

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

124

CWP-8473-2023

Date of Decision: 24.04.2023

RAJWANT SINGH

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. G.S. Bal, Sr. Advocate with
Mr. Laxman Choudhary, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

The present petition seeks quashing of an enquiry report dated 02.06.2022 (Annexure P-15) supplied to the petitioner vide letter dated 29.06.2022 (Annexure P-14) and also the impugned order dated 07.06.2022 (Annexure P-17).

Learned counsel for the petitioner contends that the petitioner is a retired Lecturer from District Institute of Education and Training (hereinafter referred to as 'DIET'), Gurdaspur and was superannuated in the year 2017. When the regular Principal of DIET was promoted and posted as District Education Officer, the charge of the post of Principal was handed over to the petitioner. One Smt. Paramjit Kaur, Junior Assistant, wife of respondent No.5 was also working in the said Institute and had been deputed for collection of students' fee. He contends that instead of depositing the amount so collected, she put the same to her own use and thus misappropriated an amount of

Rs.11,00,000/- approximately and later she died due to cardiac arrest. The respondent No.5 instead of returning the amount to DIET, started levelling allegations against the petitioner that death of his wife has occurred as a result of undue work pressure and harassment meted out to her by the petitioner. A police inquiry was conducted into the work and conduct of Smt. Paramjit Kaur, Junior Assistant- wife of the respondent No.5 and it transpired that an amount of Rs.5,00,000/- was wrongly retained by her. The matter was under investigation, however, the progress thereof was slowed down on account of outbreak of COVID-19 pandemic. He further avers that respondent No.5 had also filed a CRM-M-45828 of 2017 in this Court for taking action against the petitioner qua death of his wife and the same is now fixed for hearing on 11.05.2023.

In the said backdrop reflecting deep mutual conflict that it was further alleged that the respondent No.5 was appointed as a back door entrant by the erstwhile Executive Engineer, Upper Bari Doab Canal, Gurdaspur Division, Gurdaspur vide appointment order dated 09.08.1995. The appointment was not through the Employment Exchange or through any publication/advertisement and he also did not possess the academic qualification required for the job. The School Leaving Certificate submitted by him was issued by a School namely "Sikh National Sr. Sec. School, Batala". No such school existed in District Batala. Reliance was placed on the information received under Right to Information Act, 2005 from the District Education Officer, Gurdaspur to substantiate the claim. It was further argued that even the medical record and medical fitness were not obtained by the respondent No.5 from the office of Civil Surgeon prior to his appointment. He further argues that a written complaint was submitted by the petitioner to the

Deputy Superintendent of Police, Vigilance Bureau, Gurdaspur. Instead of enquiring into the said complaint, the same was forwarded to the Principal Secretary, Government of Punjab, Department of Irrigation for further enquiry. As no action was taken thereupon, hence, a legal notice dated 23.02.2020 was served upon the respondents. A civil writ petition No.14089 of 2021 was finally filed in this Court, which was disposed of vide order dated 02.02.2022 directing the respondents to take a decision on the complaint No.197 of 2019 submitted by the petitioner as per law and without being influenced by any statement of fact made therein. Counsel contends that the respondent-Authorities have not taken a fair, impartial, dispassionate and objective consideration to the allegations levelled and evidence furnished by the petitioner and have submitted the report ignoring the material submitted by him. A speaking order dated 07.06.2022 was passed by the Executive Engineer, Vigilance and Quality Assurance Division, Amritsar in compliance to the order dated 04.02.2022, which is also impugned herein.

Learned Sr. Counsel appearing on behalf of the petitioner vehemently argued that respondents have not dealt with the allegations regarding non-existence of the school, wherefrom the School Leaving Certificate has been obtained and furnished by respondent No.5. He further contends that he had also sought information from the respondent-Authorities regarding the duty and assignment of respondent No.5, however, said information is also not being furnished and that loss to public exchequer is being caused by the respondent-officials by unnecessarily protecting and promoting respondent No.5 without ensuring the compliance of the provisions.

A specific question as regards the maintainability of the present writ petition at the behest of the petitioner had been posed.

Learned Sr. counsel has responded to the same by averring that the petitioner had submitted a complaint and as such, he would have a cause of action to institute the present petition. It is not disputed by him that the petitioner was never an applicant for the post of Beldar/Guage Reader and has no dispute pertaining to his seniority or appointment to the said post.

He has vehemently argued that the appointment as well as promotion of respondent No.5 have been wrongly made by the department. The petitioner having submitted the complaint to the Authorities would have a cause of action to file the present petition even though the petitioner may not be the contestant/applicant for the post or promotion, however, as an illegality came to his notice, initiation of the proceedings would be valid and sustainable. He would thus be entitled to sustain the legal proceedings to challenge the same.

I have heard the learned counsel for the petitioner and have also gone through the documents on record.

The grievance which is espoused is against the order passed on the complaint submitted by the petitioner. For the purposes of examining the said issue, it has to be seen as to what would constitute a “cause of action” and who would be a “person aggrieved”, and also as to whether such third party writ petitions can be entertained in service matters.

A writ is a remedial right for seeking enforcement of a substantive right. Such rights are required to be created or extinguished by substantive law and must create a duty on the State to protect/promote or

enforce them before the public law element can be invoked through writ Court instead of a private law remedy.

Article 226 of the Constitution of India empowers the High Court to issue prerogative writs not only for the enforcement of rights conferred by Part III of the Constitution of India but also for any other purposes. It must thus decide that an “aggrieved party” has a right and the same has been infringed. Such right may either be a fundamental right or a legal right. Hence existence of right lays foundation for exercise of writ jurisdiction. Such right should ordinarily be the personal or individual right of the petitioner himself except in cases like Habeas Corpus or Quo Warranto as per the judgment of the Hon’ble Supreme Court in the matter of **“Calcutta Gas Co. Ltd. Versus State of West Bengal and others”** reported as **AIR 1962 SC 1044**. Exceptions under public interest have also been accepted to maintain a writ petition.

The Hon’ble Supreme Court held in the matter of **“Union of India Versus Rajasthan High Court”** reported as **(2017) 2 SCC 599** that powers under Articles 226 of the Constitution are wide enough to reach out to injustice wherever it may originate. Notion of justice is relatable to justice under law and does not depend upon the individual perception of a decision maker or where a balance or solution should lie. Judges are expected to apply standards which are objective and well defined by law and founded upon constitutional principles. Judicial power is respected and adhered to in a system based on the Rule of law for its nuanced and restrained exercise failing which it would invite a justifiable criticism.

The Hon’ble Supreme Court of India held in the matter of **“Anand Sharadchandra Oka Versus University of Mumbai”** reported as

(2008) 5 SCC 217 that if a person claim relief is not eligible as per requirement, then he cannot be said to be a person aggrieved.

The Supreme Court further held in the matter of “A. Subash Babu Versus State of Andhra Pradesh and another” reported as (2011) 7 SCC 616 that the expression “person aggrieved” denotes an elastic and elusive concept. It cannot be confined within bounds a rigid, except and comprehensive definition. The meaning depends on diverse and variable factors such as the content and the extent of the Statute allegedly violated and nature and extent of interest of complainant’s interest.

Further, the Hon’ble Supreme Court also held in the matter of “Shanti Kumar R. Canji Versus The Home Insurance Co. of New York” reported as (1974) 2 SCC 387 that a legal right means an entitlement arising out of legal Rules. It is hence a benefit or an advantage conferred upon a person by Rule of Law. “Person aggrieved” would not include a person who suffers from a psychological or imaginary injury and must, therefore, necessarily be one whose right or interest has been jeopardized of adversely affected.

The Hon’ble Supreme Court held in the matter of “Ayaubkhan Noorkhan Pathan Versus State of Maharashtra and others” reported as (2013) 4 SCC 465 that a person who raises a grievance must show that he has suffered a legal injury. A stranger having no right whatsoever to any post or property cannot be permitted to intervene in the affairs of others.

In reference to the departmental proceedings, the Hon’ble Supreme Court has held that Court cannot take upon itself the table of statutory authorities. It is for the departmental authorities to conduct an inquiry in accordance with prescribed Rules and role of Court is limited. It

can't substitute its own views or findings by replacing the findings arrived at by the authority.

It is also well settled that a writ petition in service matters is not to be ordinarily entertained at the behest of a 3rd party especially when no person aggrieved is approaching the Court.

The law as laid down through precedents establishes that a mere submission of a complaint alone would not give rise to an actionable wrong. For the purposes of subsisting a challenge in service jurisprudence, there must be a legal wrong, which must ordinarily be suffered by a person approaching the Court of law. A legal wrong necessarily entails existence of an actionable right in favour of the petitioner approaching the Court which has been purportedly violated on account of an act or omission on the part of the respondents against whom such action is being sought. Apparently, the petitioner has no such direct cause of action and is seemingly pursuing the present writ petition on account of the *inter se* litigation that has been pending. They have their own axe to grind and the institution of the present petition is being deployed as a tool to settle the private dispute amongst the private parties. *Prima facie* it cannot be held that petitioner is a person aggrieved or that any of his rights has been violated. The cause of action portrayed is more of a ruse rather than an actual violation of a right.

Insofar as the allegation levelled by the petitioner qua the respondent No.5 not holding a valid qualification is concerned, the respondent- Authorities have returned a finding that the appointment of respondent No.5 as a Beldar was under the Rules of 1963 which did not require any specific academic qualification and the requirement for the post was only working knowledge of Punjabi and English. It was also specifically

observed by the Executive Engineer, Vigilance and Quality Assurance that the irregularity with respect to the medical examination of the respondent No.5 already stands removed. Learned Sr. Counsel for the petitioner does not insist on the said argument during the course of hearing and fairly submits that the aforesaid irregularity actually stands removed.

The next issue as regard the Police verification having not been carried before his appointment is concerned, there is no material on record as would suggest that there were any criminal antecedent of the respondent No.5 as on the date when the appointment was offered to him. It has also been observed by the Executive Engineer in the impugned order dated 07.06.2022 (Annexure P-17) that as per the office record, no police case is pending against the respondent No.5. The petitioner does not rely on any material to dispute the aforesaid finding of fact recorded by the Authorities below.

The other contention that was raised by the petitioner before the Authorities was that the respondent No.5 had been promoted as Guage Reader. The said aspect has also been dealt with in the impugned order by pointing out that it was only a change of nomenclature of the post of Beldar to that of a Guage Reader on the same terms and conditions and is not a promotion to the said post.

Insofar as the allegation as regards usurpation of funds is concerned, the same was against the wife of respondent No.5. The said matter is separately being investigated and shall take a final course as per law. There is no allegation of any embezzlement of funds against respondent No.5 as such.

The decision having been taken by the competent Authority after examining all the allegations levelled by the petitioner, the same cannot be re-

examined merely because the petitioner is not satisfied with the outcome thereof. He, having no direct or conflict interest with the appointment of respondent No.5 and/or his continuation in service, cannot be given a tool by the Court for settling his score.

The present petition is accordingly dismissed.

24.04.2023
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No