

CWP No.17758 of 2014

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

**CWP No.17758 of 2014
Date of decision:19.05.2016**

Smt. Chander Kanta

...Petitioner

Versus

The State Information Commission and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. P.K.Rapria, Advocate,
for the petitioner.

Mr. P.P.Chahar, DAG, Haryana.

Rakesh Kumar Jain, J.

The petitioner is a retired Teacher. She filed an application under the Right to Information Act, 2005 (hereinafter referred to as the “Act”) in order to seek some information which was not supplied to her within the stipulated period, therefore, the petitioner filed appeal under Section 19(1) of the Act to the First Appellate Authority. Since there was no response to the appeal within the period provided under Section 19(6) of the Act, therefore, the petitioner filed the second appeal to the State Information Commissioner, Haryana (SIC). One day before the date of hearing, the petitioner was provided the information and on the date of hearing, it was ordered by the SIC that the office of the SPIO-cum-Deputy Superintendent of the District Elementary Education was found responsible

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for delay and as such, show cause notice was issued under Section 20(1) of the Act as to why penal action be not taken against him. The SPIO appeared before the SIC in pursuance of the show cause notice and admitted his fault and tendered unqualified apology for the delay caused, which was of more than 100 days but vide order dated 16.06.2014, SIC warned the SPIO to be more careful in future and the proceedings issued by the show cause notice were dropped.

The only argument raised by the petitioner is that there is no jurisdiction with the SIC to let off the erring officer with a warning only as according to her, the scheme of the Act provides either to award punishment of ₹250/- per day or to award no punishment. In support of his submission, he has relied upon a Division Bench judgment of the Himachal Pradesh High Court in the case of **Sanjay Hindwan vs. State Information Commission and others**, CWP No.640 of 2012-D, decided on 24.08.2012.

Counsel for the respondents has failed to cite any law in this regard to counter the argument raised by the petitioner regarding imposition of penalty, which cannot be awarded to the extent of warning.

I have heard learned counsel for the parties and perused the available record.

In order to appreciate the controversy, it would be relevant to refer to Section 20 of the Act, which reads as under:-

“20. Penalties- (1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause,

refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him;

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.”

The aforesaid provision specifically stipulates imposition of penalty of ₹250/- for each day till the application is received and information is furnished but it should not exceed ₹25,000/- in all. This

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provision has already been interpreted by the Division Bench of the Himachal Pradesh High Court in **Sanjay Hindwan's case (supra)** in which it has been held that either the penalty has to be imposed at the rate fixed or no penalty has to be imposed.

I fully concur with the observations made by the Division Bench of the Himachal Pradesh High Court in **Sanjay Hindwan's case (supra)**.

Accordingly, the order passed by the SIC dated 16.06.2014 is set aside and the matter is remanded back to him to decide it again strictly in terms of Section 20 of the Act and the interpretation made by this Court.

The parties are directed to appear before the SIC on 14.06.2016 and the SIC shall decide the matter, in accordance with law, within two months thereafter.

May 19, 2016
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(Rakesh Kumar Jain)
Judge