

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

CWP No. 16512 of 2013 (O&M)

Date of decision:-04.02.2016

Zile Singh

...Petitioner

versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Anu Chatrath, Sr. Advocate with
Ms. Harmanpreet Kaur, Advocate
for the petitioner.

Mr. Samarveer Singh, DAG, Haryana

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI , J.

Petitioner has approached this Court praying for issuance of writ in the nature of certiorari quashing the action of the respondent Nos. 1 and 2 dismissing the petitioner from service under Rule 4(1) (x) of Haryana Civil Services (Punishment and Appeal) Rules 1987 (for short 'Rules 1987') besides recovery of Rs.6,08,450/-.

Petitioner was appointed as Sanskrit Teacher and joined on 14.08.1981 and continued working as Sanskrit Teacher till 31.05.1987. Further he was appointed as Lecturer in Hind and joined on 01.06.1987. An advertisement for the post of Principal was issued by the Haryana Public Service Commission and petitioner being fully eligible applied for

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the said post. Subsequently, he was selected as Principal in Government Senior Secondary School, Thana, District Kurukshetra. Petitioner resigned from his earlier post on 20.06.1999 and joined as Principal on 21.06.1999.

Thereafter, Haryana Public Service Commission invited applications from amongst the eligible candidates for the post of Class I Officer in the Department of Education, State of Haryana and petitioner being eligible applied for the same. He was subsequently appointed on the said post and posted as District Elementary Education Officer, Yamuna Nagar and joined on 16.06.2004. Petitioner was then transferred as District Elementary Education Officer, Ambala on 09.08.2005 and was given the additional charge of D.E.O Ambala on 20.02.2006.

Vide order dated 10.09.2010, petitioner was appointed as Deputy Director in the Department of Education and he joined on 14.09.2010 in the office Director General, Secondary Education, Haryana. Vide letter dated 16.01.2007, respondent No. 1 conveyed sanction of National Programme of Nutrition food to Primary Education (Mid Day Meal Scheme) under the Central Assistance for provisioning/replacement of cooking equipment/kitchen devices. An amount of Rs.155.89 lacs was sanctioned for provisioning/replacement of the cooking equipment/devices in 3118 schools @ Rs.5000/- per

school under the State during the year 2006-07 under Para 2.3 (vi) of the Guidelines of NP-NPE-2006.

Vide letter dated 01.02.2007, respondent No. 3 forwarded the above sanction to the petitioner along with DEOs Mewat, Gurgaon, Fatehabad, Jind, Kaithal and Panchkula and directed them to utilize the amount before 31.03.2007 for the purchase of Gas Cylinder/chullah and other cooking equipment for mid-day meal programme @ Rs.5000/- per school, subject to the conditions mentioned below:-

“(i) The expenditure may be made according to Government instructions/norms

(ii) As far as possible, procurement of cooking equipment/devices shall be done in a decentralized manner preferably at the school/block level so that there is no delay in making available the required equipment/devices to the school.

(iii) Gas cylinders may be purchased from the approved Gas Agency and the gas chullah should be ISI marked.”

Petitioner received request from Block Elementary Education Officer Ambala for the purchase of cooking equipment for the mid day meal at District Level, vide letter dated 20.02.2007. Petitioner further received request from Block Elementary Education Officer Naraingarh for the purchase of cooking equipment for the mid days meal for the schools falling in Block Naraingarh, at the district level in view of the demand raised by the office bearers of the Teachers Association of the Schools falling in the block, vide letter dated

24.02.2007 (P-5). Another request was received from HRSS to the petitioner for providing cooking equipment for mid-day meal in the Elementary Schools at District Level (P-6)

Thereafter, petitioner in his capacity as District Elementary Education Officer, Ambala wrote to the Manager, Metro Gas Agency, Ambala Cantt vide letter dated 28.02.2007 requesting them to supply the rates of Gas Chullah with ISI mark on which food for 100-300 children could be prepared as the purchases were to be made prior to 31.03.2007 (P-7). The Manager conveyed his inability to supply the Gas Chullah as per requirement given vide letter dated 01.03.2007 (P-8).

Commissioner & Secretary to Government of Haryana, Department of Industries conveyed to the Director General and Supplies and Disposals, Haryana Chandigarh vide memo dated 30.04.2001 (P-9) declaring the Ambala Central Co-op Consumer Stores Ltd with Head Office at Ambala Cantt as an approved source of supply in view of the sanction of Government of Haryana for the supply of items to Government departments i.e cloth, stationery and other general items of the store.

Deputy Commissioner cum Chairman, Super Bazaar Ambala vide letter dated 23.07.2006 (P-10) addressed to the petitioner conveyed that the Ambala Central Co-op Consumer Stores Ltd with Head Office at Ambala Cantt as an approved source for the purchase of

food-grain, cloth, office stationery and printing etc. Subsequently, petitioner sought rate list as per the requisition from Ambala Central Co-op Consumer Stores Ltd (Super Bazaar) and the rate of Gas Chullah (ISI specifications) with Lighter @ Rs.2500/- were conveyed to the petitioner, vide letter dated 21.03.2007.

Subsequently, an order was placed for the supply of 566 Gas Chullahs (ISI specifications) with Regular, tube lighter @ Rs.2500/- per piece vide letter dated 23.03.2007 (P-12). The members of the Purchase committee visited and inspected the material and found the material according to specifications (P-13).

The order was placed vide bill dated 28.03.2007 (P-14) and after the receipt, payment of Rs.14,15,000/- was made to Ambala Central Co-op Consumer Stores Ltd with Head Office at Ambala Cantt, vide Account Payee Cheque No. 315584 dated 06.04.2007 drawn on O.B.C, Ambala City forwarded vide letter dated 06.04.2007 (P-15).

The Gas Chullahs were distributed in the schools falling within the jurisdiction of District Elementary Education Officer, Ambala through Block Elementary Education Officer vide letter dated 30.03.2007 (P-16).

Further Deputy Commissioner, Ambala has written to the District Elementary Education Officer, Ambala vide letter dated 15.10.2007 which was received in the office of D.E.E.O Ambala on

17.10.2007 that the Ambala Co-op Society Ltd is an authorized agency as per government and for any purchase from Ambala Co-op Society Ltd, no quotations are required (P-17).

Petitioner was charge sheeted on 15.01.2009 under Rule 7 of Rules 1987 on the charges that purchase of Gas Chullahs, lighters, pipes, regulators, burners @ Rs.2500/- was made from Ambala Central Co-op Consumer Store, Chandigarh, which is not an approved source as per letter dated 30.01.2008 issued by Director General, Supplies and Disposals, Haryana, Chandigarh and caused a loss of Rs.9,34,356/- by making the purchase @ Rs.2500/- per piece including VAT whose price is approximately Rs.884, in violation of the instructions issued vide letter dated 01.02.2007.

Petitioner gave his reply to the above said charge sheet and took a stand that there is no violation of Government Instruction dated 30.01.2008 as the material was placed before 30.01.2008 i.e in the year 2007. Further no objection was raised by Audit (P-19).

However, respondents appointed V.P. Batra IAS (Retd) as Inquiry Officer vide order dated 10.12.2009/08.01.2010. Petitioner was issued show cause notice dated 31.08.2010 as to why action be not taken against him under Sub Rule 6 of Rule 7 of Rules 1987. copy of Enquiry Report is Annexure P-20.

Petitioner gave his reply to the show cause notice to

respondent No. 1 on 12.10.2010 and requested for personal hearing, vide reply/representation dated 12.10.2010 (P-21).

Petitioner appeared before respondent No. 1 on 23.08.2011 and submitted his detailed submissions. A committee was constituted by respondent No. 1 on 01.09.2011, who submitted their enquiry report and on the basis of the findings of the Committee, the impugned order was passed against the petitioner.

Petitioner is seeking quashing of the action of the respondents on the ground that one Smt. Suman Nain the then District Elementary Education Officer, Jhajjar now D.E.E.O Mewat also purchased Gas Stove, Cylinder and other accessories for the mid-day meal from Ambala Central Co-op Consumer Store, Chandigarh in January, 2008 @ Rs.3170/- plus VAT @4%. She was also issued charge sheet vide order dated 26.03.2009 on the similar grounds. However, her proposal of dismissal from service was changed to compulsory retirement and she was compulsory retired and 50% recovery of Rs.4,28,190/- was ordered to be recovered from her retiral benefits vide order dated 16.03.2012 (P-28).

Reference has been made to a judgment passed by this Court in a case of ***Suman Nain vs. State of Haryana, passed in CWP No. 6315 of 2012, decided on 02.08.2013*** whereby this Court allowed the writ petition and set aside the impugned order and petitioner was

ordered to be reinstated in service with consequential benefits.

L.P.A was filed against the above said judgment, which was dismissed on 26.04.2014 (P-31) and even SLP has been dismissed on 12.09.2014 (P-33).

Heard learned counsel for the parties.

A perusal of judgment dated 26.04.2014 shows that Ambala Central Co-op Consumer Stores Ltd was an approved source by the Government for purchase of material by the Education Department Directions on 22.10.2007. Further reference was made to letter dated 15.10.2007 whereby it has been clearly stated that Ambala Central Co-op Consumer Stores Ltd was an approved source for purchase of material by the Education Department Directions. Further letter dated 22.10.2007 was also to the same effect. It was held that the said source was declared not approved source vide letter dated 30.01.2008 and if that is so, the Authority was supposed to take note of above said fact before passing punishment order.

In compliance of order dated 02.08.2013 passed in CWP No. 6315 of 2012 and order dated 18.07.2014 passed in C.M's in COCP no. 2912 of 2013, Suman Nain was ordered to be posted as Deputy Director.

In the present case, the petitioner was informed by Deputy Commissioner cum Chairman, Super Bazaar, Ambala that Ambala

Central Co-op Consumer Stores Ltd with Head Office at Ambala Cantt is an approved source for the purchase of food-grain, cloth, office stationery and printing etc. Further Deputy Commissioner, Ambala has written to the District Elementary Education Officer, Ambala vide letter dated 15.10.2007 which was received in the office of D.E.E.O Ambala on 17.10.2007 that the Ambala Co-op Society Ltd is an authorized agency as per government and for any purchase from Ambala Co-op Society Ltd, no quotations are required (P-17).

In view of the above said letters, petitioner placed the orders from Ambala Central Co-op Consumer Store, Chandigarh.

Once the Ambala Central Co-op Consumer Stores Ltd was held to be an approved source by the Government for purchase of material, the punishment order passed against the petitioner deserves to be dismissed and the case of the petitioner is squarely covered by the case of Smt. Suman Nain vs. State of Haryana, passed in CWP No. 6315 of 2012, decided on 02.08.2013.

Accordingly, the writ petition is allowed and the action of the respondents ordering dismissal of the petitioner from service besides recovery of Rs.6,08,450/- is hereby set aside.

(RITU BAHRI)
JUDGE

04.02.2016

G Arora