

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.25342 of 2016 (O&M)
Date of decision: 08.12.2016

Satish Kumar & ors.

.... Petitioners

Vs.

Kurukshetra University, Kurukshetra & anr.

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Dinesh Kumar, Advocate
for the petitioners.

RAJIV NARAIN RAINA, J.(ORAL)

The Kurukshetra University has responded to the legal notice of the petitioners by reply drafted and sent by their counsel. Reply to a legal notice cannot be treated as an order of Government much less adverse to employee since it does not come from the competent authority empowered to decide a service dispute. The dispute relates to seniority.

Learned counsel for the petitioners also points out that after making the representation, his clients preferred another representation bringing to the notice of the Kurukshetra University vide letter dated 17.08.2016 (Annex P-16) the view expressed by this Court in **Kailash Devi vs. State of Punjab, 2016 (2) SCT 216**, holding that replies to representations/legal notices prepared by an officer of the respondent/employer are not to be treated as adverse orders by the competent authorities for purposes of judicial review. This judgment based request has also not received any response from the University and the

matter rests on on the reply sent by the counsel of the University.

In *Kailash Devi* I had commented on such responses to legal notices in the background of judicial review as follows:

“In any case, a letter written in response to a legal notice cannot be accepted as a view of the Government unless it comes from competent authority and therefore no faith can be placed on the document nor can the Court on the writ side go blindly on it. Such instances have come to the notice of this court in the present roster where the orders impugned are in the shape of replies filed to the legal notices/ representations. This is not a happy situation. The Government is legally bound to decide the legal notice by passing orders and rendering decisions by the competent authority, who only could be made responsible for actions of the Government on judicial review before this Court. This fact needs to be put to an end as it cannot substitute an order made after due application of mind. Consequently, this Court cannot treat the letter dated 15th September, 2015 (Annex P-16) as an order of the Government. All that it means is that it shows the working of the mind of the signatory. In the circumstances, it will have to be accepted that there is no order, which takes us back to the legal notice. The infirmities pointed out in the reply to the legal notice may be kept in mind when the competent authority takes up the legal notice (Annex P-15) and passes a speaking order containing reasons as to why in the case of the petitioner that Krishan Kumar should not be

declared regular under the regularization policy available prior to 1st January, 2004 if his case squarely falls in one.”

In view of this position and having regard to the fact that the petitioners are aggrieved persons pressing for their valuable right to rule based seniority in the instant petition, I would, therefore, direct the designated authority in the respondent – Kurukshetra University competent to decide the representation/legal notice to pass a well reasoned speaking order thereon after affording an opportunity to the petitioners and likely to be affected persons of effective hearing and draw the inter-se seniority accordingly.

I reaffirm that it is not proper for an instrumentality of State to treat a para-wise reply to a notice of demand for justice as an order issued by it, unless it has been authored by the statutory authority himself competent to pass a binding order settling rights of parties and the fact is duly indicated in the response before it can be accepted by the writ court as a binding adverse decision based on original record duly considered and reflected in the reply. Failing which, the reply to the legal notice, as in the present case, cannot be treated in law as an order settling the rights of the petitioners and binding on them. It can only be treated as an opinion of a counsel tendered to the University which ought not to be put to judicial scrutiny as if it was the view of the University. The writ court shies from quashing a reply sent by an advocate retained by the employer under a covering letter addressed to the opposite counsel who sent the legal notice under instructions of his clients.

The University is an “authority” under Article 226 of the Constitution and is expected to act formally and in writing originating from its offices and issued by the competent authorities and not act through agents and professional lawyers expect to consider their advice and make it part of the final binding order governing the rights of the parties. This is not to say for a moment that legal notices/representations should not be responded to. The caveat entered by Court is only to ensure that they must be a certified and attested view of the competent authority available on record of a *lis* brought to court settling the rights and liabilities of parties finally before the reply is communicated which would avoid a situation such as confronted by court in this case which inevitably stalls the judicial process for lack of an authentic and trustworthy version on file which is indisputably the work of the decision-making authority.

Replies sent by Advocates representing parties are common and acceptable in commercial and civil disputes etc. in private law domain and represent the view of their principals to which they can be bound in court as admissions and denial apart from being tendered in evidence in a court of law. But this is not true in service jurisprudence where rights of employees are governed by statutory rules and the employers qualify as “State” in Article 12 or “other authorities” in Article 226 of the Constitution amenable to strict standards of speaking in writing and on the noting files; actions governed by rules, regulations, instructions and the codified law. The respondent University may make a note of this for the future.

Accordingly, the competent authority in the Kurukshetra University is directed to take up the legal notice/representation of the

petitioners immediately in hand and proceed to decide the same in accordance to the law within a period of eight weeks from the date of receipt of certified copy of this order either from Court or the petitioners, whichever is earlier.

Before parting with the order, it is recorded that I have not expressed any opinion on the merits of the dispute and the University would, without saying, act freely and independently in deciding the dispute in accordance to the law for which it may take into consideration the view expressed in the moot reply of the University counsel. Needless to say, that likewise no opinion is expressed thereon so as not to prejudice any party.

With the above observations and directions, the petition is disposed of.

(RAJIV NARAIN RAINA)
JUDGE

08.12.2016
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<i>1. Whether speaking/reasoned?</i>	<i>Yes</i>
<i>2. Whether reportable?</i>	<i>Yes</i>