

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14596-1998 (O&M)
Date of decision: May 5, 2022

Dhani Ram Chaudhary

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: None for the petitioner.

Mr. R.D. Sharma, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Challenge herein is to order dated 27.08.1998 (Annexure P-9) with a prayer to issue a writ in the nature of certiorari and or otherwise to quash the same. Vide impugned order petitioner was pre-maturely retired from service when at the relevant time he was serving as Executive Engineer. However, prayer at the time of filing writ petition was that he be allowed to continue as Executive Engineer with all consequential benefits.

2. Writ petition was admitted in the year 1998 and has been pending ever since to be heard and when called out for hearing, there is no representation on behalf of the petitioner.

3. It appears that by sheer effluxion of time and/or pendency of the case before this Court for almost 24 years, the petitioner has either lost interest or otherwise may not be interested to pursue his remedy at this stage particularly in view of order dated 03.11.1998 passed by a Division Bench vide which his prayer

for grant of stay of pre-mature retirement was declined. For ready reference, said order is reproduced herein below:

“Heard Shri S.P. Singh and perused the record of the case.

Having regard to the allegation made in the writ petition filed for challenging the pre-mature retirement of the petitioner, we are of the opinion that the issues raised therein requires further consideration.

Admit.

Shri S.P. Singh prayed for stay of the order of retirement dated 27.08.1998. However, in our opinion, there does not exist any valid reason to stay the implementation of the order of retirement. If, at all, the petitioner succeeds in the writ petition, he will get all consequential reliefs including that of reinstatement with consequential monetary benefits. On the other hand, if the petition is dismissed, the respondents cannot be compensated in any manner whatsoever. Therefore, we decline stay of the implementation of the order, which, in fact, has already become effective.

The prayer for early hearing made by Shri Singh cannot be accepted at this stage because thousands of cases of the years 1979 to 1997 are pending before the Court and in view of the fact that the Court is working with half of its strength, there is no reason to give precedence to the petitioner’s case in the matter of hearing. We, therefore, direct that this case be listed for hearing on its own turn and not out of turn.”

In the aforesaid premise, no worthwhile purpose would be served at this stage to take up the petition on merits as by rough guesstimate age of the petitioner as on today would be somewhere around 75 years and the only benefit that would survive, if at all, would be with respect to certain monetary benefits arising out of quashing of the impugned order, which may lead to his being considered for further promotion.

4. Speaking on merits, reference may be had to detailed observations made by the Division Bench of this Court in its order dated 03.11.1998 passed in CM-22062-1998. Speaking for the Division Bench of this Court G.S. Singhvi, J. (as he then was in this Court) in no uncertain terms made following scathing remarks on the conduct of the petitioner:

When the case was taken up for hearing on 15.09.1998, we found that in the writ petition reference has been made to the confidential notings recorded by Shri Jagan Nath, Hon'ble Public Health Minister, Haryana and the contents of the annual confidential reports for the years 1987-88 to 1996-97. Since these documents could not ordinarily be in the petitioner's possession, we directed him to file his own affidavit as well as the affidavit of the person who disclosed him the contents of the notings recorded by the Hon'ble Minister. In compliance of that direction, the petitioner filed affidavit dated 17.09.1998 in which he stated that the relevant information has been made available to him by Shri Baldev Singh, Deputy Secretary to Government Haryana, PWD, Public Health Branch on 28.08.1998 at Delhi where the latter had gone in connection with Civil Appeal No.4519 of 1998 (arising out of S.L.P. (C) No.8075 of 1998, Dhani Ram Chaudhary Vs. State of Haryana and others).

After having perused the petitioner's affidavit, we asked the learned Deputy Advocate General to find out from the government whether Shri Baldev Singh was authorized by the Chief Secretary, Haryana or any other competent authority of the Government to disclose to the petitioner the note/comments recorded by the Hon'ble Minister.

In response to that direction, Shri Baldev Singh, Deputy Secretary, Public Health Department and Civil Aviation Department has filed his own affidavit.

We have perused the affidavits of the petitioner and Shri Baldev Singh.

In his affidavit the petitioner has made the following statement:-

"1) That in order to make out a prima facie case in his favour, the deponent in his above noted C.W.P. at pages 19, 20 and 21 of the list of dates and events and at pages 20 and 21 of the writ petition has given the summary of his last ten years A.C.Rs. i.e. w.e.f. 1987-88 to 1996-97.

2) That similarly, the petitioner has reproduced the comments/notings of Sh. Jagan Nath, Hon'ble Public Health Minister Haryana at page 22 of the list of dates and events and at pages 22 and 23 of the writ petition in order to demonstrate that approval of Council of Ministers as required by Note 2 given below Rule 5.32-A of the Punjab C.S.R. Volume II is lacking in the case of pre-mature compulsory retirement of the deponent.

3) That the said information as detailed in above paras No.1 and 2 of the present affidavit has been disclosed to the deponent by Sh. Baldev Singh, Deputy Secretary to Govt. Haryana, P.W.D. Public Health Branch, Chandigarh suo-moto on 28.08.1998 at Delhi when he had gone there in connection with his (Deponent's) Civil Appeal No. 4519 of 1998 (arising out of S.L.P. (C) No.8075 of 1998), titled as Dhani Ram Chaudhary

Versus State of Haryana and others, decided by Hon'ble Apex Court on 28.08.1998."

In paragraphs 3, 4, 5, 6, 7, 8, 9 and 10 of his affidavit, Shri Baldev Singh has made the following statement:-

"3. That the deponent was neither authorized by the Chief Secretary to Govt., Haryana or other competent officer i.e. Financial Commissioner & Secretary to Govt., Haryana, PWD, Public Health Department to disclose the information nor any information was disclosed to the petitioner as alleged.

4. That the deponent joined as Deputy Secretary to Govt., Haryana, PWD, Public Health Department and Civil Aviation Department in addition vide Haryana Govt. Order No.1/106/98-1SII, dated 14.7.98 and assumed the charge of this post on 15.07.98.

5. That I have no personal or social relations with Shri Dhani Ram Chaudhary. Even in my official capacity as public servant Shri Dhani Ram Chaudhary never met me after my joining the Public Health Department on 15.07.1998.

6. That the file of Shri Dhani Ram Chaudhary, Executive Engineer, Public Health regarding retention in service beyond the age of 50 years containing the Hon'ble Public Health Minister's note dated 23.12.1997 and the record of ACRs was sent to the Chief Secretary to Govt., Haryana (in the General Services Department) on 26.06.1998 for being placed before the officer's Committee. This file was received back in the office of Financial Commissioner, Public Health on 26.08.98 with the advice of the Chief Secretary, Haryana.

7. That after joining the Public Health Department on 15.07.98 the deponent saw the file for the first time on 27.08.98 when the office submitted the file for obtaining orders of Hon'ble C.M., Haryana as per the advice of the Chief Secretary to Govt., Haryana for retiring Sh. Dhani Ram Chaudhary compulsorily.

8. That the deponent immediately marked the file to the Worthy Financial Commissioner, Public Health. The proposed action on the file was approved by the Hon'ble C.M. on 27.08.1998 (Evening) and necessary orders retiring Shri Dhani Ram Chaudhary were signed by the Competent Authority i.e. Financial Commissioner, Public Health at about 7.30 P.M. on the same day i.e. 27.08.98. The file was not in the knowledge of deponent prior to 27.08.98.

9. That SLP No.8075/1998 filed by Shri Dhani Ram Chaudhary was fixed for hearing on the next day i.e. 28.8.98 in the Hon'ble Supreme Court of India, New Delhi. As per orders of Worthy Financial Commissioner, Public Health the deponent along with Shri Ram Lal, Superintendent and Shri Krishan Kumar, Assistant District Attorney of the office of the Engineer-in-Chief,

Haryana, PWD, Public Health left for Delhi on 28.08.98 at about 4.00 A.M. by Govt. vehicle with only one relevant file regarding SLP No.8075/1998 whereby Shri Dhani Ram Chaudhary has prayed for his promotion to the post of Superintending Engineer. After attending the hearing on 28.08.98 the deponent recorded brief observations of the Hon'ble Supreme Court on the aforesaid case for the information of Worthy Financial Commissioner, Public Health.

10. That as there was no necessity/opportunity to carry the file relating to compulsory retirement of the petitioner to Delhi on 28.8.1998, this file, which contains the note dated 23.12.1997 of Shri Jagan Nath, Public Health Minister, was in the Public Health Branch at Chandigarh on 28.8.98 for immediate further necessary action regarding delivering the compulsory retirement orders and payment of three months salary to the petitioner."

After perusing the two affidavits, we are convinced that the assertion made by the petitioner that Shri Baldev Singh had given him copy of the note recorded by the Hon'ble Minister is far from being correct. It is, indeed, unfortunate that the petitioner has ventured to file a patently incorrect affidavit. We also disapprove his attempt to sneak into the confidential files of the government. This fact will be kept in view at the time of final hearing of the writ petition."

5. In the backdrop of the above, I am not inclined to interfere in the writ jurisdiction to quash the impugned order, as has been prayed herein. It is settled position in law that a person who claims equity must also act equitable and the conduct of the petitioner as aforesaid does not invite any indulgence so as to exercise its extraordinary writ jurisdiction.

6. Dismissed.

(ARUN MONGA)
JUDGE

May 5, 2022
vandana

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