

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

**CRL. MISC. No.M-25517 OF 2017 (O&M)
DATE OF DECISION : 24th AUGUST, 2017**

Pankaj Chaudhary

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. Rajinder Mathur, Advocate for the petitioner.

Mrs. Tanisha Peshawaria, DAG Haryana.

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A. B. CHAUDHARI, J. (ORAL)

This Court had made interim order dated July 19, 2017 granting interim anticipatory bail to the petitioner.

Upon hearing counsel for the rival parties, I find that the role of the petitioner cannot be said to be such that the petitioner should be refused the relief of anticipatory bail as the main accused Suchi Bajaj has also been released on anticipatory bail by this Court.

Pursuant to the last order dated August 16, 2017 a status report has been filed before this Court in relation to the departmental proceedings against the Suchi Bajaj, CDPO. The same is taken on record along with its Annexures A to C. The status report shows that Mr. Om Parkas Gupta, Retired District & Sessions Judge was appointed as Enquiry Officer in the departmental enquiry held against Suchi Bajaj. It appears that there was preliminary enquiry report prepared by ADC, Sirsa which was the part and parcel of the departmental enquiry. The Enquiry Officer recorded his findings and sent the enquiry report to the competent authority. Enquiry Officer has made following observations

in his communication dated August 20, 2017 addressed to the Additional Chief Secretary to Government Haryana (Annexure P-C):

“ADC Sirsa (who submitted the preliminary enquiry report) and Smt. Saroj Siwach were two important witnesses in the enquiry and they were not produced. Unless somebody is there to assert and prove the charges, the enquiry officer is justified in withdrawing his own conclusions. The said officers were not even cited as witnesses and no conclusion either way could be drawn in the matter in the absence of the testimony.

.... xxx xxx. Again, it is repeated that an enquiry report is required to be on the basis of evidence produced and nothing more.”

It is clear from the above that ADC, Sirsa and Smt. Saroj Siwach were two importance witnesses who were not even cited in the list of witnesses and that they did not appear before the enquiry officer to assert and prove the facts constituting the charge levelled against the delinquent. I have also gone through the Enquiry Report (Annexure P- 3) submitted by City Magistrate-cum-Enquiry Officer, Sirsa addressed to the Deputy Commissioner, Sirsa. The Enquiry Report has the following salient features:

“The complainant said that she get the appointment letter & joined duty on 1-4-2011 as aganwari helper & worked continuously for three months. But no attendance was given to me. After that she was removed & called again on 31-01-12 in the office of

CDPO Madhosinghana. She was even asked to open her account in bank on 31-1-2012 on the advice of CDPO Madhosinghana. But on 1-2-2012 CDPO, Mrs. Suchi Bajaj herself went to the centre and asked her to go away xxx xxx

I have gone through the statements evidences/papers of this case. It is clear that one post of aganwari helper was vacant in village Khairekan for which interview was held in September 2010. The merit list shows as under:-

Laxmi Devi w/o Bhaga Ram	22 marks
Santosh w/o Mahender	22 ½ Marks- waiting
Kamlesh Devi w/o Mahender	22 ½ Marks
Kushalaya w/o Shok Kumar	29 Marks-selected

Similarly the selection list shows Kaushalaya as selected & Santosh as waiting candidate. But there is cutting in the merit list in which Santosh was also made selected candidate. Merit list, Selection list & waiting list attached as (Annexure C-1, C-2 & C-3).

So Kaushalaya w/o Ashok Kumar should have been appointed and selected. CDPO Madhosinghana admitted that only one post was advertised. But in her written statement she said that she issued appointment orders to two candidates on 1/4/2011 and that both joined the same day. On being asked that why two candidates were appointed against one advertised post. She replied in her written statement that Mrs. Kaushalya w/o Ashok Kumar did not come for duty for a long

tiem. But it is clear from the statement that she did not wait for Kaushalaya, who had jointed duty on the same day.

CDPO Madhosinghana admitted in her written statement that now Santosh Kumari w/o Sh. Mahender Kumar is working. Clearly Mrs. Santosh is at the 1st waiting place in the merit list. On being asked a candidate once appointed must be removed first, before giving appointment to waiting candidate. The CDPO replied that Mrs. Kaushalya did not turn up for duty for a long time. Her reply does not stand scrutiny because both candidates were appointed on the same day.

.... XXX XXX XXX XXX

Mrs. Suchi Bajaj submitted in the last para of her written statement that one Anganwari helper had applied for the post of Anganwari worker and was likely to be promoted to the post. So one post was likely to be vacant. So two persons were given appointment as anganwari helper in anticipation that one post will become vacant when one helper would be promoted to worker. By some reasons the helper could not be promoted. So Mrs. Kaushalya w/o Ashok Kumar was stopped from taking charge.

From this point she has refuted her own plea that Mrs. Kaushalya did not turn up for long time. It implies that Mrs. Kaushalya did turn up but was not allowed to join even after giving appointment letter as the list of worker was held up.

It is crystal clear that only one post of helper had been advertised. Mrs. Kaushalya w/o Ashok Kumar was the topper in merit list. She should have been joined. Mrs. Suchi Bajaj the then CDPO clearly made a mockery of rules & appointed two candidates on the same day against one advertised post in anticipation of another vacancy which is clear violation.”

The Enquiry Officer could have sought the names of the witnesses from the department and for securing their attendance before him rather than drawing the inferences in the enquiry report saying that the same was for want of evidence. Be that as it may. The status report by way of affidavit of Renu S. Phulia, Director, Women and Child Development Department Haryana, shows that after submission of enquiry report, the Enquiry Officer was directed to give fresh report vide letter dated 16.12.2015. The Enquiry Officer stated that such second report cannot be given. The stand taken by Enquiry Officer seems to be correct but then fact remains that the material witnesses were not examined before the Enquiry Officer for the reasons best known as the Department was required to make necessary arrangement for proving documents and enquiry report.

However, in my opinion, justice cannot be buried in the manner sought to be done in the present case. The witnesses ought to have been examined, looking to the nature of the misconduct committed by Suchi Bajaj. The Department cannot be allowed to burry the entire matter.

The Additional Chief Secretary to Government Haryana, Women & Child Development Department is, therefore, directed to take appropriate steps according to law, upon proper legal advice in the matter and take a decision as the misconduct relates to the year 2011 and still the delinquent Suchi Bajaj is not being dealt with according to law. That cannot be allowed.

The matter be put up on 15.09.2017 for awaiting action taken report as aforesaid, failing which the Director, Women and Child Development Department Haryana will have to remain present in this Court.

State to file aforesaid action taken report before the next date of hearing with copy in advance to the opposite counsel well before time.

In so far as the present petition is concerned, this Court had issued an ad interim order dated 19.07.2017 in favour of the petitioner. Looking to the role attributed to the petitioner order dated 19.07.2017 is made absolute.

Disposed of accordingly.

24th AUGUST, 2017
‘raj’

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned: *Yes* *No*

Whether Reportable: *Yes* *No*