

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

Neutral Citation No.2023:PHHC:118178-DB

LPA-275-2023

Reserved on : 25.08.2023

Pronounced on: 13.09.2023

Deepak Dogra

.....Appellant (s)

Versus

State of Punjab and another

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr. I.S. Khosa, Advocate for the appellant (s).

Mr. V.G. Jauhar, Additional Advocate General, Punjab
for respondent No.1.

Mr. Vikas Chatrath, Advocate,
Mr. BPS Thakur, Advocate,
Mr. Dharamvir, Advocate and
Ms. Dilpreet Kaur, Advocate for respondent No.2.

G.S. Sandhawalia, J.

Consideration in the present Letters Patent Appeal is to the order of the learned Single Judge passed in **CWP-3435-2023** dated 01.03.2023 wherein the writ petition filed by the present appellant was dismissed.

2. The appellant was challenging the order dated 01.02.2023 (Annexure P-7), wherein his application for permission to engage an advocate/legal practitioner in the departmental enquiry had been rejected. The learned Single Judge came to the conclusion that the Punjab Civil Services (Punishment & Appeal) Rules, 1970 (for short '1970 Rules') did not permit such assistance in normal circumstances and only where the punishing authority having regard to the circumstances of the case so

permits, assistance could be taken for engagement of a legal practitioner. Reliance was placed upon the judgment of the Apex Court passed in **K.B. Rai Vs. State of Punjab, 1996 (1) SLR 353** to come to the conclusion that where an employer is represented by officer who was legally trained, the employee would have a right to seek assistance of a legally trained person and then employer could not decline the request for engagement of a legal practitioner. Resultantly, a finding was recorded that merely because the Presenting Officer was a Reader of the Court would not be sufficient to allow the petitioner a legal practitioner in the circumstances.

3. Counsel for the appellant has vehemently submitted that the binding judgment in **Professor Ramesh Chandra Vs. University of Delhi & others (2015) 5 SCC 549** has laid down if the Inquiry Officer is a trained legal mind, the denial of assistance of a legal practitioner would be unfair. Reliance has also been placed upon the judgment passed by a Single Judge of the Gujarat High Court in **Divyesh Govindbhai Kunvariya Vs. State of Gujarat, 2023 (1) ALLMR 44** wherein also following the said view the benefit was granted, since the Inquiry Officer was the City Civil Judge and the employee was an Assistant in the City Court and being a legal expert, the denial of the legal practitioner had been held to be unfair. It is contended that there was a similar rule of bar of a legal practitioner to be given as a matter of course and the learned Single Judge was not justified in dismissing the representation and, therefore, the present appeal is liable to be allowed.

4. Mr. Chatrath on the other hand appearing for the respondents has supported the judgment of the learned Single Judge and submitted that the rule itself lays down an exception and only if the punishing authority

having any regard to the circumstances of the case permits, a legal practitioner could be engaged. It is submitted that the whole purpose of departmental inquiry would be frustrated, if legal assistance is to be incorporated as the purpose is to conclude the departmental proceedings at the earliest and not to make it a regular full fledged trial. It is further pointed out that the Reader who was the Presenting Officer himself was not a Law Graduate and assistance of a co-worker who had also been a retired Reader had been given for conducting the proceedings before the Inquiry Officer and therefore, both of them did not belong to a legal background. He has further submitted that merely because the Inquiry Office was an Additional District Judge would not be a ground to provide a legal practitioner. It is, accordingly, contended that in case of all departmental proceedings to be held for judicial employees necessarily even a legal practitioner would be required.

5. After hearing counsel for the parties, we are in agreement with the arguments advanced by the counsel for the respondent No.2 and are of the considered opinion that judgment of the Apex Court passed in **Professor Ramesh Chandra (supra)** is not applicable in the facts and circumstances, and the observations made therein were in peculiar circumstances, which we shall discuss at the later part of the judgment.

6. The appellant herein was working as a Process Server in the Court of Civil Judge (Senior Division), Ludhiana. He was placed under suspension on 27.05.2022 (Annexure P-4) and action was sought to be taken against him under Rule 8 of the 1970 Rules. In sum and substance the charges against him were that he had been arrested by the police in FIR No. 44 dated 28.02.2022 under Sections 380, 409, 411, 427, 454,

120-B IPC lodged at Police Station Division No.5, Ludhiana and accordingly was placed under suspension w.e.f. 01.03.2022 vide order dated 04.03.2022. He had been named as accused alongwith Chetan Kumar and Hardayal Inder Singh Grewal, Advocate and even the challan had been presented by the Investigating Agency in the Court on 29.04.2022. It transpired during the investigation of the case that a theft of computer lying in the Court of CJM, Ludhiana had been committed and file titled Hardeep Singh Vs. Pritpal Singh bearing CIS No.1213/2019 was also stolen on 27.02.2022, which were recovered by the police from the custody of the accused person. Resultantly, charge-sheet was also issued by the District & Sessions Judge, Ludhiana on 27.05.2022 against him that the appellant with other accused persons had conspired and committed theft in the Court of the CJM, Ludhiana and it amounts to grave dereliction of duty, gross misconduct and was unbecoming of a Government servant.

7. The appellant had requested to drop the charge-sheet vide the reply filed, which was not found to be satisfactory in the departmental inquiry initiated against him and an Additional District & Sessions Judge was appointed as an Inquiry Officer. Resultantly, an application dated 06.01.2023 (Annexure P-5) was moved through an Advocate before the Inquiry Officer that he requires permission for assistance of a legal practitioner while placing reliance upon the judgment of the Apex Court passed in **Professor Ramesh Chandra (supra)**. The said application was opposed by filing reply by the Presenting Officer stating that he was not a Law Graduate and, therefore, assistance of the legal practitioner could not be granted. Vide order dated 01.02.2023, the Inquiry Officer has rejected

his request by noticing that the Reader/Presenting Officer was not a Law Graduate and the assistance of retired Reader had also been given to the appellant for defending himself in the inquiry. Therefore, permission to engage an advocate was rejected by the Inquiry Officer, leading to the challenge before the learned Single Judge.

8. The 1970 rule in question which limits the right and give the discretion to the punishing authority reads as under:-

“(8) The Government employee may take the assistance of any other Government employee or a retired Government employee to present the case on his behalf, but may not engage a legal practitioner, or the punishing authority having regard to the circumstances of the case, so permits.”

9. A perusal of the said rule would go on to show that the punishing authority having regard to the circumstances of the case may permit assistance of a legal practitioner, which is a discretion and it cannot be considered as a right or mandate. Apparently, firstly an application was not filed before the competent authority, the punishing authority itself, but filed before the Inquiry Officer, in spite of the categorical wording of the rule. The punishing authority in the present case would be the District & Sessions Judge, Ludhiana, as the appellant had been placed under suspension by the said authority and the charge-sheet had also been issued by the District & Sessions Judge. As per Rule 2 (a) The Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Group ‘D’ Service Rules, 2012, the District & Sessions Judge is the appointing authority and Rule 17 further provides that the appointing authority will be the punishing authority. The application had been presented on the strength of the judgment passed in **Professor Ramesh**

Chandra (supra) drafted and signed by a counsel and before the Inquiry Officer, which had been dealt with at the same level and which was subject matter of challenge before the learned Single Judge. This aspect was neither challenged by the writ petitioner himself, as he had filed the application before the authority, who was not competent to deal with the issue.

10. However, the legal issue as to the right of the appellant for engaging a legal practitioner in view of the limited right given under the rule remains to be adjudicated upon, which we proceed to do.

11. In **K.B. Rai (supra)** the learned Single Judge of this Court had dilated on the issue of the said rule that the assistance to an employee departmentally charged is to be given in the shape of any other Government employee or retired Government employee. It was then noted that since the Presenting Officer in that case was a legal trained officer, who had also worked as a prosecuting Sub-Inspector in the Courts and, thus, there was an obligation as such to provide the petitioner with such assistance. It was only in such circumstances, it was held that where a person is pitted against a trained prosecutor, the benefit is to be granted. In similar circumstances, the Apex Court in **The Board of Trustees of the Port of Bombay Vs. Dilip Kumar Raghavendranath Nadkarni and others, AIR 1983 Supreme Court 109** had held that when a delinquent officer in an inquiry before a domestic tribunal is pitted against a legally trained mind, then the request to defend himself by denying the said would be against the principles of natural justice. Reliance had also been placed upon the earlier judgment passed in **A.K. Roy Vs. Union of India, AIR 1982 Supreme Court 710** to come to the said conclusion.

12. In the present circumstances the situation was not as has been noticed above, rather the Reader who is the Presenting Officer was not even a Law Graduate and, therefore, it would not be a case where the appellant can bring himself within the ambit of the said judgments.

13. The Division Bench judgment of this Court in **Mangat Rai Vs. Punjab Road Transport Corporation, 1998 (1) PLR 791** had rejected the argument raised on behalf of the workman that the inquiry was held by a legally trained person, who was the Deputy Manager (Headquarter). In **Harinarayan Srivastav Vs. United Commercial Bank, 1997 AIR (SC) 3658**, the Apex Court had rejected the prayer wherein the Presenting Officer of the Bank was a Law Graduate on the ground that the facts were not complicated and, therefore, the denial of assistance of an Advocate was not in violation of principles of natural justice. In spite of presenting officer of the Bank being a Law Graduate, the Apex Court has found that the allegations made were simple in the charge-sheet, permission to defend with the assistance of an Advocate which had been denied was liable to be upheld.

14. We have also examined the charge-sheet as noticed above. The issue is of theft and the recovery as such of the computer belonging to the Court of CJM, Ludhiana and the judicial file, therefore, it was on that account the delinquent official has been charge-sheeted. Therefore, we are of the considered opinion that the charge is not of any complicated issue of that nature, which would require the assistance of a lawyer. The Division Bench of this Court in **Dheru Ram Vs. The State of Punjab, 1993 (3) PLR 476** while dilating the issue on the rule in question had held that the language of the sub-rule is clear and it was not mandatory to provide the

legal assistance and the delinquent official has to establish that he would be put to a disadvantage during the course of the inquiry as he was not in a position to cross-examine the departmental witnesses. It is pertinent to notice that in the application filed there is no averment that the appellant has been put to disadvantage in any manner and it was only on the strength of the fact that Inquiry Officer is a Judge and the case is based on criminal proceedings also and by placing reliance upon the judgment of the Apex Court the application had been preferred.

15. In **Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi, (1993) 2 SCC 115**, a three Judge Bench held that the request of the delinquent to be represented through a counsel before the Industrial Tribunal could be rejected on the ground that there is no absolute right of representation and only if the charge is of serious and complex nature, the request could be conceded. It was held that the object and purpose of the provision is to ensure that the domestic enquiry would be completed and not prolonged and also that remains an inexpensive proceeding and, therefore, standing order or the Act did not conflict with the principles of natural justice. The Apex Court in **The Management of National Seeds Corporation Ltd. Vs. K.V. Rama Reddy, (2006) 11 SCC 645** has held that there is no absolute right of representation to an employee in domestic inquiries. The issue in the said case was regarding the assistance provided to the retired Assistant Manager of the Corporation in the disciplinary proceedings and Rule 31(7) of National Seeds Corporation (Conduct, Discipline and Appeal) Rules, 1992 also provided additional right of a legal practitioner to be appointed. It was, accordingly held while relying upon the judgment passed in **Dunlop Rubber Co. (India) Ltd. Vs.**

Workmen AIR 1965 (SC) 1392 another three Judge Bench judgment that there was no right of representation in the disciplinary proceedings by another person or a lawyer unless the service rules specifically provide for the same and once the Presenting Officer was not a legal practitioner, the right given of assistance by another employee was not prejudiced by the refusal of a legal practitioner.

16. The Apex Court in **D.G. Railway Protection Force and others Vs. K. Raghuram Babu, (2008) 4 SCC 406** has held that only if there is a statutory rule which permits the employee to be represented by a lawyer, then he can ask for such assistance. The Apex Court in **State Bank of India Vs. M/s Jah Developers Pvt. Ltd. and others, (2019) AIR (SC) 2854** has also set aside the judgment of the Delhi High Court which had given a right to a person to be represented by a lawyer in the proceedings when a borrower was to be declared a willful defaulter under the circulars of the Reserve Bank of India.

17. Thus, reliance placed upon the judgment passed in **Professor Ramesh Chandra (supra)** is without any basis, since in the said case the Retired Judge, was the Inquiry Officer, who was earlier the counsel of the University. Therefore, a finding was recorded that the inquiry was not conducted in a proper manner, whereby the decision of punishment had already been taken and memorandum of charge had been framed thereafter and inquiry was conducted just to give it a colour of legal procedure. In such circumstances, the observations flew from the Apex Court that if the Inquiry Officer is a retired Judge, the Presenting Officer should also be a person who has sufficient experience and should be a legally trained and qualified lawyer. Thus, it was held that the said inquiry report is based on

extraneous facts and accordingly the same was set aside and the appellant was reinstated to the post of Professor alongwith 50% back-wages.

18. The learned Single Judge of the Gujarat High Court in **Divyesh Govindbhai (supra)** apparently did not notice the said background which was before the Apex Court while following the said judgment and, therefore, we are of the view that the said decision is not liable to be taken into consideration the views of the Larger Bench's of the Apex Court. We are of the considered opinion that we are not bound to follow the same as a *stricto sensu*, keeping in view the larger principle that the departmental inquiry has to be conducted expeditiously and, therefore, the assistance which has been provided to the appellant was sufficient to defend himself for the charges which were simple in nature and there was nothing complicated in the same that the discretion has to be exercised for appointment of a legal practitioner for assistance.

19. Resultantly, we do not find any ground to interfere in the well reasoned order of the learned Single Judge and the appeal is, accordingly, dismissed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

13.09.2023
Naveen

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	