

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

117

CWP No.20971 of 2022
Date of Decision: 18.10.2022

Harcharn Singh

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Kapil Kakkar, Advocate, for the petitioner.

Mr. Satya Pal Jain, Addl. Solicitor General of India, with
Mr. Ashish Rawal, Senior Panel Counsel,
for respondent Nos.1 and 2.

VIKAS SURI, J. (Oral)

The petitioner has invoked the jurisdiction of this Court by this petition under Article 226/227 of the Constitution of India *inter alia* with the following substantive prayer:-

- “(ii) To issue a writ, order or direction, especially in the nature of mandamus directing respondent Nos.1 and 2 to grant “No Pending Enquiry Certificate” forthwith which has not been issued despite numerous representations and in the absence of which the case of the petitioner is not being considered for the post of President, District Consumer Commissions in the State of Punjab and Member, District Consumer Forums accordingly he will suffer irreparable loss because of the typical bureaucratic attitude of the respondents.
- (iii) It is further prayed that during the pendency of the writ petition, respondent Nos.3 and 4 may be directed to accept the candidature of the petitioner for the post of President, District Consumer Commission, in the State of Punjab and Member, District Consumer Commission, Kapurthala and Malerkotla provisionally subject to submission of No Pending Enquiry Certificate before the final selection.”

That on the first preliminary hearing itself, learned counsel for respondent Nos.1 and 2 had put in appearance as a copy of the petition had been served on him in advance.

The petitioner has submitted that he served two consecutive terms as Presiding Officer, Debt Recovery Tribunal at Chandigarh. The first time was as a Presiding Officer, Debt Recovery Tribunal-II, Chandigarh, appointed vide order dated 11.08.2010 (Annexure P-1), which was for a period of five years from the date of resumption of the charge of the post or till attaining the age of 62 years, whichever is earlier. The second term was as a Presiding Officer, Debt Recovery Tribunal-I, Chandigarh, appointed vide order dated 15.12.2014 (Annexure P-2), with the same conditions.

It is averred in the petition that the petitioner after completing his term as a Presiding Officer, Debt Recovery Tribunal-I, Chandigarh, relinquished the charge on 16.01.2020.

On 15.09.2022, learned counsel for respondent Nos.1 and 2, who was present in Court, was called upon to seek information and apprise the Court of the action/decision taken, if any, regarding the request of the petitioner dated 21.07.2022 (Annexure P-6), which was forwarded vide communication dated 01.08.2022 (Annexure P-7) to the Ministry of Finance, Department of Financial Services, New Delhi, seeking "No Enquiry Certificate".

On 16.09.2022, the following order was passed:-

"At the very outset, Mr. Satya Pal Jain, Addl. Solicitor General of India, informs the Court that on the request of the petitioner necessary action has been initiated and is underway. The process to seek inputs and necessary clearances from different Ministries and other departments concerned, on account of sensitivity and nature of the post in question, is likely to take another four to six weeks to complete and only thereafter further action could be taken.

As such, accommodation is sought to place on record the final result of the aforesaid process, for consideration of the Court.

Learned counsel for the petitioner submits that last date to furnish the “No Inquiry Certificate” is 16.09.2022 till 5.00 PM, failing which the candidature would be rejected.

A perusal of the paper book and the averment made in the petition in that regard shows that in the year 2020 also, the candidature of the petitioner was rejected for want of the same certificate, with the following remarks:

“No Enquiry Certificate not submitted despite giving one opportunity”

It may be noticed that after rejection of the candidature in the year 2020, no steps were taken by the petitioner to obtain the 'No Inquiry Certificate' or any form of NOC for record and reference in future.

In the present case, the posts in question were advertised on 14.07.2022 by issuing a Public Notice (Annexure P-5) and the cutoff date for receipt of applications was 10.08.2022 upto 5.00 PM. Though the petitioner had made a request to the concerned authority, seeking a certificate mentioned in clause 2.2 of the public notice but chose not to approach the Court at that time. The petitioner applied for three posts pursuant to the Public Notice, including that of President, District Consumer Commission (District Level), without the mandated certificate by giving the remarks that the certificate has already been applied.

The petitioner has now sought to invoke the jurisdiction of this Court only after receipt of the letter dated 08.09.2022 (Annexure P-12), relevant portion of which reads as under:

“With reference to your application in response to Public Notice dated 14.07.2022, it is submitted that you have mentioned in your application that an enquiry was conducted but no charges were proved and you have also attached an Affidavit to the effect that no departmental enquiry is pending against you. However, as per enquiry report 07.01.2020, the charges qua article II to the extent have been substantiated. Therefore, the contents of your application/affidavit are incorrect. Hence, you are requested to submit four sets of the following documents, till 16.09.2022 at 05:00 PM, failing which your candidature shall be rejected:-

1. **Decision/Order passed by the Competent Authority of your department with regard to your enquiry showing that the same has been closed.**
2. **No enquiry certificate from your last employer as per condition No.2.2 read with Mandatory Documents**

mentioned in the Public Notice dated 14.07.2022. ”

Learned counsel for the petitioner has argued that as per public notice, the petitioner was not required to attach the certificate with the application form, therefore not having approached the Court earlier should not be taken into consideration.

It may also be noticed that the petitioner is not alien to judicial processes or to the timelines involved in adjudicatory process, having served two full terms as Presiding Officer, Debt Recovery Tribunal at Chandigarh, as per his own averment.

Counsel would further point out that the applications submitted for three posts one for President, District Consumer Commission (District Level) and two for Member, District Consumer Commission, are collectively attached as Annexure P-8.

With regard to the candidature for the post of President, against Column Nos.21 and 25 of the application, it was specifically submitted as under:

21	Whether the applicant has ever been charge-sheeted for any criminal offence or in any departmental proceedings? if yes, the details thereof.
	Yes Enquiry was conducted but no charges proved. NO ENQUIRY PENDING. Copy attached.
25	Any other relevant information not covered under columns No. 1 to 23 above.
	No enquiry certificate has already been applied to

As regards to candidature for the post of Member, District Consumer Commission, Malerkotla, against Column Nos.21 and 25 of the application, the following remarks were submitted:

21	Whether the applicant has ever been charge-sheeted for any criminal offence or in any departmental proceedings? if yes, the details thereof.
	Yes Enquiry was conducted but no charge proved. Copy attached herewith. No Enquiry report has been applied
	Any other relevant information not covered under columns No. 1 to 23 above.
	No enquiry certified applied and awaited.

Whereas, in the third application for the post of Member, District Consumer Commission, Kapurthala, Column No. 25 has been left blank. Column Nos.21 and 25 of the said application, read as under:

21	Whether the applicant has ever been charge-sheeted for any criminal offence or in any departmental proceedings? if yes, the details thereof.
	Yes Enquiry conducted but no charge proved. No Enquiry certificate applied and awaited. Copy is attached along.
25	Any other relevant information not covered under columns No. 1 to 23 above.

Heard learned counsel for the petitioner and learned senior counsel appearing for the contesting respondent Nos.1 and 2, at some length.

Learned counsel for the petitioner does not seriously oppose the request of the contesting respondents’ counsel, seeking time to place on record the final result of the information sought from the different Ministries and other departments concerned. However, he presses for *ex-parte* interim directions to respondent Nos.3 and 4 to accept the candidature of the petitioner, provisionally.

Learned counsel for the petitioner is not in a position to point out any statutory provision or service rule, under which the certification, as sought, is mandated to be furnished. Same was the position on the previous date. It is not disputed that the term post as Presiding Officer, Debt Recovery Tribunal, that was held by the petitioner is governed by the terms and conditions stipulated in the 'Debts Recovery Tribunal (Salaries, Allowances and other terms and conditions of service of Presiding Officer) Rules, 1993'.

A perusal of the record also shows that even a copy of the present petition has not been supplied in advance to respondent Nos. 3 and 4, against whom an *ex-patre* order as interim relief is being sought. However, advance copy is shown to have been sent to respondent Nos.1 and 2 only. Moreover, the petitioner was aware of the likely outcome for not having submitted the mandated 'No Inquiry Certificate', from his past experience of rejection of candidature in the year 2020, for the same reason noticed above. The Public Notice (Annexure P-5) also makes the stance of the said official respondents

very clear in unambiguous words, which read as under:

“It is made clear that applications filled online at the link available at <http://foodsuppb.gov.in> till the cutoff date i.e 10.08.2022 upto 5.00 PM, complete in all aspects alongwith all the requisite documents with application fee of Rupees 2000/- paid online shall be considered. However in addition to above, applicant shall submit four set (hard copies) of application alongwith his/her complete documents (which he has filed online) in the office of the Registrar, State Consumer Disputes Redressal Commission, Punjab, Dakshin Marg, Sector 37-A, Chandigarh till 10.08.2022 upto 5.00PM.

Any application found incomplete, in any manner or hard copy of the application (alongwith complete documents) not received within the specified date and time, the same would be rejected in scrutiny and no intimation regarding the same shall be sent to applicant.”

[*Emphasis supplied*]

The petitioner has not shown to have taken any steps before a Court of competent jurisdiction, after rejection of the candidature in the year 2020, to obtain any NOC or the 'No Inquiry Certificate'. It is also not the case of the petitioner that the said rejection was before the Inquiry Report dated 07.01.2020 (Annexure P-4) came into being. The petitioner has chosen to file the present petition on 12.09.2022, at the eleventh hour and after responding to the defects pointed out by the Registry, it was re-filed on the following day.

There is no material on record to show that with regard to Article II of the charge-sheet, which stood substantiated as per the report of the Inquiring Authority dated 07.01.2020 (Annexure P-4), whether any further proceedings were taken out or the same was dropped. Even if viewed from that angle, at least a preliminary response from respondent Nos. 1 and 2 in that regard would be necessary before considering the prayer for interim relief.

In view of the above discussion and also considering the factual matrix in its entirety as well as the peculiar circumstances of the case, I am of the considered view that no case is made out for grant of *ex-parte* interim orders and that too against a party respondent who has not been supplied a copy of the petition in advance, resultantly, the prayer for provisional consideration of the candidature cannot be granted, at this stage.

Even otherwise, it is well settled that interim relief that has trappings of final relief, should not ordinarily be granted at the mere asking.

Adjourned to 18.10.2022.

In the meanwhile, appropriate steps be taken by respondent Nos.1 and 2 to expedite pending process.”

Learned counsel for respondent Nos.1 and 2 has filed in Court short affidavit on behalf of respondent No.1-Union of India along with letter dated 07.10.2022 appended as Annexure R-1/1. The said affidavit and letter are taken on record. A copy of the same has been supplied to learned counsel for the petitioner.

Heard learned counsels appearing for the petitioner and the contesting respondent Nos.1 and 2.

Learned counsel for the petitioner submits that in view of the letter dated 07.10.2022 (Annexure R-1/1) and due to efflux of time, the cause of action in the present petition would not survive and the same be disposed of as such.

Learned Additional Solicitor General of India submits that he does not object to the same and the substantive relief stands granted to the petitioner, as reflected in the letter dated 07.10.2022 (Annexure R-1/1).

In view of the above, it is jointly submitted that no further orders are required to be passed in this petition and the petition has served its purpose. So appears to be the position on record.

Dismissed as having been rendered infructuous.

(VIKAS SURI)
JUDGE

October 18, 2022

vcgarg

Whether speaking/reasoned: Yes

Whether reportable: No