

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-32230 of 2014 (O&M)

Date of Decision: 05.12.2017

Gulshan Rai Senger

...Petitioner

VERSUS

Vinod Bhardwaj

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Mohinder Kumar, Advocate
for the petitioner.

Mr. Sameer Sachdeva, Advocate
for the respondent.

SURINDER GUPTA, J.

This is petition under Section 340 read with Section 195 (1) (b) of the Code of Criminal Procedure (Cr.P.C.) filed by petitioner-Gulshan Rai Senger to initiate proceedings against respondent for committing offence of forgery under Sections 191/192/196/199/200 of Indian Penal Code (for short 'IPC') by furnishing false affidavit on oath in judicial proceedings.

2. Case of the petitioner, in brief, is that in Civil Writ Petition No. 28755 of 2013 filed by him against DAN College of Education for Women and others, respondent filed a short reply on behalf of DAN College of Education in his capacity as President of the College. Alongwith reply he also moved application for vacating *ad interim* stay order dated 24.12.2013. In that reply, respondent had levelled baseless allegations against the petitioner and on the basis of said reply writ petition filed by the petitioner was dismissed.

3. The petitioner sought information under the Right to Information Act about authorization given by the Principal to respondent for

filing the short reply. In those proceedings, Principal, DAN College of Education for Women, has stated that she had not authorized respondent for filing the affidavit on her behalf. The petitioner also sought information from the Principal about any letter issued to him with regard to allegations of insubordination or serious misconduct levelled against him, forwarded to President/Secretary Management Committee for taking disciplinary action and the Principal in response to aforesaid application informed him that as per college record no such order/letter was issued to the petitioner in connection with any allegation of insubordination, serious misconduct during the period 30.10.2013 to 10.12.2013. The respondent by filing a wrong affidavit without authorization on behalf of DAN College of Education for Women has made himself liable for initiation of proceedings under Section 340 Cr.P.C.

Perusal of paper-book shows that the petitioner had filed a Civil Writ Petition against DAN College of Education for Women and others bearing CWP No. 28755 of 2013 seeking a writ of certiorari quashing order dated 11.12.2013 whereby he was placed under suspension. The writ petition was dismissed vide order dated 04.02.2014 with the observation as follows:-

“It is apparent that now the suspension order is being challenged on the ground of jurisdiction and mala fides. A reading of para 26 of the Ordinance and Section 2-B of the 1974 Act as reproduced in the body of CM No.519/2014 filed by the petitioner clearly indicates that an employee can be placed under suspension if the disciplinary proceedings are contemplated against him. It further cannot be disputed that in

the impugned suspension order dated 11.12.2013(P-10) itself, it is recited that the charge sheet shall be supplied later on. At the time of hearing also learned counsel for the respondents, on a pointed query, has stated that a charge sheet was being drafted and vetted and would be soon served upon the petitioner. It also cannot be disputed that the alleged charges against the petitioner are very grave and therefore, action cannot be entertained to be mala fide by any stretch of reasoning. It is settled principle of law that suspension is only an interim measure adopted for completing the disciplinary proceedings in an unhindered manner so that delinquent may not take any advantage of his position. From the facts, as is apparent on record, it is evident that the competent authority has by passing the impugned order neither violated any provision of law nor acted arbitrarily or in the absence of any material with it.”

Against above order, the petitioner filed a review petition and then a letter patents appeal, which were admittedly dismissed.

Learned counsel for the petitioner has argued that firstly the respondent filed reply in civil writ petition without any authorization and secondly, in that reply he took the plea that there were allegations of grave misconduct and moral turpitude including misbehaviour with lady employees and causing sexual harassment against petitioner as a result of which his writ was dismissed. The allegations were false and the affidavit in the Court was given by the respondent without any authority.

Admittedly, the petitioner was President of DAN College of

Education for Women at the time of filing short reply and affidavit, as such was competent to file reply. On the other hand, this petition on the face of it, is a misuse of process of Court by the petitioner. Being President of the College, which was impleaded as respondent no. 2 in the writ petition, respondent-Vinod Bhardwaj was competent to file short reply as well as affidavit. This plea of the petitioner, that there was no allegation of sexual harassment against him, is without any basis. Charge-sheet against the petitioner has been incorporated in the judgment of Education Tribunal, Punjab (Annexure P-16), which reads as follows:-

“1. That while working as Junior Assistant in the college on 11.12.2013 you created ruckus in the administrative wing of the college while the management meeting was being convened. You not only used abusive language against the officials of the college but also tried to physically manhandle Sh. Shakti Kumar, Superintendent and created an atmosphere of fear and tension. Immediately, on receiving the message about your unruly behaviour, Sh. Kulwant Rai Sharma was deputed by the management to bring the matter under control and verify the facts and report back to management. However, instead of properly behaving with Sh. Kulwant Rai you deliberately insulted him and tried to physically manhandle him also. You also used un-parliamentary language against the superior authorities in the college and tried to threaten and intimidate the staff and the management. In this way, you have committed an act of

grave misconduct and indiscipline in the college premises while on duty.

2. *That you are habitual of misbehaviour with the staff, especially female staff which is highly objectionable. One Mrs. Kavita, Assistant Professor of the college have (sic made) a written complaint of your acts of sexual harassment to the Principal, where upon you tendered your apology before the staff. However, as soon as a lenient view was taken and the principal recommended that the complaint be cancelled, you starting showing your colour again and resorted to the same acts of sexual harassment on account of which the staff again requested to management to take action.*
3. *That your acts of insubordination and indiscipline are intolerable by the management whereby you are habitual of going on leave without proper sanction from your competent authority. Not only this, even after suspension you did not bother to mark your presence till date. Your act of indiscipline and insubordination are aggravated from the fact that the management had to resort to police complaint on 10.01.2014 when you under suspension forced your entry into the college and misbehaved with the staff and threaten them thus creating commotion in the college spite of various explanation sought from you, you have not only failed to challenging the competence of the managing committee.*

4. *Various complaints have been received against you from the lecturers and students of the college where from it is apparent that you are provoking the employees and students against the management thus committing act unbecoming of a reliable and faithful employee.*
5. *That instead of mending your ways and instead of appreciating that the management had on number of occasions treated your act of misconduct with leniency with the hope that you will reform, you are taking undue advantage of this leniency and now even issuing threats to the staff and management about putting them in bad light and cause physical and mental harm. Such acts on your part speaks volume of your misconduct and character unbecoming of a good employee.”*

Perusal of above charge-sheet shows that there were allegations of misbehaviour with lady employees and sexual harassment. The petitioner appears to be a disgruntled employee of DAN College, who even after dismissal of his writ petition and seeking relief of review and filing of letter patents appeal, has indulged in harassing the respondent without any reason by filing this false and frivolous petition.

The instant petition is dismissed with costs of ₹10,000/-, which the respondent is entitled to recover from the petitioner, on his failure to pay the same, through execution.

December 05, 2017

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No