

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**CWP No.10771 of 2018 (O&M)**

Date of decision: 02.09.2019

Harmeet Singh

...Petitioner

Versus

Punjab and Haryana High Court & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.S. Bains, Advocate for the petitioner.

Mr. Rajeev Kawatara, Advocate, for respondents No.1 to 3.

RAJIV NARAIN RAINA, J.

1. The brief facts which are relevant for deciding the case are that petitioner had joined in the court of Ashish Kumar Bansal, Civil Judge (Junior Division) at District Court, Ludhiana, as Civil Ahlmad on 02.08.2011, which was a successor court of Ravi Inder Singh, Civil Judge (Junior Division), Jagraon. He challenges the order of punishment dated 22.03.2012 (Annex P-32) passed against him under section 36 of the Punjab Courts Act. He further challenges the order of the appellate authority i.e. the Learned District & Sessions Judge, Ludhiana, dismissing his appeal by order dated 06.08.2012 (Annex P-35,). Later, he filed second appeal before the Registrar General of the Punjab and Haryana High Court, which was held as not maintainable as per the communication dated 04.02.2013 (Annex P-44). Thereafter, he had challenged both the orders in CWP No.21451 of 2017 which was ordered to be dismissed as withdrawn with liberty to file fresh writ petition vide order dated 30.01.2018 (Annex-45). Accordingly, the present writ was filed.

Pleadings are complete. The replies of respondents are on record. No rejoinder has been filed.

2. The learned counsel for the petitioner pointed out that petitioner was issued notice dated 28.02.2012 (Annex P-29) under section 36 of the Punjab Courts Act, as to why disciplinary action should not be initiated against him for not providing the consignment particulars of Civil Suit No.72 of 09.06.2004 decided by Sh. Ravi Inder Singh Judge titled as 'Gurmel Singh versus Kapoor Singh', on 11.05.2010, despite process having been issued to furnish the said particulars by the court of learned Additional District Judge, Ludhiana. It was further stated that in compliance of the direction of the Learned Additional District Judge, Ludhiana, his explanation was called for the above lapse and in view of his explanation, show cause notice was issued as to why regular disciplinary proceeding be not initiated against him for not taking care at the time of taking charge of the institution register that the consignment particulars of the civil suit in question were not mentioned. Petitioner in his reply Annex P-30 took the specific stand that the file in question was decided more than a year prior to his transfer and posting at Jagraon. The case was decided on 11.05.2010, whereas petitioner joined at the place of posting on 02.08.2011. The previous Ahlmad, namely, Dharampal had not consigned the file to him as is clear from the list made at the relevant time while taking over the charge of un-consigned files of decided cases. It was stated in the reply that after his explanation, notice was issued to the then Ahlmad Sh. Dharampal. When it was learnt that Dharampal has been transferred to Gurdaspur, demand was made from him of producing the file in question, even though the official concerned of record room has reported that the concerned Ahlmad has not consigned the file to the record room and

therefore the question of consignment particulars of a file which has not been consigned to record room, does not arise. Therefore, the learned counsel for the petitioner argued that the petitioner had been punished without any fault on his part and the impugned orders deserves to be set aside.

3. The factual narration of events is not disputed. Most of the events are based on judicial order sheets. The learned counsel for the petitioner had referred to the report of Sh. Asish Kumar Bansal dated 29.08.2012 (Annex P-7) sent to Additional District and Sessions Judge and report dated 08.09.2012, addressed to District and Sessions Judge, Ludhiana and both reports are part of Annex P-7. It seems that directions were received by the Civil Judge, Jagraon on 07.04.2012 to enquire into the matter. Summonses were issued to Sh. Dharampal, the then the concerned Ahlmad. He appeared on 05.07.2012 and suffered a statement that he had sent the file in question for consignment to record room, Ludhiana along with other files, which were handed over to Clerk Gurnam Singh, who did not provide him the consignment number and the files were in possession of Gurnam Singh. Gurnam Singh was summoned. He did not appear and accordingly bailable warrants were issued for 14.08.2012. Prior to that on 08.08.2012, Dharampal appeared and suffered a statement that he has consigned the aforementioned file with the record room at G.No.103/5 JD-10. Jarnail Singh, Clerk, Record Room confirmed that now the file stands consigned with the above stated number. The explanation of the Dharampal was recorded on 27.08.2012, who further stated that in fact 23 files were handed over to Gurnam Singh on 29.10.2010, who denied the same and later Dharampal inquired from Yogesh Kumar and later the files were found in the record room in un-consigned state.

4. The report to the Learned District and Session Judge dated 08.09.2012, concedes that the consignment of the main file titled as “Gurmel Singh versus Kapoor Singh, civil suit No.72 of 09.06.2004 decided by the court of Sh. Ravi Inder Singh, other than CJJD, Jagraon by judgment and degree dated 11.05.2010 was belatedly consigned with G.No.103/5 JD 10. The date of consignment comes out clearly from the court order of respondent No.3, dated 20.10.2012, which reads as follows:

“Report has been called from Court Manager, who has reported that file has been deposited by the Dharampal, the then Ahlmad in record room at Jagraon having G.No.103/15.08.2012. Docket be issued for 30/10/2012.”

5. The learned counsel for the petitioner points out in none of the reports referred to above, the name of the petitioner comes as a person responsible for non-consignment of the consignment No. to the files including the one which led to his punishment order in civil suit No.72 of 09.06.2004 titled as Gurmel Singh versus Kapoor Singh. Further FIR No.114 dated 05.06.2012 was registered against Dharampal under sections 177, 381, 409 IPC on the complaint of Dr. Balwinder Kumar Sharma, Civil Judge (Senior Division) Ludhiana. There is no other accused person named in this FIR because after the enquiry the FIR was registered but finally due to death of Dharampal, the proceedings were closed. This is also part of Annex P-34 of which FIR is a part.

6. The learned counsel for the petitioner further referred to Annex P-9, in which the record keeper of judicial record room, Jagraon was directed to send the file of civil suit No.72 of 09.06.2004 decided on 11.05.2010 and a notice given that in case file is not sent for Peshi, record keeper is directed to

appear personally. There is a report submitted by the record keeper dated 16.04.2011, in which he has pointed out that Goshwara register 'seen'. File had not been sent by the concerned Ahlmad. He also points out that on 10.08.2011, orders Annex P-10, were passed in the appeal in which the trial court record of civil suit 72 of 09.06.2004 was needed:-

“Lower court record not received. The same be received for 12/09/2011. Ahlmad is directed to bring the consignment particulars from the concerned Ahlmad and issue the docket by giving consignment particulars.”

7. The counsel for the petitioner pointed out that at this stage the petitioner had joined the successor court of Sh. Ravi Inder Singh, CJJD, Jagraon on 02.08.2011. When he received the following orders addressed to the civil Ahlmad concerned in the court of Sh. Ravi Inder Singh, CJJD, Jagraon from the court of R.K. Jain, ADJ, Ludhiana on 20.08.2011:

“Send the consignment particulars of CS No. 72 of 09/06/2004 RBT 388/26/03/2009 DOD 11/05/2010 Gurmel Singh versus Kapoor Singh. Send on or before 23/08/2011.”

8. The Ld. counsel for the petitioner pointed out that immediately on the same day 20.08.2011, as per annex P-12, petitioner informed in writing that the concerned clerk Dharampal is now posted with the court of Sh. Amarinder Pal Singh, CJJD, Ludhiana and consignment particulars of record of the case be asked from him. As Annexure P-13 shows on 26.08.2011, the record keeper was asked about the file of civil suit 72 of 09.06.2004 decided on 11.05.2010 Gurmel Singh versus Kapoor Singh and the report by the record keeper is that no such case was entered in the Goshwara register. The Ld. counsel for the petitioner laid particular stress on document Annex P-14, which is the order by the Ld. ADJ dated 12.09.2011 in which it is specifically

directed that as record is not received, summon the then Ahlmad Dharampal now in the court of Sh. Amarinder Pal Singh, JMIC, Ludhiana for consignment particulars within 15 days and record be requisitioned for 11.11.2011. Accordingly, as per orders annex P-14, the summons issued to the Dharampal by Reader to ADJ, Ludhiana on 24.09.2011 by order annex P-15. It was stated, *“Send the G No. decided by court of Sh. Ravi Inder Singh, CJJD, Jagraon, Sc civil suit No. 72 of 09/06/2004 RBT 388/26/03/2009 DOD 11/05/2010. Gurmel Singh versus Kapoor Singh on or before 06.10.2011.”*

9. It was pointed out by the Ld. counsel for the petitioner that even the report of the process server dated 30.09.2011 shows that Dharampal stands transferred from district Ludhiana to district Gurdaspur vide Annex P-16. Therefore, the letter addressed to the concerned civil Ahlmad in the court of Sh. Ravi Inder Singh, CJJD, Jagraon alongwith institution register of civil suit No.72 of 09.06.2004, RBT 388/26/03/2009 DOD 11.05.2010 Gurmel Singh versus Kapoor Singh (Peshi 4) 11.11.2011 at 10 AM, issued by Reader to ADJ, Ludhiana dated 05.10.2011, could only be understood to have been issued to Dharampal and not to the petitioner, which is Annex P-17. Therefore, the Ld. counsel for the petitioner argued that reply of the petitioner it is seen that the file was decided on 11.05.2010 and the petitioner joined on 02.08.2011, so the docket be sent to the record room is perfectly in accordance with factual situation on 14.10.2011, Annex P-18. The Ld. counsel pointed out that after this report by the petitioner, his bailable warrants were issued on 11.11.2011 by the Ld. Additional District Judge, respondent No.3, Annex P-19, after noticing that Ahlmad made the report showing that he has not provided consignment particulars, therefore his bailable warrants were issued by name for 04.01.2012. The Ld. counsel

argued that since Ahlmad concerned already stands identified as Dharampal as per Annex P-14 and P-15, the petitioner presumed that the bailable warrants annex P-20 are for Dharampal and therefore missed the Peshi dated 04.01.2012. Failure of the petitioner to present himself led to the issuance of arrest warrants on 04.01.2012 by the Ld. ADJ, Annex P-21. The Ld. counsel for the petitioner submitted that arrest warrants were issued to SHO, police station Jagraon on 21.01.2012, Annex P-24, by name against the petitioner for 03.02.2011. The petitioner presented himself before the Ld. ADJ on 28.01.2012 with application for recall of non-bailable warrants and for recording his statement, which is Annex P-25. The application was ordered to be placed on file for date already fixed, and this endorsement is on Annex P-25. On 03.02.2012, Annex P-26, the petitioner was taken into custody and was released on bail on furnishing personal bond in the sum of Rs.10,000/- and his explanation was called through the presiding officer and the case again adjourned for providing consignment particulars for 18.02.2012. The explanation was sought and given by the petitioner, which is part of Annex P-27. The order passed on his explanation is Annex P-28 dated 18.02.2012 by respondent 3 and directions issued to the presiding officer to take action against the petitioner. Accordingly his explanation was sought by Annex P-30 and punishment order was passed, Annex P-32.

10. The Ld. counsel for the petitioner has pointed out that even though the record reveals that the petitioner had no role in the matter and he had promptly provided the information yet his explanation has not been considered by both the punishing authority as well as by the appellate authority in Annex P-32 and P-35. The only operating part of the impugned order is that it is the duty of the official to take charge of the entire

record/registers whenever he is transferred meticulously and after transfer he becomes responsible for the entire record. The impugned order is dated 22.03.2012. No other circumstances or explanation given by the petitioner was considered in the impugned order. Summarily, the petitioner was punished and a fine of Rs.500/- imposed upon him. The Ld. counsel for the petitioner points out that subsequently he was transferred from Ludhiana to Mansa even though he had a sick mother residing with him, and red entry was wrongly added in his service record. The appellate authority followed the same pattern and returned a finding that it has considered all the aspects of the case and has gone through the record but no merit or substance is found to be there in the appeal as a detailed and speaking order has been passed by the punishing authority and no illegality or infirmity is found contained in the said order. Apparently, the appellate authority has clearly not considered the grounds of appeal Annex P-33 at page 192-195 of the paper-book which is dated 25.03.2012. Not only have the details of the events been narrated but even the orders of respondent No.3 have been reproduced in the appeal. The petitioner has taken firm ground that he had no concern whatsoever with the above-mentioned file which had never been given to him while taking charge and therefore there is no consignment No. available and only the concerned person Dharampal is aware of the file. This was found to be factually correct afterwards and thereafter FIR was lodged against Dharampal. The 2nd ground that though the summons were issued for Dharampal yet the bailable warrants were issued for the petitioner for no apparent reason is also factually correct as Annex P-14, P-15, P-16, P-17 and P-20 reveal. The 3rd ground is that inquiry is already going on against Dharampal, which is also correct because the inquiry finally led to registration of FIR against Dharampal.

11. The impugned orders annex P-32 and P-35 clearly do not answer the grounds taken in the reply as well as in appeal. Sh. Rajeev Kawatra the Ld. counsel for respondent's points out that the real misconduct of the petitioner is that he did not present himself before the learned ADJ, when bailable warrants were issued to him for 04.01.2012 as per Annex P-20. He only appeared after non-bailable warrants are issued on 21.01.2012, on 28.01.2000 with an application Annex P-25. This by itself constitutes misconduct and therefore this court ought not to interfere considering his conduct in disregarding the bailable warrants issued by the Ld. ADJ, Ludhiana.

12. Considering the notice issued to the petitioner Annex P-29, dated 28.02.2012 under section 36 of Punjab Courts Act, 1908, the argument of the Ld. counsel for the respondents does not have any merit and fails to appeal to reason. The petitioner has not been issued notice of punishment for not appearing in pursuance to the bailable warrants. He has been preceded against for not providing consignment particulars of civil suit no.72 of 09.06.2004 titled as Gurmel Singh versus Kapoor Singh decided on 11.05.2010 by Sh. Ravi Inder Singh, the predecessor court of the Civil Judge Jr Division, Judicial Magistrate 1st Class, Jagraon, who had issued the notice. Therefore, the conduct of the petitioner in not appearing in pursuance to the bailable warrants on the probable ground that he understood it as for Dharampal has to be accepted because he had already suffered consequences of non-appearance and was subsequently arrested and submitted bail bonds also. The 2nd contention of the Ld. counsel for the respondents that the petitioner was proceeded against in criminal contempt for uploading his grievances is not subject matter of the present petition, therefore merits no adjudication in the

present writ petition which is confined to punishment order Annex P-32 and the appellate authority order Annex P-35.

13. That in view of my finding that the punishing authority as well as the appellate authority have not considered in the impugned orders annex P-32 and P-35 the relevant material which is part of the explanation offered by the petitioner and also the grounds raised in the grounds of appeal not being addressed by assigning reasons, both the impugned orders are quashed. Moreover, even independently examining the material on record, there is no role of the petitioner in consignment of that particular file of civil suit No.72 of 09.06.2004 decided on 11.05.2010 titled as Gurmel Singh versus Kapoor Singh. Later enquiries revealed only the role of Dharampal and none else. Therefore, the petitioner has been unlawfully punished and his explanation has not been considered by the appellate authority, an explanation which had considerable substance. The petitioner will have his consequential benefits, if any, which may flow from the setting aside of the impugned orders annex P-32 and P-35.

14. The writ is allowed. There will be no order as to costs.

02.09.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes/No*