

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

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CWP-163-2023

Date of Decision:09.01.2023

Kuljeet Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

**Present: Mr. Deepanshu Mehta, Advocate,
for the petitioner.**

VINOD S. BHARDWAJ , J.(Oral)

The instant writ petition has been filed under Articles 226/227 of the Constitution of India seeking a writ, order or direction especially in the nature of mandamus directing the respondent Nos.1 to 4 to conduct departmental enquiry in light of the provisions of Public Servants (Inquiries) Act 1850 and The Punjab Departmental Enquiries (Powers) Act, 1955 and to summon the adequate record before concluding the enquiry.

The petitioner contends that he is an ex-elected office bearer of M/s Phillips Lighting Employees' Union although no such document has been placed on record to substantiate the aforesaid averment. The petitioner further contends that there were a total of 720 regular and 700 contractual employees who were working in the said Company. The Management of the said Company had decided to outsource the LED manufacturing and

resorted to Unfair Labour Practices by closing down the factory. The entire work force of the Plant was offered VRS Scheme without obtaining any consent from the Trade Unions operational in the factory giving rise to an Industrial Dispute. It is alleged that respondent No.5 who was then posted as Assistant Labour Commissioner, called the petitioner to her office and had threatened the petitioner to step down or else she would get him involved in some cases. The petitioner thereafter submitted a written complaint to the Deputy Commissioner, District SAS Nagar, Mohali and sent the copies thereof to the Senior Officers of the Government of Punjab, however, no action was taken thereupon. The aforesaid complaints are stated to have been appended along with the present petition as Annexure P-2. The operation of the factory was entirely closed on 04.09.2018 without obtaining necessary permission under the statutory laws. Accordingly, the petitioner along with other workmen demanded prosecution of the Factory Management under various Provisions of the Industrial Disputes Act, 1947. The sanction for prosecution was however granted only under Section 25 O of the Industrial Disputes Act, 1947. The matter is still pending consideration before the Hon'ble Supreme Court in SLP No.6729/2019. It is averred that respondent No.5 had indulged in manipulating the record and even committed the offence of forgery to secure her out of turn promotion. Accordingly, an application was submitted by the petitioner on 23.08.2022 for seeking summoning of the relevant record including the record pertaining to the cases decided by the said officer while posted as Assistant Labour Commissioner, District Bathinda. He submits that despite the aforesaid application having been submitted, the Enquiry Officer has neither

recorded any proceedings in the enquiry nor intimated any next date of hearing. Rather, the said officer i.e. respondent No.4 has stated that he cannot summon any record in the enquiry and he will convey the next date of enquiry to the petitioner over call. The proceedings of the enquiry have also not been supplied to the petitioner and no date of hearing has been intimated whereupon the petitioner submitted an application dated 07.10.2022 in the office of the Labour Commissioner, Punjab for not intimating about the enquiry proceedings and against the application not being taken into consideration by the Enquiry Officer. As no action was taken thereupon, the petitioner submitted a written complaint (Annexure P-7) to the Chief Director, Vigilance Bureau, Punjab stating therein the entire allegations. The petitioner submits that he was called by respondent No.4-Enquiry Officer on 29.12.2022 intimating that the date of the enquiry has been fixed for 30.12.2022. The petitioner appeared and submitted another application requesting that the record be summoned so that he can submit an appropriate affidavit in evidence. However, respondent No.4-the Enquiry Officer again did not take judicial notice of the aforesaid application. Subsequently, a representation was submitted by the petitioner to the Principal Secretary, Department of Labour, Punjab (Annexure P-9). He avers that the petitioner has been informed that the enquiry proceedings are complete and the Enquiry Officer shall submit a report with the office of the Labour Commissioner, Punjab. It is alleged that the respondent No.4-Enquiry Officer has not submitted the relevant report/evidence and has also not taken into consideration the application that has been submitted by the petitioner and the said action of the respondent is in contravention of The

Punjab Departmental Enquiries (Powers) Act, 1955. The officer conducting such enquiry is competent to exercise the powers for summoning of witnesses and for compelling the production of documents as are necessary for conclusion of the enquiry. He also avers that Part IV Rule 8 of The Punjab Civil Services (Punishment and Appeals), Rules 1970 provide that the Enquiry Officer has to frame issues and call for the relevant record. It is averred that in the absence of the relevant record, the enquiry proceedings cannot be said to be concluded under the act in an appropriate manner and as such the Enquiry Officer is trying to suppress appropriate conclusion in the enquiry proceedings. Prayer was accordingly made for directing the respondent Nos.1 to 4 to conduct departmental enquiry in the light of provisions of Public Servants (Inquiries) Act 1850 and The Punjab Departmental Enquiries (Powers) Act, 1955 to summon the relevant record before concluding the enquiry.

I have heard learned counsel appearing on behalf of the petitioner and have gone through the documents appended with the present petition.

The present petition raises allegations against an officer in the rank of Additional Labour Commissioner without substantiating any such allegations. Reliance was placed on the complaints attached as Annexure P-2 highlighting the misconduct of respondent No.5. Both the said complaints have been examined. The first complaint dated 10.06.2016 reads thus:-

“Ref No. Ramesh Sharma/8 dated 10.06.2016

To

*The Manager, Labour,
Phillips Electronic India Limited,
Mohali Light Factory.*

*Subject:- Regarding harassment of labour in the workshop
by officers Naveen Bhatia, Jatender Verma and General
Manager J.T.*

Sir,

*It is requested that on 31.05.2016, it was settled from the
mutual conversation between Union and Management that the
signature of the employee will be taken who want to take VRS
as per his own wishes but the complaints of employees are
being received against the above said officers. On 09.05.2016,
the acts done in the Coil Plant by General Manager is criticize-
able. You are requested that your kind attention be paid
towards this complaint and action be taken to keep the
atmosphere of company peaceful.*

I shall be thankful to you.

Thanking you.

Yours faithfully

Employees Union.”

A subsequent reminder is dated 28.01.2017 and the same reads

thus:-

“Ref No. Ramesh Sharma/dated 28.01.2017

To

*The Manager, Labour,
Phillips Electronic India Limited,
Mohali Light Factory.*

Subject:- Regarding unfair labour practice.

Sir,

*It is requested that it came to know that officers of the
company have called the workers working in production area
of company, in their office and threatened them to transfer them
to other area and they are unnecessarily harassing the workers.*

The Union is requesting you that action be taken to keep

the atmosphere of company area peaceful and to treat the workers in well manner.

Thanking you.

Yours faithfully

All members of Union”.

A perusal of the aforesaid complaints clearly shows that the complaints were not submitted against respondent No.5 and were in fact against the Management of the M/s Phillips Electronics India Limited and addressed to the Management itself. Thus, palpably incorrect submission was raised before this Court that the complaints dated 10.06.2016 and 28.01.2017(Annexure P-2) were against respondent No.5. Further, even though the petitioner contends that an application had been submitted by him before the Enquiry Officer to summon the record, however, he has failed to attach any document pertaining to the ongoing enquiry and demonstrate as to how the record, which is being stressed upon, was relevant for the enquiry. The details of the record which has sought for vide application (Annexure P-5) is as under:-

“4. That the following record is required to be summoned:-

- a. Record of Applications submitted by Complainant/Applicant Kuljeet Singh and Authorised Representatives of Philips Lighting Union, SAS Nagar Mohali to the office of Labour Commissioner, Punjab, Additional Labour Commissioner, Punjab, Assistant Labour Commissioner, Punjab between the period of 2012-2017.*
- b. Daily Diary Register of the Office of Labour Commissioner, Punjab, Additional Labour Commissioner, Punjab, Assistant Labour Commissioner, Punjab between the period of 2012-2017.*

- c. *Record of Workman Compensation Case decided by Smt. Mona Puri when deputed as Assistant Labour Commissioner, Bathinda.*
- d. *ACR Record of Smt. Mona Puri.*
- e. *Relevant Notification/Policy of the department to promote Law Officers to the Post of Assistant Labour Commissioner, Punjab based on Handicap Quota, specifying the detailed requirements and category wise.”*

A perusal of the aforesaid report shows that the same pertains to the alleged applications submitted by the complainant to the office of Labour Commissioner. Invariably, the said record relates to the application submitted by the petitioner himself and the petitioner being the Author/generator of the said record could have incorporated witnesses with the same. Further, the other record pertains to the Daily Diary Register of the office of the Labour Commissioner, Punjab, Additional Labour Commissioner, Punjab between the period of 2012-2017; record of Workmen Compensation cases decided by respondent No.5 when deputed as Assistant Labour Commissioner, Bathinda; her ACR record; relevant Notification/Policy of the Department to promote the Law Officers as Assistant Labour Commissioner in Punjab. The petitioner has failed to substantiate as to how the aforesaid documents/record were relevant and essential for the enquiry proceedings that had allegedly been undertaken by respondent No.4 as Enquiry Officer. Besides, the legality of cases decided by the respondent No.5 under the Workmen Compensation Act, 1923 are not subject matter of challenge before this Court and there is also no allegation levelled in the present petition by those aggrieved that those cases had been decided illegally or erroneously. In any case, the affected parties always had

the remedy to raise a challenge to the cases decided by the Officer in exercise of the powers under the Workmen Compensation Act, 1923. So far as, the Notification/Policy are concerned, the same are in public domain and not required to be summoned.

Learned counsel appearing on behalf of the petitioner has failed to demonstrate as to how the above information was essential and integral for recording any finding on the allegations being enquired into against respondent No.5. Even the charge-sheet/the statement of allegations has also not been placed on record. As a result whereof, it cannot be construed whether the enquiry pertained to the promotion of respondent No.5 or it related to any official misconduct against respondent No.5 in deciding cases or dealing the labour dispute. It has also been submitted by the petitioner that the allegation against the respondent No.5 was levelled for the first time only on 04.04.2022 and the said enquiry proceedings had been initiated against respondent No.5 on such complaint. However, for reasons not known, even the said complaint has not been appended by the petitioner along with the present petition. The petitioner has sought summoning of the record without demonstrating the relevance and necessity of the said record.

He has further submitted during the arguments that the enquiry report has already been concluded as per the information available with him. There is no detail given about the same and as to why the said fact has not been mentioned in the petition and why the said report or details of enquiry have not been appended. Filing of the present petition is seemingly on account of the petitioner being dis-satisfied with the outcome of the enquiry. The petitioner would have his cause of action to file an appropriate petition

raising a challenge to the enquiry proceedings and impugn the final enquiry report as and when such report is submitted. The present petition is clearly premature and apparently an act of pressurizing the Enquiry Officer to conduct the enquiry as per suitability of the petitioner. Such an attempt does not deserve to be promoted at this juncture.

The petitioner not having come up with complete facts and submission of the entire sequence and having filed the present petition without complete documents or demonstrating the relevance and significance of the said documents as also the nature of the enquiry being conducted, the present petition is not maintainable, at this stage, and the same is accordingly dismissed in *limine*.

Liberty is however granted to the petitioner to file a fresh petition on a renewed cause of action after submission of the final enquiry report as averred, with the competent authority, if so advised.

January 09, 2023
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No