

C.W.P. No. 7094 of 2016

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 7094 of 2016

DATE OF DECISION:02.05.2018

Ramesh Kumar

.....Petitioner

Versus

Union of India and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Mohit Jaggi, Advocate
for the petitioner.

Ms. Sheenu Sura, Advocate
for respondent No.1.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of certiorari for setting aside impugned order dated 16.3.2016 (Annexure P-9) passed by respondent No.1,whereby, the petitioner was asked either to attend hearing of the case or in case, he did not wish to attend the hearing, he could send his submissions to the Commission at least two days in advance. A further prayer has also been made for issuing directions to respondent No.3 to decide the application filed by the complainant under Section 6 (1) of the Right to Information Act, 2005 (hereinafter referred to as 'the Act, 2005') and to punish said CPIO/delinquent official (s) by imposing exemplary penalty for causing delay of about two years and nine months in supplying the information to

the petitioner.

Learned counsel for the petitioner contends that the Central Information Commission had sent a notice dated 25.2.2016 under Section 18 of the Act, 2005 to the petitioner to appear before the Commission with all relevant papers/documents to be relied on during the hearing and in case he did not wish to attend the hearing, he was asked to send his submissions to the Commission at least two days in advance. He was also advised to send copy of his complaint filed before the Commission to the Public Authority. In response to that notice, the petitioner sent his written submissions to the Commission well in advance i.e. two days prior to the date fixed but still his complaint has been dismissed mainly on the ground that he did not appear before the appellate authority.

Learned counsel for respondent No.1 submits that the petitioner did not appear before the Commission but sent written submissions before the Commission on the date fixed but his complaint was dismissed. Learned counsel further contends that case of the petitioner was dismissed for want of his presence.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on the file including the impugned orders.

Admittedly, the petitioner filed one application dated 12.6.2013 under the Act, 2005 to respondent No.3 seeking information with regard to dress code specifically prescribed by respondent No.2 for MPHWS of Malaria Department working in its Laboratories. When said information was not supplied to the petitioner, he filed first appeal before respondent No.2 but to no avail. Thereafter, the petitioner approached the Central

Information Commission i.e. respondent No. 1 by way of filing second appeal, wherein, the date was fixed as 18.8.2015. On the said date, respondent No.1 directed to provide complete and categorical information, issue-wise to the petitioner as per his RTI application, in accordance with the provisions of the Act, 2005, within 30 days from the date of receipt of copy of the order. In spite of specific directions issued by respondent No.1, incomplete, wrong, irrelevant and misleading information was supplied to the petitioner. When relevant information was not supplied to the petitioner by the concerned authorities, the petitioner filed complaint under Section 18 of the Act, 2005. The petitioner received notice on 25.2.2016 from the office of Central Information Commission, whereby, he was informed to appear before the Commission with all relevant papers/documents to be relied on during hearing and to send his submissions in his absence. He was also advised to send copy of his complaint filed before the Commission to the Public Authority. In response to said notice, the petitioner sent his written submissions to the Commission well-in-time but on getting final order dated 16.3.2016, he came to know that the complaint filed by him was dismissed as he failed to appear either in person or through someone.

Order dated 16.3.2016 has been challenged on the ground that the petitioner sent his written submissions well-in-time still his complaint was dismissed only on the ground that he was not present, whereas, liberty was given to him either to send the written submissions or appear personally through someone. There was no reason for respondent No.1 to dismiss the complaint of the petitioner as it should have been decided by considering the written submissions.

A perusal of impugned order dated 16.3.2016 clearly shows

that the order is totally non-speaking and has been passed contrary to contents of notice dated 25.2.2016. The relevant portion of notice dated 25.2.2016 is reproduced as under:-

“The complainant may, appear before the Commission with all relevant papers/documents to be relied on during the hearing. In case the complainant does not wish to attend the hearing, he may send his submissions to the Commission at least two days in advance. He is also advised to send copy of his complaint filed before the Commission to the Public Authority (CPIO/FAA), if not already done.”

In spite of specific mention to the petitioner to submit his written submissions, the impugned order has been passed by stating that the petitioner failed to appear either in person or through someone duly authorized by him and his absence was deliberate. The complaint filed by the petitioner was dismissed without mentioning any reasons and the same is contrary to the notice issued to him. The relevant portion of order dated 16.3.2016 is reproduced as under:-

“It is to be seen here that despite of our due notice, complainant failed to appear either in person or through someone, duly authorized by him before the Commission to press his case. However, the Commission feels that complainant must have appeared, in such situations, to press his complaint before the Commission, after all, it is his case to be pursued specifically but complainant is absent deliberately, despite of our due notice. Thus, it shows the intention of the complainant that he is not interest, at all, in pursuing his own case before the

Commission.

In view of the above, the Commission feels that no fruitful purpose would be served by proceeding in such cases. Thus, the Commission is of the considered view that it would be appropriate and even justified to dismiss the case. Therefore, it is hereby dismissed.”

A perusal of the impugned order dated 16.3.2016 shows that it has been passed without considering the written submissions sent by the petitioner.

Accordingly, the present petition is allowed and impugned order dated 16.3.2016 (Annexure P-9) is set aside. The case is remanded to respondent No.1 to reconsider the complaint of the petitioner afresh and pass necessary order in accordance with law after taking into consideration the written submissions already sent by the petitioner, which are annexed as Annexure P-8 with the petition. In case, the petitioner or other concerned person is required to be heard, an opportunity of hearing be given. The necessary exercise be done within a period of four weeks from the date of receipt of certified copy of the order.

May 02, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes