

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7186 of 2019

Date of Decision: 15.03.2019

Yogender Kumar

... Petitioner

Versus

Punjab & Haryana High Court,
Chandigarh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Namit Gautam, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.

1. This is a writ petition challenging the judgment and order dated September 07, 2018 passed by the Hon'ble Administrative Judge of Hisar Sessions Division in Service Appeal No.30 of 2017 filed by the petitioner-Reader Grade-II, against the order dated February 21, 2017 passed by the learned District & Sessions Judge, Hisar imposing a punishment of stoppage of two increments with cumulative effect on charges of indulging in “small time corruption” an apt phrase of the Appellate Court summing up the charge.

2. The brief facts of the case are that a complaint was received from a young Civil Judge (Junior Division) on her first posting to who's Court the petitioner was deputed on April 21, 2016 as a Reader. He had 31 years of service to his credit. The complaint was processed resulting in a regular inquiry in which the petitioner was associated. In the regular inquiry, the Judicial Officer appeared and testified against the petitioner.

Her deposition was recorded which I have read with the assistance of the

learned counsel. She had declared to her staff a warning that she would not tolerate corruption at any level. The Presiding Officer harboured grave suspicion of the petitioner indulging in petty corruption. She confirmed rumours through some independent Clerks of advocates working in the Courts as well as certain counsel, who corroborated the same. She had warned her Reader but there was no improvement in the delinquent official and hence she was compelled to make her complaint in writing. The son of the petitioner is an Advocate and associated with Advocate Mr. X as a junior and they appeared regularly in her Court. She deposed that the petitioner would give suggestions to her to proceed in files of the counsel in a way which was suitable to Mr. X. In fact, most of the time, it was the petitioner's son who appeared in those cases. She wrote against this conduct of her Reader.

3. The petitioner pleaded in the Judge's Chamber that she should not have directly written against him. Rather, the Judge ought to have first served him with a notice to mend his ways. The petitioner even tried to pressurize the Judge by sending four senior advocates of Hansi to her court chamber asking her to withdraw the complaint against the petitioner. The Reader approached the judge many times but she did not entertain him. In her cross-examination she stated that the petitioner was given much to demanding bribes from clerks of lawyers and this information she got secretly from one of her staff members. The Judge was frank enough to state that she did not want to disclose the name of the officials without consent as it was shared in confidence. The Presiding Officer deputed a Peon to keep a watch on the delinquent and he saw him accepting bribe from a clerk of an

advocate. The petitioner during the course of cross-examination of the Presiding Officer kept harping on whether the Judge remembered the dates of the incidents or were complaints made in writing to her. The Presiding Officer would not disclose the name of those Advocates with whom those Clerks are attached so as not to breach confidentiality and faith reposed. She admitted that she asked the Clerks to move a written complaint to District Judge but they refused to do so. She had not given in writing to any authority that the son of the delinquent official is a junior Advocate at Hansi and used to appear in her Court. She did not know whether he filed an independent power of attorney in any case, pending in her Court. She did not know the name of the son but recognized him by face. She had never sought any written explanation from the delinquent official regarding his corrupt practices. She had never seen the delinquent official accepting bribe. But she named the Peon/Process Server who had seen the delinquent accepting bribe. He was Sh. Pawan. Pawan had disclosed to her 5-6 times that he had seen the delinquent official accepting the bribe in court precincts. She could not tell the dates. Even Mr. X was a part of the four Advocates who had come to the presiding officer's chamber requesting her to withdraw the complaint.

4. The inquiry report went against the petitioner holding him guilty of indulging in corrupt practices. The report was put to the petitioner inviting his objections. Those were considered and in mitigation of the charge he made a statement before the District & Sessions Judge, Hisar on January 06, 2017 in which he undertook in writing that no lapse shall be committed by him in future and a lenient view may be taken in the matter of

punishment. The statement suffered by the petitioner runs as follows:-

“Stated that I am serving with sincerity and honesty and to the entire satisfaction of my officers under whom I remained posted. I am to support a family consisting of my old ailing mother, spouse and two children to support. I undertake that no lapse shall be committed by me in future. A lenient view may kindly be taken in the matter of punishment.”

5. The defence was considered together with the statement and punishment was inflicted which has been upheld in service appeal.

6. It was argued before the Hon'ble Appellate Authority that apart from the bald testimony of the Judicial Officer, there is no evidence against the petitioner because despite asking about the predilection of the appellant she did not disclose. Much was made on the ground that no details were mentioned, no dates were supplied, no names came up as to when, how much and from whom the appellant was seeking and accepting bribes. His counsel had argued that the delinquent official had 31 years of unblemished service and no complaint of such kind had ever been made against him in the past.

7. On the other hand, the Presenting Officer had argued as recorded in the judgment and order in appeal that this is a case where a young Officer had joined at her first posting. In normal circumstances, she would have been more than happy that a person with 31 years of service is her Reader as she could look upon him as a source of guidance. It was argued that in these kinds of cases of petty corruption, it is very difficult to have details and people like Clerks of Advocates and even Advocates are reluctant to come forward and complain. The delinquent official did not

allege that Presiding Officer had any animus against him.

8. The department argued that this was a case where harsher punishment was called for but it was only an act of leniency by the District & Sessions Judge that the appellant has got major punishment of stoppage of two increments with cumulative effect. The Hon'ble Administrative Judge as the appellate authority found the arguments of the Presenting Officer were weightier than those offered by the other side, observing that there is no warrant to come to the conclusion that a young Judicial Officer made a false complaint against the senior-most member of the staff. There is no warrant of come to the conclusion that having made the complaint she would come and testify falsely. The appellate authority felt that it cannot be lost sight of that in such kind of complaints the victims are reluctant to come on board. Besides, the undertaking given by the petitioner that no lapse shall be committed by him in future is a circumstance against him.

9. I have absolutely no occasion to interfere with the reasons recorded by the Appellate Authority in the judgment and order dated September 07, 2018 and would dismiss the petition as devoid of merit.

(RAJIV NARAIN RAINA)
JUDGE

15.03.2019

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Whether speaking/reasoned Yes

Whether reportable Yes/No