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

CWP No.14119 OF 2006 (O&M)

Reserved on : 03.08.2022

Pronounced on : 30.08.2022

Anil Kumar and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Aditya Yadav, Advocate
for the petitioners.

Mr. R. D. Sharma, D.A.G., Haryana.

ARUN MONGA, J.

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing orders dated 13.03.2006 & 04.08.2006 (Annexures P-7 to P-15) passed by respondents No.3 to 6 under Article 311(2)(B) for the petitioners' dismissal from service by dispensing with the departmental enquiry.

2. Succinct facts first. Petitioners No.1 to 5 joined as Clerk in the respondent- department in the year 1998-2001 and petitioners No.6 to 9 joined as Class IV employee in the same department in the year 1996, 1998 and 1999 respectively. On 29.07.2004, the Superintending Engineer, Yamuna Water Circle, Bhiwani sent a letter to the Executive Engineer and Land Acquisition Collector of Yamuna Water Services, Circle Bhimani regarding appointment of some Clerks and other posts in a

fraudulent manner by preparing fake documents. The respondent department asked the petitioners to submit their appointment letter, failing which, their services would be terminated. The petitioners had challenged the said show cause notice by way of various writ petitions and termination of services of the petitioners was stayed. The respondent department also got registered a criminal case in which this Court had granted interim bail to all the petitioners. All the writ petitions were disposed of on 20.10.2005 by the Division Bench and it was held that appointments have been given to the petitioners in a manner, which is really unbecoming and directed the respondent-State to initiate an enquiry through Vigilance department, if not already initiated and take the same to its logic conclusion both with regard to the involvement of the petitioners and also of those who had given the appointment in improper way. This Court also relegated the petitioners to avail the remedy of civil suits, if so advised, as disputed questions of facts were involved.

3. The Director General of Vigilance, Haryana submitted his report to the Chief Secretary of Haryana on 08.12.2005. As per the vigilance enquiry report in the year 1998 to 2001, the recruitment of 14 employees was based on fake documents on the vacant post in different Range of Irrigation Department, Bhiwani. The fake appointment of all the employees had been done with the help of various officials of the respondent-department. Therefore, the impugned orders (Annexures P-7 to P-15) were passed dispensing with the department enquiry. Hence, the present petition.

4. Learned counsel for the petitioners has argued that though the FIR registered against the petitioners was cancelled by the police and the FIR registered by the vigilance against the petitioners was also

quashed the respondent–department still illegally dismissed the petitioners from service only by making them a scapegoat. He has relied upon the judgment of the Supreme Court in Civil Appeal No.3186 of 2008 titled as ***Man Singh vs. State of Haryana*** to contend that the respondent-department cannot be permitted to resort to selective treatment by way of adopting different criteria of punishment for petitioners. He has further argued that once the petitioners had been appointed and continued in service for sufficient long period then the invoking of Article 311(2)(b) of the Constitution of India dispensing with the departmental enquiry is contrary to the law laid down by the Supreme Court and under the Haryana Civil Services (Punishment & Appeal) Rules, 1987.

5. Learned State counsel has strenuously argued that during preliminary and vigilance enquiry proceedings, it transpired that the factum of producing fake, forged and fictitious documents occurred prior to the entry into the government service by the petitioners in connivance with some unknown employees and, therefore, the cases were registered against the petitioners and other accused persons. He has further argued that since the fraud happened through illegal means before the entry of the petitioners into the government service, it does not provide them any protection under Article 311 of the Constitution of India and under the HCS (P&A) Rules, 1987 and, therefore, the competent authority rightly invoked the provisions of Article 311(2)(b) of the Constitution of India. Further their appointment in service by fraudulent methodology vitiates everything, hence was void *ab initio*. He has further argued that the averments that the petitioners have been made a scapegoat is neither here nor there as the real beneficiaries are the petitioners and consequences of the fraud and use of forged, fabricated and fictitious documents, prepared

by the petitioners before their induction into service cannot be allowed to be legalized by allowing them to continue in service, more so, when they themselves failed to cooperate in the conclusion of departmental enquiry proceedings. Learned State counsel has relied upon the judgments of the Supreme Court in the matters of *Sahadeo Singh vs. Union of India and others, 2003 AIR (SC) 1568* and *R. Vishwantha Pillai vs. State of Kerala and others, 2004 AIR (SC) 1469* to contend that once the candidate got appointment on the basis of fake certificate or any fraud and that in preliminary enquiry there are reasons and material on record to dispense with the holding of inquiry, the candidate cannot claim protection under Article 311 of the Constitution of India. In view thereof, dismissal of petition has been sought by the respondents.

6. I have heard rival contentions and now proceed to note the same and elaborate my opinion thereon.

7. First and foremost, the learned counsel for the petitioners has strenuously argued that the protection envisaged under Haryana Civil Services (Punishment & Appeal) Rules, 1987 to an employee being a substantive right of an employee cannot be summarily taken away by exercising powers conferred under Article 311(2)(b) of the Constitution of India. Let us see if it is so in the instant case.

8. Before advertng to the same, it is pertinent to note here that what emerges from facts and perusal of the record is that concededly it is not a case of any malafides and/or hostile discrimination of any kind on the part of the official respondents. It was on their own volition of course that the action as warranted on their part was taken upon coming to know of certain information qua the alleged forgery and fabrication of documents, based whereupon the appointments of the petitioners were

alleged to have been made. In order to unearth any illegality therein and to find the real facts of the case, a preliminary inquiry was ordered. As per the preliminary inquiry report, it transpired that the appointment letters shown to have been issued by the department's officials were in fact fictitious and even the signatures of the appointing authority were forged. Naturally, there was no choice left with the official respondents but to go deeper in the matter by registering an FIR by the State Vigilance Bureau, Hisar, under Sections 420, 467, 468, 471, 120-B IPC being FIR No.15 dated 31.03.2006, against the petitioners and other unknown government employees who may have been involved. Therefore, a vigilance enquiry was also conducted in addition to the preliminary enquiry as aforesaid. The vigilance enquiry also reveals that indeed forgery had been committed for fabrication of certain fictitious documents which never existed on the office records. However, the forgery was committed prior to the petitioners entering into the government service. Petitioners were issued show cause notices which led to their filing of an earlier petition bearing CWP No.9474 of 2005 alongwith connected civil writ petitions filed by other similar persons, whereby initially this Court granted stay on their termination. Vide order dated 20.10.2005, bunch of writ petitions were disposed of and the petitioners were relegated to avail remedy of civil suits, if so advised, in view of disputed questions of facts. Order dated 20.10.2005 is as below:-

“xxxx xxxx xxxx

It has been pointed out by Mr. Sidhu that in some cases appointments on compassionate grounds have been given though the fathers were not even government employees and in some case were still living. The petitioners counsel have on there contrary

pointed out the petitioners were Class IV employee, whose appointment had been manipulated by the respondents at their own end and that having been faced with the presently situation they were attending to deflect all proceeding towards the petitioners. We find that disputed question of facts have been raised in these matters. We accordingly relegate the petitioners to their remedy by way of civil suits, if so advised.

Meanwhile, we direct the respondent State to initiate an Enquiry through the vigilance department, if not already initiated and take it logical conclusion both with regard to the involvement of the petitioners and also if those who have given the appointment improper way.

This writ petition is disposed off accordingly.”

9. The vigilance inquiry report dated 08.12.2005 (Annexure P-6) clearly rendered a finding that appointment of petitioners i.e. Anil Kumar, Clerk (petitioner No.1), Manmohan Singh, Clerk, Yamuna Water Services, Bhiwani (petitioner No.4), Surya Parkash, Water Services, Bhiwani (petitioner No.2) and Jai Parkash, Watchman, Loharu Water Services, Dadri are illegal. The inquiry report also rendered a finding that even the service book of four of the delinquents were prepared in the same handwriting, notwithstanding that they were appointed in different districts i.e. Bhiwani, Yamunanagar, Sonipat and Karnal etc. Not only that, despite carrying out search in the respective offices their appointment letters were not traceable as the same were not available in the official files. To be also noted that prior to conduct of the vigilance inquiry the department also initiated the process of appropriate departmental proceedings including holding an inquiry under the provisions of Haryana Civil Services (Punishment & Appeal) Rules, 1987

and precursor thereto issued charge-sheets under rule 7 thereof to the petitioners. They were also put under notice for their misconduct under Government Employees Conduct Rules, 1966 for illegally procuring their appointment letters on the basis of forged, fabricated and fictitious documents created of course prior their entry in service. If the petitioners were/are as clean as is claimed by them, it is rather intriguing to note as to why they would not cooperate with the department in inquiry/vigilance proceedings. Not only the petitioners did not cooperate but even the government employees who had connived with them in issuance of appointment letters on the basis of forged, fabricated and fictitious documents to allow them backdoor entry in government departments, also did not cooperate. It was in this premise that it was felt that it was practically not possible to hold a full-fledged inquiry as contemplated under Rule 1987 *ibid*.

10. Assuming for the sake argument, as has been canvassed by learned counsel for the petitioners, the inquiry under rule 7 is a *sine qua non* and summary powers cannot be invoked merely to take away the vested right of the petitioners under the service rules. It is actually not so, as the entire purpose of conducting the inquiry is two folds i.e. to unearth the facts and also to ensure that there is no violation of principles of natural justice, equity and fair play by denying the delinquents the chance to defend themselves in case there are any adverse consequences resulting out of the inquiry. In this case, there is no violation of any kind either in terms of principles of natural justice or denial of right to defend themselves inasmuch as not one but two different inquiry had indicted them i.e. preliminary enquiry followed by vigilance inquiry. As regards a full-fledged departmental inquiry not having been conducted under rule 7,

it does not lie in the mouth of the petitioners to claim any such inquiry as a matter of right in view of their own non-cooperation as pointed out above. The arguments therefore necessarily have to be rejected as by their own act and conduct, the petitioners had caused self-inflicted injury compelling the competent authority to invoke Article 311 of the Constitution of India.

11. As an upshot of the above discussions, no ground to interfere under extraordinary writ jurisdiction is made out, more so, when there are disputed questions of facts involved and despite the petitioners having been relegated to avail his civil remedies by way of adducing evidence, they have chosen not to do so.

12. Petition is dismissed. The impugned orders are upheld qua all the petitioners.

13. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

August 30, 2022
ashish

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No