

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

(1) CWP No. 1758 of 2016 (O&M)
Date of Decision: 03.03.2020

Karan Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

(2) CWP No.16307 of 2014

Karan Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

(3) COCP No.1975 of 2014 (O&M)

Karan Singh

.....Petitioner

Versus

Surina Rajan

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Digvijay Singh, Advocate
for the petitioner in CWP-1758-2016.

Mr. Ajay Ghangas, Advocate for
Mr. Ajay Chhikara, Advocate
for the petitioner in CWP-16307-2014 and COCP-1975-2014.

Mr. Gaurav Jindal, Addl. Advocate General, Haryana.

NIRMALJIT KAUR, J. (ORAL)

Both the aforementioned writ petitions as well as contempt petition shall stand decided by this common order as the issue involved is identical.

The writ petition bearing CWP No.1758 of 2016 is filed for setting aside the order dated 06.11.2015 (Annexure P-16), vide which, the

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punishment of 5% cut in pension for whole life has been imposed and further imposed the recovery of Rs.13,18,740/- from the retiral benefits.

A charge-sheet was issued to the petitioner and other similarly situated persons. As per charge-sheet, the purchases had been made from an un-approved source as well as on higher rates and that the payment towards these purchases was excess and in addition, the said Chulla was not an ISI marka.

After the departmental enquiry, the following penalties were inflicted upon the petitioner.

1. Recovery of loss of Rs.13,18,740/- from the retiral benefits.
2. Cut in pension to the extent of 5% for whole life.

It is further submitted that after the passing of order of punishment in Departmental Enquiry regarding purchasing of Gas Chulla/Lighter/Pipe/Regulators and Burners etc. from Haryana Khadi & Village Board, the petitioner and other similarly situated persons filed writ petition in this Court. The number of the writ petition filed by the petitioner i.e. CWP No.10084 of 2013 tilted as Karan Singh Vs. State of Haryana. The main case was CWP No.6315 of 2012 titled as Suman Nain Vs. State of Haryana. The main case i.e. Suman Nain Vs. State of Haryana was decided, vide order dated 02.08.2013, in favour of the petitioner namely Suman Nain. The respondent/State filed LPA against the judgment dated 02.08.2013. During the pendency of LPA, this Court admitted the writ petition of the petitioner and ordered to be heard alongwith LPA No.1937 of 2013 titled as State of Haryana Vs. Suman Nain.

The earlier writ petition filed by the petitioner bearing CWP No.10084 of 2013 titled as Karan Singh Vs. State of Haryana, was also disposed of keeping in view the order passed in LPA No.1937 of 2013 titled as State of Haryana Vs. Suman Nain, whereby the order of punishment was set aside and liberty was granted to pass afresh order. In pursuance to the same, the matter was reconsidered and fresh order dated 06.11.2015 was passed reiterating the earlier order once again by awarding the punishment of 5% cut in the pension with a further recovery of Rs.13,18,740/-.

Learned counsel for the parties were heard.

As recorded above, the petitioner was charge-sheeted on the allegations that the purchases had been made from an un-approved source as also on higher rates and that Chulla was not an ISI marka. Hence, one of the ground raised in the present petition is that the purchase has been made from approved source and the approved source is an undertaking of the Govt. of Haryana and all purchases have been made after prior verification from the said source. So, in these circumstances, no mis-conduct has been committed by the petitioner. There is substance in the argument so raised.

It is not disputed that the Government vide letter dated 27.09.1984 (P-3) has declared Haryana Khadi & Village Industries Board as an approved source. It is also noted that the Haryana Khadi & Village Industries Board is a Government of Haryana undertaking and 100% control is of the Govt. of Haryana. Even, the IAS officer is appointed its Managing Director. So, the said approved source is a Govt. of Haryana undertaking. Moreover, even prior to giving the order, the petitioner had verified from the said source what was the approved rates of Chulla etc. and vide letter

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dated 01.02.2007, the Haryana Khadi & Village Industries Board informed the approved rates of Chullas etc. and undisputedly when purchase has to be made from the approved source, no bargaining is required. So, in these undisputed factual position, no misconduct seems to have been committed by the petitioner and the allegations of higher rates is difficult to sustain because all payments have been made through cheques and all payments have been made to the Govt. of Haryana undertaking i.e. The Haryana Khadi & Village Industries Board.

In almost similar set of circumstances, learned Single Bench of this Court in the case of Sarita Chaudhary Vs. State of Haryana and another, CWP No.15574 of 2014 alongwith another connected writ petition bearing CWP No.15508 of 2014 titled as Sumedha Taneja Vs. State of Haryana and another, allowed the said writ petitions by holding as under:-

“xxxxxx Once the said store had been granted approval, the petitioners cannot be punished on the ground of making purchases from the said store. Moreover, as per the letter dated 15.10.2007 (Annexure P-9), it is clear that while making the purchases from approved source, no quotation was required to be made from the said agency.

The only ground taken by the respondents in the written statement is that vide letter dated 14.02.2008 issued by Financial Commissioner & Principal Secretary to Govt of Haryana, Industries, Department, Chandigarh, the Khadi Board was approved for handmade paper items manufactured by this unit. While filing the written statement carelessly letters Annexures R-2 and R-3 dated 30.04.2001 have been placed on record, which do not

relate to the Khadi Board. Hence they do not have any relevance for deciding this writ petition.”

There is nothing to show that any appeal was filed against the judgment rendered by this Court in the case of CWP No.15574 of 2014 decided on 27.05.2016, and the same has attained finality.

This case of the petitioner is identical. In the present case too, it is evident from Annexures P-3 and P-4 that the Haryana Khadi & Village Industries Board was duly approved source and it was the District Khadi & VI Officer-cum-Approved Source for Govt. Supply, who themselves issued Annexure P-4 i.e. the approved rates of 2006-2007.

The argument raised by learned counsel for the respondent that the approval was only qua the goods manufactured by the Board of the Units registered with it as per their memo dated 27.09.1984, does not help as the allegations in the charge-sheet was for having purchased from an un-approved source and not that the items purchased from the approved source were not manufactured by the Board of the Unit.

While dealing with the second argument raised by learned counsel for the respondent that the items were not ISI marka, where they were purchased from the approved source, which was a Haryana Govt. undertaking, it may be seen that the payment was by way of cheque and that too, to a Haryana Govt. undertaking. The learned Single Bench in the case of Suman Nain Vs. State of Haryana, CWP No.6315 of 2012, decided on 02.08.2013, recorded that no approved store or source where ISI marka Chulla/Bhatti was available on website. Therefore, in any case, no mala-fide can be alleged. In spite of the above, the respondent have gone ahead and

passed the penalty of recovery.

It was probably due to this that the learned Single Bench while setting aside the punishment order of compulsory retirement passed in the case of co-employee Suman Nain (CWP No.6315 of 2012 titled as Suman Nain Vs. State of Haryana, decided on 02.08.2013), identically placed as the petitioner, held that:-

“The level of discrimination practiced in a particular case is for constitutional Courts to examine and determine whether interference is called for and to what extent or not at all. The guiding principles laid down by the Supreme Court in such matters is found in the erudite judgment delivered by His Lordship Justice M. Jagannadha Rao, in ***Om Kumar vs. Union of India***; (2001) 2 SCC 386 and the salutary principles enunciated therein would have to be kept in mind in all such cases involving judicial review of administrative action. Measured from these angles I am unable to sustain Government action against the petitioner. I am also unable to reconcile myself to believe that from the total sanctioned amount of Rs.17,50,000/- for purchase of kitchen equipment for 350 Government Primary Schools in Jhajjar District for the Mid Day Meal Programme a loss of Rs 8,72,900/-determined in the statement of charges (P-2) can result to the State exchequer when the Government itself had put aside Rs.5,000/- per school for the purpose. The actual purchase in District Jhajjar was of Rs.11, 53,800/- for 342 Government schools and 8 Government aided schools (see P-22 colly). There is no technical report on record that the equipment purchased was of sub standard quality or does not work or does not exist at site. It has been asserted by the

petitioner at many places in the pleadings that till date there is no source which provides for commercial chulha/bhatti with ISI mark and this fact can be verified from the website of the Bureau of Indian Standards. This assertion has not been denied at all. After all chulha/bhatti was part of budget proposal and was named equipment to be purchased.”

The above observations were totally ignored while re-considering the case of the petitioner, which was also disposed of in the light of the above judgment rendered in the case of Suman Nain (supra). In view of the above discussion, the order of recovery of the said amount is, therefore, totally uncalled for. Accordingly, the impugned order dated 06.11.2015 is set aside and writ petition is allowed.

CWP No.16307 of 2014

The writ petition bearing CWP No.16307 of 2014 is filed for quashing of the impugned suspension order dated 26.07.2007 as well as for quashing of order dated 21.05.2014, vide which, the pay and allowances for the suspension period were restricted to whatever has been paid during the suspension period to the petitioner and the suspension period was wrongly treated as non duty period with a further prayer to direct the respondents to make payment of arrears of that period with interest and all consequential benefits thereof by treating the suspension period as duty period.

In view of the order of punishment dated 06.11.2015, vide which, the punishment of 5% cut in pension in the whole life had been imposed alongwith recovery of Rs.13,18,740/- having been set aside as above, the very order dated 21.05.2014, restricting the pay and allowances

to whatever has been paid during the suspension period has to go. The very basis of the suspension order having been quashed, the subsequent order of treating the suspension period as non duty period and restricting the pay and allowances of the said period to whatever is already granted, has to be set aside.

Accordingly, the writ petition is also allowed and orders dated 26.07.2007 and 21.05.2014 are set aside. The respondents are directed to pay the arrears of the suspension period alongwith interest @ 6% from filing of the present writ petitions till it is actually paid.

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In view of the above and after going through the contents of the contempt petition, this Court is of the opinion that no useful purpose would be served in continuing with the same.

The contempt petition is, accordingly dismissed as rendered infructuous.

Rule, if any, is discharged.

03.03.2020
sandeep

(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No