

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

COC-58-2022
Date of Decision: 28.10.2022

MOHD. KALEEM AZAD

...Petitioner

Versus

VIJAY SINGH CHAUHAN, THE DEPUTY SECRETARY
TO GOVERNMENT OF PUNJAB, DEPARTMENT OF
HOME AFFAIRS AND JUSTICE

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. PardumanGarg, Advocate
for the petitioner.

Mr. Rajesh Mehta, Addl. A.G., Punjab.

HARSH BUNGER, J.

Petitioner has filed the instant contempt petition under Sections 10 and 12 of the Contempt of Courts Act, 1971 (here-in-after referred to as 'the Act, 1971') on the plea that the respondent is liable to be punished for wilful and intentional disobedience of order dated 08.09.2021 (Annexure P-1) passed by this Court in **CWP-16366-2021**.

Succinctly, the petitioner was appointed/nominated as a Member of Punjab Waqf Board under Section 14(3) of the Waqf Act, 1995, for a period of five years w.e.f. 18.08.2017 to 18.08.2022. During the intervening period, one VivekBhambi had filed a complaint dated 03.06.2021 (Annexure P-2) against the petitioner. Relevant thereof, reads as under :-

“4. That thereafter, applicant made a payment of Rs.5,00,000/- on 17.09.2020, Rs.1,00,000/- on 09.11.2020, Rs.5,00,000/- on 24.11.2020 and Rs.50,000/- on 30.11.2020

to Mohammed Kaleem Azad, Member, Punjab Wakf Board, Mohammed Bashar Mamnoon, the then Estate Officer, Punjab Wakf Board in the house of Mohammed Kaleem Azad at Muslim Colony, Jalandhar in the presence of NeerajBhambi R/o village Phambian, Tehsil and District Hoshiarpur, Amolak Rattan Singh, R/o Football Chowk, Jalandhar. In this way, applicant made payment of Rs.25,00,000/- in total. The payment of Rs.11,50,000/- was received by the applicant to way of property and sum of Rs.1,50,000/- was withdrawn from the account of nephew of the applicant namely Rohit and remaining payment was withdrawn by the applicant from his bank account on different dates.

5. That above said persons received the payment from the applicant by saying that same is payment of arrears of lease, security, donation chargeable of Punjab Wakf Board. The above said persons issued no receipt by saying that they will issue the receipt later on. Mohammed Kaleem Azad also received two cheques, out of which one cheque is dated 30.11.2020 for a sum of Rs.500,000/- without name and another is dated 31.10.2020 for a sum of Rs.6,00,000/- in the name of Auqaf.

6. That the applicant surprised to know when he received notice dated 04.03.2021 from the branch office of Punjab Wakf Board, Jalandhar for payment of lease money. The applicant approached the branch office of Punjab Wakf Board and found that Mohammed Bashar, the then Estate Officer was suspended and new Estate officer Jameel Ahmed joined the office and they told the applicant that above said cheques are lying uncashed with file but no one has paid the lease money on behalf of applicant. Thereafter, applicant approached Mohammed Kaleem Azad, Member, Punjab Wakf Board, Hoshiarpur regarding the payment made by applicant and they told the applicant that the said amount is bribe amount to be paid by applicant for obtaining wakf

property on lease and said amount is not refundable. The applicant told that he has paid the said amount as arrears of lease money, lease amount, security and donation amount but same is not part of bribe amount. Upon this, above said persons told the applicant that the said amount is meant for approval of lease in his favour and balance amount is to be paid by him.

7. *That now the applicant has realized that the above said persons have played fraud upon applicant and swallowed the huge amount of applicant by making false representation.*

8. *That applicant came to know that the officials of Punjab Wakf Board are receiving the amount over and above the lease amount from almost all the lesson as bribe amount by playing fraud.”*

The aforesaid complaint was forwarded to the Chief Executive Officer, Punjab Wakf Board vide letter dated 11.06.2021 with a direction to submit its comment, who in turn submitted its report dated 28.06.2021 (Annexure P-3). Relevant extract of said report reads thus :-

“ Complainant visited the office today on 28.06.2021 and recorded his statement that the contents of the complaint be treated as his statement and he submitted the transcript of the audio-video and a pen drive containing the details of conversation with the member, RC and the private person appear to be prima facie correct for following reasons.

1. *The amount due from the proposed lessee was deposited by him through cheques but the same were never deposited with the bank. The reply submitted by the EO that there wasn't sufficient balance in the account is untenable as he did not even present the cheque before the bank.*

2. *The transcripts of the conversations produced by the complaint along with the pen drive give a clear insight into the circumstances surrounding the lease in*

question. The conversations clearly being out the fact that the member was completely involved in this lease and the proposed lessee had paid visits to his house. The member, Sh. Kaleem Azad, can be heard clearly saying that he needs money in loose and not as cheque and further that the amount due towards board can be cleared later but rest amount should be first cleared. The role of member in this whole act seems to be too dominant to ignore and his involvement apparently forced EO to not deposit the cheques in the bank.

3. *Report has been sought from EO Hoshiapur about the activities of private person in Hoshiarpur which is still awaited.*

While inquiry proceedings against the officials is going on and further evidence will be recorded and action will be taken as required under law, including the possible criminal action under PCA and IPC. Government may take such action as it may deem appropriate against the member Sh. Kaleem Azad.

The interim report is being submitted for information and necessary action please.”

Perusal of the file reveals that the Government of Punjab, Department of Home Affairs and Justice (Civil Defence Branch), vide Office letter dated 22.07.2021 (Annexure P-4) had forwarded the complaint and other documents to the Principal Secretary, Vigilance Department, Punjab, Chandigarh, for registration of criminal case against the petitioner and others under the relevant provisions of Prevention of Corruption Act, 1988 and Indian Penal Code. Subsequently, approval under Section 17-A of the Prevention of Corruption Act, 1988 has also been accorded with the competent authority.

Apart from the above-said criminal action initiated against the petitioner, the Government of Punjab, Department of Home Affairs and

Justice (Civil Defence Branch) issued a notification dated 12.08.2021 (Annexure P-5), whereby, the petitioner was removed as Member of the Punjab Waqf Board with immediate effect.

The petitioner, thereafter, filed a ***Civil Writ Petition No.16366 of 2021***, challenging notification dated 12.08.2021 issued by the State of Punjab, whereby, he was removed from the post of Member, Punjab Wakf Board. Pursuant thereto, a short reply by way of affidavit dated 07.09.2021 was filed by Sh. Vijay Singh Chauhan, Deputy Secretary to Government of Punjab, Department of Home Affairs and Justice, Punjab Chandigarh, wherein, it is *inter alia* stated as under :-

“7. That in the view of serious allegations of corruption supported by evidence, the Department of Home Affairs and Justice, Punjab vide its letter dated 22.07.2021, had written to the Principal Secretary, Department of Vigilance, Punjab for registration of a criminal case under the relevant provisions of the Prevention of Corruption Act, 1988 and Indian Penal Code, against the petitioner and other officials, alongwith previous approval under Section 17A of the Prevention of Corruption Act, 1988.

8. That in view of the complaints received against the petitioner with serious allegations of taking bribe on the pretext of allotment of waqf property, explanations were sought from him but the petitioner never responded to any of the explanations called from him and keeping in view the aforesaid facts and circumstances, and the conduct of the petitioner being prejudicial to the interest of the Board, the State Government issued the Notification dated 12.08.2021 under Section 20 of the Waqf Act, 1995, thereby removing the petitioner as a member of the Punjab Waqf Board.

9. That although notices were issued earlier to the petitioner on complaints received against him earlier, explanation was not sought in the instant complaint

inadvertently before issuance of the relevant Notification dated 12.08.2021 under Section 20 of the Waqf Act, 1995.

In light of the aforesaid submissions and as the relevant notification terminating the services of the petitioner was issued inadvertently without giving an opportunity being heard to the petitioner, the competent authority has decided to withdraw the notification dated 12.08.2021 terminating the services of the petitioner and decide the relevant complaint against the petitioner de novo by affording the petitioner a proper opportunity of being heard.

Therefore, it is respectfully prayed that as the competent authority has decided to withdraw the notification dated 12.08.2021 under challenge in the present writ petition. This Civil Writ Petition No.16366 of 2021 may kindly be dismissed, being infructuous.”

Taking note of the said reply, petition (CWP-**16366-2021**) was disposed of vide order dated 08.09.2021 (Annexure P-1) by observing as under :-

“Respondent No.1-State of Punjab has filed a reply which is taken on record. In paragraph 9 thereof, it is stated that inadvertently the petitioner was removed as a Member of the Punjab Waqf Board without affording him an opportunity of being heard. The competent authority has decided to withdraw the impugned notification dated 12.08.2021. However, the complaint received against the petitioner shall be dealt with separately after affording him an opportunity of hearing.

In view of the aforesaid statement made in the reply filed by the respondent No.1-State of Punjab, learned counsel for the petitioner submits that the petition has been rendered infructuous as the relief prayed for has already been granted.

In the circumstances and in view of the statement made by learned counsel for the parties, the petition is

disposed of as infructuous with liberty to the petitioner to approach this Court if any further cause of action survives or arises.”

Now, the petitioner has filed the instant contempt petition on the plea that in the reply filed by the respondents in ***Civil Writ Petition No.16366 of 2021***, it was stated that they would decide the complaint against him *de novo* by affording him a proper opportunity of being heard and hence, all the actions taken against him before filing of the above-referred reply would not be acted upon by the State and all the previous act would stand null and void. It is also contended that the respondent had not withdrawn the earlier sanction given to the Vigilance department intentionally and deliberately in order to harass the petitioner. Therefore, the act and conduct of the respondent is contemptuous one.

It is stated in the contempt petition that the Vigilance department had lodged FIR No.29 dated 24.11.2021 under Sections 409, 120-B IPC and Sections 7, 13(1)(a) and 13(2) of the Prevention of Corruption Act, 1988 against the petitioner on the basis of previous sanction.

On the other hand, a short reply by way of an affidavit dated 04.04.2022 of Smt. Baldeep Kaur, Special Secretary to the Government of Punjab, Department of Home Affairs and Justice, has been filed, *inter alia* stating therein, that the petitioner has already filed ***CWP-18299 of 2021*** titled as ***Mohd. Kaleem Azad Versus State of Punjab and another***, claiming similar relief, wherein, notice of motion has been issued and the same is still pending consideration. It is stated that the petitioner has deliberately concealed this fact from this Court that he had already filed ***CWP-18299-2021***.

In the said reply, the following categorical stand has been taken :-

“7. That the Department of Home Affairs and Justice has not altered its position as mentioned in its earlier affidavit dated 07.09.2021 and has withdrawn the notification dated 12.08.2021 vide its Notification dated 18.09.2021 (Copy of the same is attached as Annexure R-3) and in pursuance to order dated 08.09.2021 in CWP No.16366 of 2021, an opportunity of hearing/explanation has also been afforded to the petitioner as per the provisions of Section 20(1)(b) of the Waqf Act, 1995 vide letter no.06/13/2016-6CD (P.F.)/1329-30, Date 13.10.2021 (Annexure P-7).”

It is accordingly stated that there is no intentional disobedience of the order passed by this Court and prayer has been made that the contempt proceedings may be dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The contention of the petitioner that in view of the stand of the Government recorded in order dated 08.09.2021 (Annexure P-1) that the complaint received against him shall be dealt with separately after affording him an opportunity of hearing, all the actions taken against him before filing of reply in **CWP-16366-2021** would not be acted upon by the State and all the previous act would stand null and void, is totally misplaced, for more than one reason; mentioned here-in-below :-

Firstly; in **CWP-16366-2021**, the petitioner had challenged the notification dated 12.08.2021 issued by the State of Punjab, whereby, he was removed from the post of Member, Punjab Wakf Board. Since, this notification dated 12.08.2021, removing the petitioner from the post of Member, Punjab Wakf Board, was issued without calling upon any

explanation from him, hence, it was stated in reply dated 07.09.2021 (Annexure P-6) filed in **CWP-16366-2021**, that the competent authority had decided to withdraw the notification dated 12.08.2021 under challenge in the said writ petition. In view of the statement made in the reply filed by the State of Punjab, learned counsel for the petitioner in **CWP-16366-2021**, submitted that the petition has been rendered infructuous as the relief prayed for, had already been granted. Accordingly, **CWP-16366-2021** was disposed of as infructuous with liberty to the petitioner to approach this Court if any further cause of action survives or arises.

It is manifest that the only undertaking as reflected in order dated 08.09.2021 (Annexure P-1) is regarding withdrawal of notification dated 12.08.2021 and as per short reply/affidavit dated 04.04.2022 filed in this petition, notification dated 12.08.2021 was in fact withdrawn vide notification dated 18.09.2021 (Annexure R/3). Thus, the undertaking recorded in order dated 08.09.2021 was duly complied with.

Further, in pursuance of order dated 08.09.2021 (Annexure P-1) passed in **CWP-16366-2021**, an opportunity of hearing/explanation has also been afforded to the petitioner as per provisions of Section 20(1)(b) of the Wakf Act, 1995, vide letter No.06/13/2016-6CD(P.F.)/1329-30 dated 13.10.2021 (Annexure P-7).

Secondly; the action of the petitioner in filing second writ petition i.e. **CWP-18299-2021**, challenging the enquiry order dated 28.06.2021 conducted by the Chief Executive Officer and also seeking quashing of order passed by the State of Punjab, directing Vigilance Bureau to register criminal case against the petitioner under relevant provisions of Prevention of Corruption Act, 1988 and Indian Penal Code, 1860; leaves no

manner of doubt that order dated 08.09.2021 (Annexure P-1) was limited only in respect of notification dated 12.08.2021, which was subsequently withdrawn by the State of Punjab, in consonance with its stand taken before this Court, as recorded in order dated 08.09.2021 (Annexure P-1).

Thirdly; the petitioner had filed writ petition bearing ***CWP-18299-2021*** in September-2021, whereas, the present contempt petition has been filed in the month of January-2022. The petitioner has not disclosed the filing of this writ petition in the present contempt petition, for the reasons best known to him.

Fourthly, it is well settled that a departmental action and criminal action against an employee are two distinct and separate proceedings and both actions can be proceeded with simultaneously. In so far as, departmental action against an employee is concerned, the same would call for an opportunity of hearing to the concerned employee before taking any action against him/her, whereas, on the other hand, no such hearing would be required when a criminal action is anticipated against such an employee.

Moreover, for every contempt, there has to be a wilful disobedience and the jurisdiction in contempt shall be exercised on a clear case having been made out.

Hon'ble the Apex Court in ***Sudhir Vasudeva, Chairman and MD, ONGC and others v. M. George Ravishekaran and others, AIR 2014 Supreme Court 950*** has held that the Court should not go beyond the four corners of order alleged to be flouted or enter in questions not dealt in order or to reopen the decided issues or to pass order supplemental to what has

been expressed in order alleged to be flouted.

Taking all facts and circumstances into consideration, I am satisfied that no case for contempt of order dated 08.09.2021 (Annexure P-1) is made out. Resultantly, the instant contempt petition is dismissed.

Ocobter 28, 2022
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No