmi is attending as plaintiff's

witness. He is not a govt. spokes person & will only appear in his personal capacity. If he is to file any affidavit, or, questions to be answered on any govt. stand or policy, he will need prior permission. Last affidavit filed by him is being legally examined. Already since certain paras are govt. policy area. He will file a detailed report on return.”

It is apparent that the said witness was also charge sheeted on 26.05.2009 (Annexure P-14) on the ground that in para no. 10, the stand of the Government had been questioned and this was a violation of the Employees Conduct Rules, 1966. Further charge was that as he had not submitted a report on his return on 03.06.2008 and accordingly, he was asked for his explanation on account of being a senior officer and failing to maintain self discipline. Accordingly, he was warned to be cautious in such cases in future by the Principal Secretary (Home) on 28.08.2010 and the order reads thus:-

“Sh. D.S. Mehmi Divisional Commandant now Deputy Commandant General-II was charge sheeted vide Govt. Letter Memo No. 5/6/08-ICD/509 dated 26.05.09 under Punjab Home Guards and Civil Defence Class-I rules 1988. He violated Pb. Govt. conduct rules 1966. Sh. D.S. Mehmi has demanded record which was supplied to him.

2. The charge sheet issued to the officer was thoroughly examined and it was perused / examined under govt. employee conduct rules 1966 sub Rule-10. By minutely examining the same Sh. D.S. Mehmi Deputy Commandant General-2 Punjab Home Guards is warned to the cautious in such cases in future.

In the interim period on 12.08.2009, the application was filed

by the plaintiff during the pendency of the suit for referring the matter to this Court and issuing contempt notice against respondent no. 2 on account of the alleged interference in the Court proceedings. The said application, as noticed, has been dismissed. The reasoning given by the trial Court is that respondent no. 2 was summoned in his personal capacity and had taken leave and appeared before the Court and was not appearing as an official witness and the leave had been sanctioned on a condition that he was not to divulge any unauthorized information from the office record. The restraint not to become an official spokesperson on behalf of the parent department was thus, justified and, therefore, it could not be said that there was any pressure upon respondent no. 2 merely because he had been charge sheeted with regard to the deposition made in Court. The said respondent himself had not initiated any proceedings against respondent no. 1 and the departmental action thus taken could not be classified as interference in the process of law and he was let off after being warned and, therefore, it was not a case that there was any interference in the judicial process.

Senior counsel for the petitioner has vehemently argued that it is a case of respondent no. 2 interfering in the process in the administration of justice as such and the order is not justified.

After hearing counsel for the petitioner, this Court of the opinion that from the above summary of facts, it would be apparent that there was a reason for respondent no. 2 to depose in a manner in the given affidavit in spite of being a summoned witness and criticise the stand of the State regarding the promotion of one Tejinder Singh as he himself was an aggrieved party having filed a writ petition. He had been specifically cautioned that he was holding a responsible post and he should only depose

as a private witness and should not divulge any unauthorized information from the office records or criticise the government. In such circumstances, if he had been put to caution as to how to conduct himself in Court regarding the seniority dispute, it cannot be said that respondent no. 2 was interfering in the process of Court. He was also charge sheeted not by respondent no. 2 but by the government and even cautioned as such for his behaviour vide the order dated 28.08.2010 by the none else than the Home Secretary himself and, therefore, it cannot be said that the conditions which have been put upon him as such were of that nature that would handicap him from projecting before the Court in a right manner.

Accordingly, in the opinion of this Court, the present application is only an effort to harass the official of the government i.e. respondent no. 2, who was only looking after the interest of the department and advising his junior to depose in his private capacity and not to act unbecoming of a government official on account of the fact that he had access to various government records.

In such circumstances, the advise which had been given to him could not be held to be unjustified in any manner or that it would involve interference in Court proceedings. Resultantly, the order passed by the Court does not warrant interference and the present revision petition is accordingly dismissed.

05.02.2015
shivani

(G.S. SANDHAWALIA)
JUDGE