IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP 7905-2014 (O&M)
Date of decision: 13.09.2018

Ishwar Dutt

…..Petitioner

versus

Punjab and Haryana High Court and another

……Respondents

CORAM: Hon'ble Mr.Justice A.B.Chaudhari
Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Birender Singh Rana, Senior Advocate with
Ms.Pooja Bansal, Advocate for the petitioner
Mr.Sanjeev Sharma, Senior Advocate with
Mr.Amit Chaudhary, Advocate
for the respondent-High Court

1. Whether Reporters of Local newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Kuldip Singh, J.

Petitioner has invoked the writ jurisdiction of this Court under Articles 226/227 of Constitution of India for quashing adverse inspection remarks recorded in his ACR for the year 2006-07, conveyed vide Memo No.543/RHC(1) dated 19.7.2007 (Annexure P1) and the rejection of the representation dated 28.1.2011 (Annexure P6) *sic* (date of representation is 5.9.2007) as well as quashing the order dated 30.1.2013 (Annexure P21) and the order dated 19.2.2014, conveyed vide letter dated 22.4.2014 (Annexure P23 colly), whereby the judicial work of the petitioner was withdrawn and consequential proceedings have been initiated.

Petitioner joined the Haryana Civil Services (Judicial Branch) on 6.5.1997. He worked satisfactory and earned good reports. He was promoted as Additional Civil Judge (Senior Division) in the year 2002 and

GOPAL KRISHAN
2018.10.06 14:18
I attest to the accuracy and
integrity of this document

was posted as Additional Civil Judge (Senior Division)-cum-Sub Divisional Judicial Magistrate, Guhla Cheeka in the year 2006. He was conveyed the adverse remarks for the year 2006-2007 as under:-

1.	*Quality of work:-* • *Conduct of business in Court and office*	*He has less control over staff*
7.	*Integrity*	*There are complaints about his integrity*
8.	*General assessment regarding strength and short comings*	*Photocopy of the remarks added below*
9.	*Grading*	*C-Integrity Doubtful*
Part -III	*Remarks of the Administrate Judge*	*The officer is not enjoying good reputation and there are complaints concerning his integrity*

His overall grading was recorded 'C-integrity doubtful'. It is stated that the integrity doubtful report was made relying upon the complaint made by S.S.Sandhu alleging that the petitioner has demanded Rs.4-5 lakhs in an execution case titled as State Bank of Patiala vs. Mohinder Singh and others. Preliminary inquiry was conducted by the then District Judge, Kaithal, wherein it was stated that the petitioner had denied that he knew the complainant whereas the call details show that there were two calls from the number of the complainant to the petitioner, without noticing that the said calls were of 17 seconds and 30 seconds over a period of 8 months. Therefore, the said report could not be relied upon to record the adverse ACR. Petitioner submitted the reply to the said complaint, putting forward his own side of the story, details of which have been mentioned in the petition and need not to be reproduced. However, the High Court decided to hold regular inquiry in the matter. Charge sheet dated 20.3.2009 was served upon the petitioner. Petitioner submitted reply to the charge sheet. After recording the evidence, Registrar Vigilance, Punjab

GOPAL KRISHAN
2018.10.06 14:18
I attest to the accuracy and
integrity of this document

recorded the findings that the charges are not proved. Therefore, the petitioner was hopeful that the adverse remarks based on the said complaint will be expunged. However, his representation was rejected by the High Court. It is further stated that while recording adverse ACR, the Administrative Judge has made reference to the oral complaint made by President of Guhla Bar Association, which was made to the Hon'ble Administrative Judge in isolation, demanding transfer of the officer. President did not substantiate the said allegations by making reference to any specific instance. Before the adverse ACR, the other ACRs of the petitioner are good. The subsequent ACRs for the year 2007-08, 2008-09, 2009-10 and 2010-11 are 'B+ Good'. ACR for the year 2011-12 is 'B Average/ Satisfactory'. However, despite the fact that the petitioner was exonerated on the basis of the adverse ACR, the Hon'ble High Court decided to retire him prematurely on attaining the age of 50 years. His judicial work was withdrawn and consequently, the High Court in the Meeting dated 19.2.2013, recommended to the Government for premature retirement of the petitioner and the Government accordingly passed the order.

The High Court in the reply has not denied the factual position of joining of the petitioner. It was also not denied that he was compulsorily retired w.e.f. 25.4.2013 when he would attain the age of 50 years, under provisions of Rule 3.26(d)(i) of Punjab Civil Services Rules, Volume-I Part-I, (as applicable to the Haryana). Withdrawal of the judicial work is also not denied. It is also not denied that on the complaint received by the Administrative Judge, the District and Sessions Judge, Kaithal was asked to look into the same and that he submitted the preliminary report. Thereafter,

GOPAL KRISHAN
2018.10.06 14:18
I attest to the accuracy and
integrity of this document

the charge sheet was served to the petitioner. It is also not denied that in the regular inquiry, he was exonerated. It is claimed that adverse ACR was correctly recorded as 'C-integrity doubtful'. It is stated that the District Judge has found that the petitioner has made telephonic conversation on the telephone number of Mohinder Singh and one Gurinder Singh which proved that the petitioner was in connivance with those persons, which amounts to a mis-conduct. It is also not denied that on the basis of the regular inquiry, after examining the inquiry report, the Vigilance Committee recommended dropping of the proceedings which was accepted by the Full Court in the Meeting dated 17.8.2010. However, representation regarding expunging of adverse remarks 'C-integrity doubtful', was rejected by the Full Court after getting observations from the then Administrative Judge. The earlier service record being good was also not denied. After considering the entire record, the Full Court decided to pre-maturely retire the petitioner at the age of 50 years.

We have heard learned counsel for the parties and have also carefully gone through the file. We have also examined the service record of the petitioner.

It is not denied that till the year 2006-07, service record of the petitioner was good. At that time, he was posted as Additional Civil Judge (Senior Division)-cum-Sub Divisional Judicial Magistrate, Guhla Cheeka. ACR of the petitioner for the year 2005-06 shows that it was recorded to be 'A Very Good' and the Bar praised his work. With the ACR for the year 2006-07, the then Administrative Judge the District and Sessions Judge, Kaithal appended a note with the same in which he made a reference to the murmuring about the integrity of the petitioner in the Bar. It was also

GOPAL KRISHAN
2018.10.06 14:18
I attest to the accuracy and
integrity of this document

mentioned that during the inspection, the Administrative Judge noticed that the officer has not improved. The President of the Guhla Cheeka Bar made complaint that the officer is corrupt and should be transferred immediately but when he was asked to give specific instances, he was reluctant and did not give specific instance. One complaint was made by S.S.Sandhu regarding payment of Rs.4-5 lakhs in the execution case. The fact finding inquiry was got conducted through District Judge, who reported that there is telephonic conversation with two persons namely, Mohinder Singh and Gurinder Singh. Therefore, on the basis of the same, report was recorded as 'C-integrity doubtful'. It is also not denied that on the basis of the same complaint, a regular inquiry was ordered. The regular departmental inquiry was conducted by District and Sessions Judge-cum-Registrar Vigilance, Punjab, who recorded the evidence of both the parties and after examining the call details, found that the charges against the petitioner are not proved regarding said complaint of S.S.Sandhu. It is not denied by the High Court that the said inquiry report was accepted by the Full Court and the proceedings against the petitioner were dropped. The petitioner had also made a representation for expunging the adverse remarks. The matter regarding acceptance of regular departmental inquiry report and expunging adverse remarks was put up in the Full Court Meeting held on 17.8.2010, in which, the Full Court decided to accept the report of the District and Sessions Judge, Vigilance and dropped the proceedings based on the complaint of S.S.Sandhu. However, surprisingly, in the same meeting, representation of the petitioner, for expunging the adverse remarks, was rejected, as coming out from the meeting note (Annexure P9).

GOPAL KRISHAN
2018.10.06 14:18
I attest to the accuracy and
integrity of this document

We are of the considered view that once the complaint of S.S.Sandhu was found to be false and the charges were not proved against the petitioner, any adverse remarks made in the ACR, based on the same complaint and the fact finding inquiry report of the District Judge, should also have been expunged.

Therefore, the stand of the High Court is not acceptable that on the one hand charges were held to be not proved but at the same time on the basis of the same charges, his integrity was recorded as 'C-integrity doubtful'. Regarding the other observations of the Administrative Judge, it is recorded in the note itself that President of the Bar demanded transfer of the officer on the ground that he is corrupt but failed to give specific instance. Therefore, the allegations of the President Bar of Guhla Cheeka are unsubstantiated. It is the same Bar, which in the earlier year has lavishly praised the judicial officer for his efficiency. Therefore, on the basis of unsubstantiated allegations and without verification, no adverse remarks could be recorded. There is no other instance or material on the basis of which 'C-integrity doubtful' report could be recorded.

Consequently, we are of the view that the adverse remarks made in the ACR for the year 2006-07 are liable to be quashed and considering his previous ACRs his report 'C-integrity doubtful' is liable to be upgraded to 'B+ Good'.

The Full Court Meeting note dated 21.1.2003 (Annexure P22) shows that when the matter regarding retirement of the petitioner at the age of 50 years was taken, the report of the Administrate Committee was also considered which had made the recommendation to pre-maturely retire the petitioner and which was ultimately accepted. The Administrate Committee

GOPAL KRISHAN
2018.10.06 14:18
I attest to the accuracy and
integrity of this document

has made reference to one complaint made by Kapoor Singh son of Hari Ram resident of Village Mukandpur Basal, Tehsil Bawal, District Rewari, which was got inquired from Registrar Vigilance, who submitted the report dated 18.7.2012 (Annexure E), wherein Registrar Vigilance took the view that the order passed by the Judicial Officer was not legal and justified because of nature of offences alleged against the accused and conduct of the accused persons, as they were absconding from proceedings of the Court and that the Judicial officer did not maintain parity while dealing with bail application of Constable Ram Narain and others on 9.2.2012 and bail application of Amar Singh Rathore on 17.2.2012 and that the allegations leveled against the judicial officer prima-facie appears to be based on facts and there is substance in the matter.

We have examined the comments of the judicial officer dated 5.2.2012, in which he has referred that in the summoning order offences under Sections 195 /196 IPC were not mentioned. Therefore, due to said omission the bail order was passed. However, when he came to know of the said omission, accused were immediately taken to custody and committed to the Court of Sessions.

We have also examined the report of the Registrar Vigilance (Annexure E) which was considered by the Committee. After examining the report of the Registrar Vigilance and the attending proceedings, we are shocked to see that the said report is in fact a preliminary inquiry report, which has been simply mentioned as inquiry report. In fact a complaint was received by the Administrate Judge, the District and Sessions Judge, Kaithal who marked it to the Registrar Vigilance for fact finding inquiry and in fact report Annexure E is the fact finding inquiry and not a regular inquiry. The

GOPAL KRISHAN
2018.10.06 14:18
I attest to the accuracy and
integrity of this document

Administrate Committee did not notice that it is only a fact finding inquiry and that no action on the basis of the said fact finding inquiry report could be taken to pass the punishment order of pre-mature retirement without holding regular departmental inquiry. The said inquiry report was put up before the Full Court, where also it was not brought to the notice of the Full Court that it is in fact a fact finding inquiry and not a regular departmental inquiry.

Learned senior counsel for the High Court Mr.Sanjeev Sharma when confronted these facts has admitted that in fact it was a fact finding inquiry. He has also conceded that no punishment order could be passed on the basis of the fact finding inquiry and that in case prima-facie truth is found in the complaint, a regular departmental inquiry was required to be conducted.

The said fact finding inquiry of the Registrar Vigilance which was titled as 'inquiry report', was put up before the Full Court along with the recommendations of the Administrate Committee and was accepted by the Full Court. Full Court apparently considered 'C-integrity doubtful' report as well as 'inquiry report' of the Registrar Vigilance, which is in fact a fact finding inquiry and decided to prematurely retire the petitioner.

In this case, we have already quashed the adverse remarks made in the year ACR for the year 2006-07 in view of the fact that the charges in the complaint, on the basis of which adverse remarks were made, were found not proved during regular departmental inquiry. Further, merely on the basis of fact finding inquiry, no punishment order could be passed.

The net result is that order of prematurely retiring the petitioner is illegal and is liable to be quashed.

GOPAL KRISHAN
2018.10.06 14:18
I attest to the accuracy and
integrity of this document

As a result of the foregoing discussion, we pass the following order:-

1. Adverse remarks made in the ACR for the year 2006-07 are hereby quashed and his ACR is ordered to be upgraded from 'C-integrity doubtful' to 'B+ Good', considering his previous ACRs.

2. Recommendations of the High Court in the letter No.3187 Gaz.-II(3) dated 1.2.2013, recommending the Government to prematurely retire the petitioner on attaining the age of 50 years as per provisions of Rule 3.26(d) (i) of Punjab Civil Services Rules, Volume-I Part-I (as applicable to the Haryana) and the order of the Government dated 19.2.2013, conveyed on 19.2.2013 prematurely retiring the petitioner w.e.f. 25.4.2013 are hereby quashed.

3. Order dated 30.1.2012 (Annexure P21) withdrawing the judicial work of the petitioner also stands quashed.

4. The petitioner has stated that he does not claim the salary for the intervening period. The petitioner is ordered to be reinstated in service within four weeks from the date of receipt of a certified copy of this order by the Registrar General of this Court. He shall be entitled to seniority, continuance in service, right to promotion and all other consequential benefits, except arrears of salary.

The Registry is directed to immediately convey the copy of the judgment to the Registrar General for compliance.

(A.B.Chaudhari)
Judge

(Kuldip Singh)
Judge

13.09.2018
gk

Whether speaking/reasoned *Yes*
Whether reportable *Yes*

GOPAL KRISHAN
2018.10.06 14:18
I attest to the accuracy and
integrity of this document