

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CM-4354-2019 in/and
LPA-1523-2019 (O&M)

Date of decision:- 29.11.2019

Manbir Singh

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SHARMA

Present:- Mr. Birender Singh Rana, Senior Advocate,
with Mr. Deepak Gollen, Advocate,
for the appellant.

* * * *

RAVI SHANKER JHA, C.J. (ORAL)

On the insistence of learned senior counsel for the appellant, the appeal is taken up and heard.

This appeal has been filed by the appellant being aggrieved by an order dated 20.08.2019 passed by the learned Single Judge in CWP-20760-2019, whereby the petition filed by the petitioner against non-recommendation of his case on account of pendency of disciplinary proceedings has been dismissed.

Learned senior counsel appearing for the appellant submits that no disciplinary proceedings are pending against the appellant. It is also submitted that the learned Single Judge has not appreciated the facts of the case in a proper perspective and has wrongly concluded that the appellant has not been cleared from the vigilance angle. It is submitted that the learned Single Judge by recording the aforesaid findings which are perverse and contrary to the evidence on record has

wrongly dismissed the petition. Hence this appeal.

Learned senior counsel for the appellant further submits that the decision to issue a chargesheet to the appellant was taken by the authorities on 05.03.2019, whereas the eligibility of the appellant for promotion from the post of District Revenue Officer to the post of Haryana Civil Services (Executive Branch) was to be determined with reference to 01.11.2018 on which date no decision to initiate any departmental action had been taken by the authorities. It is submitted that the department had also recorded this fact and initially forwarded the claim of the appellant. However, subsequently in view of a clarification to the notification issued by the Chief Secretary, Government of Haryana, dated 30.05.2019, the claim of the appellant was rejected. Learned senior counsel for the appellant in addition submits that even otherwise in view of the provisions of Section 7-A of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as the Act), the very basis for initiating departmental inquiry against the appellant is misconceived as no fault could be attributed to the appellant. It is submitted that in such circumstances, the very decision to initiate proceedings against the appellant is contrary to law.

We have heard learned senior counsel for the appellant at length.

From a perusal of the order passed by the learned Single Judge, it is apparent that the learned Single Judge after quoting the relevant paragraphs of the notification dated 30.05.2019 has found that there was no vigilance clearance in the appellant's case and admittedly the same was pending. The learned Single Judge on that basis held that the authorities have rightly ignored the claim of the appellant in

terms of condition No. 2(a)(iv) of the notification dated 30.05.2019.

Having perused the record, it is observed that inquiry in respect of a memo issued by the Chief Secretary, Government of Haryana dated 02.02.2016 as well as Diary of the Superintendent of Police, State Vigilance Bureau, Gurgaon Division, Gurgaon dated 01.03.2016 was pending before the authorities. It is in this inquiry that the authorities ultimately recorded a clear finding that the allegations against the appellant alongwith certain other Tehsildars were found to be proved. The document further indicates that it is on the basis of the aforesaid inquiry report that the decision to initiate departmental proceedings against the appellant was taken by the authorities on 05.03.2019. On a perusal of clauses 2(a)(iii) and (iv) of the notification dated 30.05.2019, it is evident that only those Tehsildars are to be recommended for further promotion against whom no disciplinary action was ever taken or contemplated and who have been cleared from vigilance angle. In view of the facts that emerge from a perusal of the record, it is evident that the departmental action against the appellant was under contemplation and the finding in the inquiry report being against the appellant he had also not been cleared from the vigilance angle and in such circumstances the learned Single Judge rightly held that no fault could be found with the action of the authorities in ignoring the claim of the appellant for being considered for promotion.

As far as the contention of learned senior counsel for the appellant regarding Section 7-A of the Act is concerned, this Court would be preempting any decision in the departmental inquiry to be initiated against the appellant, if

any finding in that regard is recorded in the present case. The issue as to whether the appellant has committed any irregularity or mis-conduct would be considered and decided in the departmental proceedings against him. In the present case, we are only concerned with the validity and correctness of the decision dated 12.07.2019, whereby the case of the appellant was not recommended and in view of the analysis made in the preceding paragraphs, we do not find any illegality or perversity in the order passed by the learned Single Judge.

The appeal filed by the appellant being meritless is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(RAJIV SHARMA)
JUDGE

29.11.2019
Amodh

whether speaking/reasoned	Yes/No
whether reportable	Yes/No