

Sr. No.220

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

CWP No.44715 of 2018 (O&M)

Date of Decision: 18.12.2019

Sumit Setia

... Petitioner

Versus

National Fertilizer Limited and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. S.S.Sidhu, Advocate,
for the petitioner.

Mr. Ashwani Talwar, Advocate with
Mr. Sahej Mahajan, Advocate,
for the respondents.

ARUN MONGA, J.(ORAL)

1. Petitioner herein seeks issuance of a writ in the nature of certiorari to quash order dated 04.06.2018 (Annexure P-19) vide which he was dismissed from service. He filed an appeal which was also rejected vide impugned order dated 24.09.2018 (Annexure P-23).

2. Brief facts of the case are that complainant had levelled six allegations of sexual harassment against the petitioner out of which five were not proved.

3. As per the report of Internal Complaints Committee (ICC) 01 of the 06 allegations against the petitioner was proved. Allegation against the petitioner was that he had written offending words on the car of the complainant.

4. The Internal Complaints Committee (ICC) without

informing the petitioner appointed a handwriting expert, who without his prior information took his hand writing samples, which is not admissible as evidence in the eyes of law, as contended by learned counsel for the petitioner.

5. Having perused the inquiry report wherein the petitioner has been indicted of the charge of sexual harassment, I am unable to persuade myself with the reasoning adopted therein.

6. A perusal of the testimony of the complainant herself would reveal that she did know as to who scribbled the offending words on her car. Her statement is based on mere conjectures and surmises. In her testimony, she herself states that the petitioner and she were good friends. While deposing before the Inquiry Officer, neither there is any imputation qua the petitioner by the complainant nor even otherwise any other witness stated that either he or the complainant saw him scribbling the offending words on the car.

7. On the contrary, the complainant states otherwise, inasmuch as, she stated that she discussed the matter with another colleague of the petitioner, who informed her that as per him another employee's son, who was involved in some bike incidence (eve teasing) may have done this. The manner in which she has deposed before the Inquiry Officer is reflective that she herself did not know who scribbled the offending words and entire testimony is based on conjectures and surmises.

8. Another noteworthy facet is that the petitioner has been indicted by the Inquiry Officer on the basis of handwriting experts'

opinion.

9. It is not comprehensible as to how a car on which the offending words were scribbled was made available to the handwriting experts as the originals are required to be compared by the handwriting experts.

10. On a query posed by the Court, it transpires that the original car was never produced before the handwriting experts only the photographs, which were taken as a sample were sent to the handwriting expert. The procedure adopted by the handwriting expert also seems to be suspectful.

11. As an upshot of the above discussion and the reasoning contained herein, the writ petition is allowed.

12. The impugned orders dated 04.06.2018 and 24.09.2018 Annexures P-19 and P-23 respectively, are set aside.

13. In the premise, respondents are directed to reinstate the petitioner without any back-wages but by granting him continuity in service.

14. It is however, made clear that for the period petitioner remained out of job, he will not be entitled to any salary.

15. Let the needful be done within a period of two months from the date of receipt of certified copy of this order.

16. Allowed in the aforesaid terms.

(ARUN MONGA)
JUDGE

18.12.2019
vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No