

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

CWP No.20632 of 2016

Date of Decision: 03.10.2016

Kultarnjit Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. R.S. Manhas, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of *certiorari* for quashing the adverse remarks recorded in the Annual Confidential Report of the year 2012-13 (Annexure P-4), whereby, the representation of the petitioner has been rejected.

Briefly, the facts of the case, as made out in the present petition, are that the petitioner was initially appointed as Science Master on 09.11.1987. Thereafter, he was promoted as lecturer on 17.02.1993. As per case of the petitioner, he was eligible for promotion to the post of Principal but junior to him were promoted and he was subsequently promoted as Principal on 22.07.2013. It is also the case of the petitioner that his service record was very good/excellent. The adverse remarks were recorded in the Annual Confidential Report of the year 2012-13. The petitioner made a

representation against the adverse remarks stating therein that a complaint was made by him against respondent No.4 for violating the rules and for working against the norms of the department and due to that reason, a threat was given to him to down grade the ACR and to spoil his career. In the Annual Confidential Report for the year 2012-13, in the column of integrity, the remarks of 'Unreliable' was mentioned and it was assessed as average, which was approved by the reviewing authority. The petitioner filed **CWP No.17502 of 2014** to challenge the adverse remarks, which was disposed of with a direction to the respondents to decide the representation by passing a speaking order within a period of two months. The claim of the petitioner was rejected vide order dated 14.05.2015, which is also under challenge in the present petition.

Learned counsel for the petitioner submits that the service record of the petitioner has been very good/excellent and his work has been appreciated from time to time but due to *mala fide* intention of respondent No.4 and due to complaint made by the petitioner against respondent No.4, the adverse remarks have been recorded in the Annual Confidential Report of the petitioner for the year 2012-13. A representation was made by the petitioner, stating therein, that respondent No.4 has threatened him to spoil his career. The claim of the petitioner, as directed by this Court in the petition filed by him, has wrongly been rejected.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on the file.

Admittedly, the Annual Confidential Report of the petitioner for the year 2012-13 was written by respondent No.4 and adverse remarks

including the remarks relating to integrity have been recorded. The representation filed against the adverse remarks was also rejected. As per directions issued by this Court in **CWP No.17502 of 2014**, the case of the petitioner was considered and his claim was rejected by passing a speaking order dated 14.05.2015. While passing the said order, the following reasons have been mentioned for recording adverse remarks in the Annual Confidential Report;

“1. The report was sought on 02.11.2012 from Sh. Kultarnjit Singh regarding the work of R.M.S. He is habitual in making excuses for work and delaying the completion of the work. The answer to the reply was not satisfactory. In this regard, the undersigned has entered the remarks. Not obeying the orders and not sincere to the work.

2. According to Letter No.24/07/2008/eduset/workshop 3410 dated Chandigarh 25.10.2012 by the Punjab Eduset Society, the maintenance of S.I.T., operating and treble-shooting list and according to schedule send by the District Education Officer (S.E) Hoshiarpur, it got noted for attending meeting then Sh. Kultarnjit Singh himself cut the “SIT Incharge” written on it and gave remarks whereas the list has been sent by the District Education Officer. In this way, he has shown his untruthfulness.

3. The information sought by the District Education Officer (S.E.) Hoshiarpur vide letter No.Eduset-2012/27 dated Hoshiarpur 31.10.2012, that was given and prepared

wrongly with mala fide intention by Sh. Kultarnjit Singh which was corrected by the undersigned himself. From this it is proved unfaithful.

4. At the time of promotions of P.E.S. (School and Inspection) Group A on the certificate of character, it was mentioned that “for the last one year not co-operating” and at serial no.6, the integrity of the employee is not doubtful if yes then complete details have been written to Director, S.C.E.R.T., Punjab. It has also been recorded in the Special A.C.R of Sh. Kultarnjit Singh for the disobeying character.

5. The undersigned has been troubled by seeking information under R.T.I. Act, 2005 by Sh. Kultarnjit Singh from time to time, whereas, some concerned letter have been found from his Almirahs as well as from the Almirah of his Clerk Sh. Rajinder Kumar which were under their charge when the record has been searched after receiving your letter. He sought information from the wrong address and names. He was seeking information from undersigned by putting dispatch no. of the office of Principal Govt. Service Training Centre, Hoshiarpur without approval from the undersigned after that the charge of R.T.I was taken back from him. In this way, he has shown unfaithfulness and indiscipline.

6. He has refused to work of application of re-checking and Award List sent by your office vide letter no.3/3-2013 Pre (2, 3, 4) dated Ajitgarh. After that, the work was got done

from Smt. Sunita Bhalla, Lecturer Chemistry, Govt. Girls Senior Secondary School, Railway Mandi Hoshiarpur. In this way, he has shown indiscipline and unfaithfulness towards work.

7. Sh. Kultarnjit Singh went on leave on his own without its sanction and without giving information of leave on telephone and was not complying with the Govt. Instructions. On 20.09.2012 in stead of giving information of the leave to undersigned, he has given to Sh. Surjit Singh, Lecturer English. Similarly, in reply to the explanation sought for the leave on dated 13.03.2013, no reply was given till 25.04.2013 and nor approval was sought after the work. The explanation called was torn and thrown in the dustbin which was found by undersigned and re-joined. All this has been done with the connivance of Clerk Sh. Rajinder Kumar.

8. According to letter No.SMA/2013-36-37 dated 07.06.2013, the duty of the training was sent for noting which was noted by Sh. Surjit Singh but Sh. Kultarnjit Singh did not note and demanded photocopy of the order. On every work, he demanded the concerned letter. Whereas the other employees working in this office was ordered to be get noted. In this way, he used to create obstacles in doing work every day and always prepared for quarrel.

9. In Office Order Book regarding Kultarnjit Singh, the orders of Sciencetess/2012/183 dated 02.11.2012 and

Sciencetess/2013/186 dated 29.01.2013 always noted with remarks of objection. First he disobeyed the order and then noted with objection. In this way, untruthfulness has been shown.”

It is a settled proposition of law that recording of annual confidential reports is on subjective satisfaction of the Reporting Officer. Until and unless it is shown that the recording of the remarks was arbitrary or *mala fide*, the Court is not inclined to interfere in the same. The adverse remarks can only be quashed, in case, the same are result of malice, ill will or with some ulterior motive. A superior officer may make certain remarks while assessing the work and conduct of the subordinate officer based on his personal supervision or contact. It is difficult, may not be impossible to prove by positive evidence that a particular officer has remained dishonest or his performance was not watched as the assessment can only be made by the officer under whom the person is working. The remarks cannot be set aside while invoking the provisions of Article 226 of the Constitution of India as has been held in the judgments of this Court in ***K.L. Agarwal vs H.S.E.B 2002(4) SLR 30*** as well as ***Dharam Singh vs State of Haryana 2001(2) SCT 1139***.

In ***Dharam Singh's*** case (supra), it has been held that the Court cannot go into the correctness of a confidential report and the only remedy available to an official is to file a representation under the Rules/Instructions available to the employee.

This Court in ***Vijay Parkash vs State of Haryana 2000(1) SCT 1076*** has held that the recording of annual confidential report being a matter of subjective satisfaction of the concerned officer, in the very nature of

things, the correctness thereof cannot be gone into by the Civil Court.

Same view was also observed by this Court in the judgments rendered in ***Harjinder Pal Singh vs Punjabi University 2003(4) SLR 525*** and also the Division Bench in ***Hav/Clk Venkatagireppa DN vs Union of India, through Secretary, Ministry of Defence, New Delhi and others 2014(3) S.C.T 795***. The relevant portion of said judgment is reproduced as under :-

“9.The reasoning and conclusion reached at by the learned Tribunal are correct and do not warrant any interference of this Court in exercise of its supervisory writ jurisdiction under Articles 226/227 of the Constitution of India. The question whether the petitioner had submitted his ACR forms for the years 2008 and 2009 on time in the first week of October of both the years or not, is a question of fact. The respondents in their reply have categorically denied this. However, even assuming that the petitioner had submitted his forms in time as is alleged by him and thereafter, there is a delay in filing the forms and forwarding them and writing the ACRs is not such a circumstance to hold that the action of the respondents was with any mala fide intent. The instructions issued by the Department for the recording of ACRs are in the nature of guidelines for the officers to comply and these do not confer any right leave alone a statutory right on an employee to seek a mandamus from the Court for their compliance or of any advantage for their non-compliance. In *Government of A.P. v. V. Sivaraman JT 1990 (2) SC 443* it was held that the instructions of the Government which required the Government to review an order of suspensions within six months had no statutory force and suspension beyond six months does not become automatically invalid or non est. The

instructions therefore which are issued by the Army Authorities for the mode of writing ACRs are for the guidance of the officers in the matter of regulating the procedure for the same. The violation of these would not confer any immunity to an employee for recording adverse or disparaging remarks in case there is a violation of the same. An employee cannot claim any benefit on the violation of mere instructions. Besides, it is to be noticed that the allegations of mala fide have been levelled against Lt. Col. I.V. Raghu, Sena Medal. He has not been impleaded as a party to the case so as to answer the charge. In State of Punjab v. Chaman Lal Goyal, JT 1995 (2) SC 18, it was observed on the charge of mala fide, it was held that in the absence of any clear allegation against any particular official and in the absence of impleading such person *eo nomine* so as to enable him to answer the charge against him, the charge of mala fides could not be sustained. Therefore, in the absence of impleading the person against whom the charge of mala fide is alleged would clearly be unsustainable. Even otherwise, it is to be noticed that the petitioner is in the rank of Havildar and it is quite unreasonable to comprehend that the IO/OC who is in the rank of Lt. Col. in the Army would act in a manner to delay the ACR of the petitioner so as to stall his posting in Foreign Embassies abroad. Besides, it is not as if the ACRs had suddenly come in and deprived the petitioner of foreign posting. The ACRs as observed by the learned Tribunal are based on earlier warning letters and counselling. A reference has been made to the written warnings issued by the IO vide letter dated 05.10.2007, 29.12.2007 and 27.09.2008, besides, the counselling given to him. Therefore, the petitioner had been warned from time to time and graded 'High Average' in 2008, besides, it was recorded that he lacks professional

reliability and integrity. He habitually commits mistakes, violates instructions and does not show any regrets when counselled. It is further recorded that he is rigid in mind and self-centred and was found living wrong advise to his subordinates and that he was not desirable in war. In the ACR for 2009 it is recorded 'improved his professional integrity'. The ACR of an official is based on the subjective satisfaction of the Initiating Officer of the conduct of the official concerned. The satisfaction of the Initiating Officer though is subjective, but is based on objective consideration of the conduct and demeanour of an assessee or a ratee. The subjectiveness is not justiciable although objectiveness may be subject to judicial review. In the present case, the Initiating Officer on the basis of his subjective satisfaction after assessing the conduct of the petitioner. The same, therefore, in the facts and circumstances, does not warrant any interference of this Court in exercise of its supervisory writ jurisdiction under Articles 226/227 of the Constitution of India. Therefore, there is no merit in the petitioner and accordingly, the same is liable to be dismissed."

In the present case also, the adverse remarks were recorded in the Annual Confidential Report for the year 2012-13 and subsequently, a detailed/speaking order was passed as per directions issued by this Court. Reasons and circumstances have also been mentioned by the competent authority.

Accordingly, keeping in view the facts and circumstances of the case, no interference is warranted by this Court in exercise of its supervisory writ jurisdiction under Articles 226/227 of the Constitution of India. Therefore, there is no merit in the contention raised by learned

counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

03.10.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes