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

CWP-18976-2021

Date of decision: September 22, 2021

Satender Dahiya and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sandeep Singh Sangwan, Advocate
for the petitioners.

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J (ORAL)

Petitioners herein, *inter alia*, seek issuance of a writ in the nature of mandamus directing the respondents not to impose extra duties on them except related to duties as Veterinary Surgeons as they are unable to complete the tasks already assigned due to shortage of staff. Impugned herein is also a letter/ order dated 17.08.2021 vide which the petitioners being the gazetted officers, in addition to their regular duties, have been allotted Police Stations for search during registration of cases under Section 50 of the NDPS Act. Challenge herein is also to another letter/ order dated 06.09.2021 (Annexure P-10) vide which the petitioners are stated to have been assigned the work of holding camps under a scheme floated by the State Government known as Chief Minister Antodaya Parivar Utthan Yojana. Now vide the said impugned order, petitioners are supposed to interact with the families of marked persons and after giving them details of the schemes and promote and

prompt the said persons to give in writing as to what work would they want to do in order to increase their income.

2. Part of the petitioners' grievance is in fact arising out of directions rendered in **CRM-M-5074-2019** titled as **Joginder Singh versus State of Punjab**, decided on 28.05.2019, by a single Bench of this Court. For ready reference, relevant thereof is reproduced herein below: -

“It is further directed that a list of the empowered Gazetted Officers other than the police officers, along with their mobile numbers, in consultation with the Deputy Commissioner of the concerned district, will also be prepared in PDF format and will be given to all the Investigating Officers so as to call a Gazetted Officer during the investigation.”

3. As against the observations/ directions, the petitioners rely on a Division Bench of this Court rendered in **CWP-12554-2010** titled as **Haryana Veterinary Association, District Ambala versus State of Haryana and others**, decided on 20.01.2011. For ready reference, relevant part thereof reads as under: -

“While it is correct that an employee holding a public office can be asked to perform duties which strictly may not pertain to his office, such decision of the State must be justified on the touchstone of necessity and public interest. Veterinary Doctors who have nothing to do with the issuance of Below Poverty Line Cards or are associated with the process of issuance of such cards should not be entrusted such duties. In a situation, where effective re-verification/re-enquiry was considered necessary by the State in the matter of allotment of Below Poverty Line Cards, the same ought to have been enquired into by the persons who are conversant with the process. Instead, it is the Veterinary Doctors who have been assigned the said task. The result of such verification by the Veterinary Doctors who are not familiar with the process may not be effective at all. We are, therefore, of the view that order dated 23.6.2010 (Annexure P-1) and the assignment of duties of re-verification/re-enquiry into allotment of Below Poverty Line Cards by the Veterinary Doctors should receive our interference. Accordingly, State is directed to disassociate the Veterinary Doctors from the said task and assign the same to some other persons who are conversant with the same. PIL is disposed of in the above terms.”

4. A conjoint and harmonious reading of the single Bench order read along with the Division Bench order makes it clear that the impugned orders passed hereinabove are not in conflict with what has been noted by the Division Bench. The petitioners being posted as Gazetted Officers in their respective districts and concededly being Gazetted Officers are merely required to discharge their duties keeping in view the statutory mandate under the provisions of Section 50(1) of the NDPS Act. For ready reference, the same is reproduced herein below: -

“50. Conditions under which search of persons shall be conducted.-

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.”

5. A perusal of the above section leaves no manner of doubt that requirement of the statute is mandatory in nature and associating Gazetted Officer other than ones involved in normal administrative and law & order duties is to maintain the impartiality and ensure that an independent witness of a certain Government rank is involved. A perusal of the impugned order reflects that apart from the petitioners, who are Veterinary Surgeon officers from diverse streams have been involved, i.e. District Project Coordinator officer, Forest Range Officer, Principals of School/ Colleges, Executive Officers of Municipal Corporations, Block Education Officer, Executive Engineer, Tehsildars, Secretary of Market Committees, Sub-Divisional Officers under the Panchayati Raj, Agriculture Development Officer, Horticulture Development Officer.

6. In the aforesaid premise, it rather seems that shoe is on the other foot and impugned order has been passed keeping in view statutory mandate as well as in compliance of single Bench order dated 28.05.2019 *ibid*. In fact, issuance of a mandamus and/ order certiorari as sought by the petitioners would rather be discriminatory in nature inasmuch as other officers also belong to the specialized streams who are gazetted officers would by natural corollary feel that they have been unequally treated by assigning the duties envisaged under the NDPS Act, while the petitioners have been exempted therefrom.

7. *Qua* the second impugned order (Annexure P-10), it has been stated that the petitioners had requested respondents No.2&3 to exempt them from extra duty not related to them, but to no avail. It is expected of respondents No.2 & 3 to consider the request of the petitioners *qua* the impugned order dated 06.09.2021 (Annexure P-10) and if feasible, to take appropriate steps for exempting the petitioners from the duties assigned to them vide the said order, not related to the petitioners.

8. With these observations, the petition is disposed of.

(ARUN MONGA)
JUDGE

September 22, 2021

vandana/mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No