

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.10993 of 2016
DECIDED ON: July 24th, 2023

Narinder Singh Sandhu

.....Petitioner

VERSUS

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr.R.S.Bains, Sr. Advocate,
with Mr. Loveneet Thakur, Advocate,
for the petitioner.

Ms. Shivani Sharma, D.A.G.Punjab

SANJEEV PRAKASH SHARMA, J

1. The petitioner, by way of this petition, has prayed to quash the charge sheet 12.10.2014 (Annexure P-1/T) and the inquiry reports dated 05.12.2014 (Annexure P-18/T) and 30.05.2015 (Annexure P-3) and the notice issued to the petitioner on 20.04.2016, whereby, a show cause notice was issued stating that the disciplinary authority has decided to terminate the services based on the inquiry report and comments were sought from the petitioner.

2. Brief facts which need to be referred for adjudication of this case are that the petitioner having the requisite qualification for appointment as a Lecturer in Sociology was appointed in the year 1996 and later his designation was changed to Assistant Professor in

Sociology. A complaint was filed by a lady who was working as a Resource Person in the office of the petitioner that she has been physically molested by the petitioner, where-after an in-house inquiry was conducted and thereafter a charge sheet was issued to the petitioner on 21.10.2014, wherein following charges were levelled against the petitioner:-

- (i) You physically molested xxxxxxxx, Resource Person and expelled her from the duty without adopting the procedure when you failed to take her consent;*
- (ii) You have appointed your wife Ms.Sarandip Kaur and her brother Daljit Singh to the post of Resource Person by violating the rules.*

In the statement of allegations, it was pointed out that the concerned lady had filed a complaint with regard to the misbehaviour and harassment done by the petitioner. A preliminary inquiry was conducted which reflected that the petitioner had not complied with the procedure to appoint the Resource Person without constituting any criteria for appointment. Resource Persons were appointed arbitrarily. The concerned complainant was also appointed on the same day when she applied for the post of Resource Person. He took her in his personal car to the Training Centre, Nabha and tried to molest her with evil intentions. He took her to Nabha Hostel although she was not required to be taken to the hostel. As she did not relent to his advances, without complying with any procedure, he terminated her services as Resource Person.

It was further pointed out that without forming any committee / criteria, appointment for the post of Resource Person was given by him to his wife and his brother-in-law without taking consent of the senior officers and preparing any merit. The copy of the Inquiry Report conducted by Rural Development and Panchayat Department and another report conducted by Joint Director, Panchayat were made as list of documents to be considered in inquiry. Inquiry Report was prepared by the Inquiry Officer after calling the petitioner. The Presenting Officer examined two witnesses and the Charge Officer submitted his written defence and also produced defence witnesses. The Inquiry Officer in his Inquiry Report held that all the allegations contained in the charge sheet are proved vide his Inquiry Report dated 30.05.2015. The copy of Inquiry Report was made available to the petitioner vide letter dated 25.04.2016 and it was mentioned that as the Inquiry Officer has proved the allegations against him. Therefore, the decision was taken to remove him by the authorized officer. Before taking further action, an opportunity for defence was given to him. He was directed to remain present before the Secretary Rural Development and Panchayat on 25.04.2016.

3. The said show cause notice and Inquiry Report have been challenged by the petitioner in the present writ petition. On 28.05.2016, this Court passed following order:-

“Mr. Bains, learned counsel for the petitioner submits that the procedure laid down in the rules for conducting enquiry or involving or not, allegations of sexual harassment,

were not followed. The charge was that the petitioner had sexually and physically harassed Ms. Paramjit Kaur (Resource Person) who was not called in the witness box to face cross examination despite request made by the petitioner to the Enquiry Officer. Therefore, the enquiry has not been conducted in a fair and proper manner. Notice of motion returnable by 11.8.2016.

Notice Re: stay.

In the meantime, services of the petitioner shall not be dispensed with till further orders.”

The interim order has continued to operate till date and in the meanwhile the petitioner attained superannuation.

4. The counsel for the petitioner submits that there are five Inquiry Reports on record. Two preliminary Inquiry Reports dated 25.08.2014 and 26.09.2014 were submitted for the first time for perusal to the petitioner along with the written statement. He further states in his written arguments that he was aware of two other preliminary inquiries dated 05.12.2014 and 06.08.2015. In all the inquiries the charges have been proved against the petitioner. Learned counsel has however submitted that in none of the reports, the petitioner was allowed to cross examine the complainant although her statement was recorded while conducting the preliminary inquiry. He submits that there is no value of such preliminary reports as the evidence was not recorded in front of the petitioner and the basic principle of natural justice has not been followed.

5. Learned counsel submits that considerable evidence was brought on record by the petitioner in the course of inquiry and even in preliminary inquiry, nine ladies have given in writing that nothing of the kind as alleged had ever happened. It is further stated that the complainant

had joined on 10.01.2014 and since funds were not released after 31.03.2014, one hundred and fifty Resource Persons were removed on 01.04.2014 and two Resource Persons were removed on 04.04.2014. It is submitted that the punishing authority vide show cause notice had made up his mind to the guilt of the Charge Officer and there has been thus, complete non application of mind. He relies upon the law laid down in **Managing Director, Ecil, Hyderabad Vs. Karunakar, etc. etc. (1993) 4 SCC 727.** Documents were also not proved during domestic inquiry and he relies on **Roop Singh Negi v. Punjab National Bank and others (2009)2 SCC 570** as well as **The State of Haryana v. Suresh Chand and others (1998) 2 PLJ 335.** He further submits that petitioner has a right to ensure that once a statute directs a particular thing to be done in a particular manner then the authorities have no option but to do the work in that particular manner, alone. He submits that for the purpose of dealing with allegations relating to sexual harassment, The Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to 'the Act of 2013) had come into force w.e.f 22.04.2013. The respondents were bound to conduct the inquiry in terms of the said Act alone and they could not have conducted inquiry under the The Punjab Civil Services (Punishment and Appeal) Rules, 1970. He further submits that the allegations which are linked with more than one or more allegations have to be inquired by same internal complaints committee in terms of the Act and not by a male Inquiry Officer. It is further stated that the petitioner has alleged legal malice against the Minister and once there is an allegation that the

complaint was tampered with, there was no occasion to conduct the inquiry departmentally.

6. Learned counsel for the petitioner, in support of his submission, has relied upon Taylor vs. Taylor (1875) 1 Ch D 426 and Nazir Ahmed v. King Emperor (1936) L.R 63 I.A 372. He also relies upon 2023(3) SCC page 1, Vivek Narayan Sharma and others v. Union of India and others. It has been submitted that the punishment proposed is wholly disproportionate to the misconduct alleged and, therefore, proceedings and show cause notice deserve to be quashed.

7. *Per contra*, a short affidavit has been filed by the Under Secretary, Government of Punjab. It is stated in the preliminary submissions that one lady preferred a complaint dated 22.7.2014 to the Minister, Rural Development and Panchayats, Punjab (Annexure P-25 which is attached with the writ petition) wherein she alleged against the present petitioner that she was physically harassed by the petitioner and alleged that the petitioner sought Sexual favour and on denial by her, she was removed from post.

It is further stated that Minister Rural Development and Panchayats, Punjab send the application of complaint to Joint Director (RD) for comments and Joint Director (RD) submitted his comments on dated 25.8.2014 and found the petitioner guilty. That Director Rural Development and Panchayats, Punjab was appointed enquiry officer by Minister Rural Development and Panchayats, Punjab to conduct the enquiry in alleged allegation against the petitioner. Thereafter, the Director Rural Development

and Panchayats heard the complainant and petitioner and recorded the statement of both the parties. He then submitted his enquiry report on 26.9.2014 and allegations against the petitioner were proved.

That on basis of the report which is submitted by Director Rural Development and Panchayats, Punjab, the petitioner was suspended from the post of Assistant Professor vide Government order dated 01.10.2014. Thereafter he was charge sheeted on 21.10.2014 (Annexure P-1) under (Imprisonment and Appeal) 1970 under Rule 8. The petitioner filed the reply and gave his clarification against the charge sheet and explained his innocence. Petitioner denied all the allegations.

That on 21.10.2014 preliminary enquiry was conducted against the petitioner. Joint Development Commissioner (IRD) was appointed enquiry officer on 5.12.2014 (Annexure P-18). Joint Development Commissioner submitted his report and found the petitioner as guilty. Thereafter on 3.12.2014 the petitioner submitted his reply against preliminary enquiry.

It is further stated that on 10.12.2014 a regular enquiry was conducted by Additional District and Session Judge (Retd.) who was appointed as an enquiry officer. Thereafter on 10.6.2015 he submitted his report wherein he proved all allegations against the petitioner. That the letter 6.8.2015 was issued to the petitioner whereby it was informed that the reports of inquiry officer i.e. Joint Development Commissioner and Additional District & Sessions Judge (Retd.) submitted their reports wherein petitioner was found

guilty, he was informed that the competent authority decided to remove the petitioner from service. However, last opportunity was afforded to the petitioner to prove his case and he was directed to appear before Secretary, Rural Development and Panchayats, Punjab on 25.4.2016. That on 17.12.2015 the petitioner appeared before Secretary Rural Development and Panchayats gave his clarification in reply and explain his innocence. But as the matter was already before the Hon'ble Punjab and Haryana High Court, no decision or recommendation was made by the Secretary, Rural Development and Panchayats.”

Thus, he submits that the writ petition be dismissed at this stage, as no final order has been passed.

8. I have considered the submissions.

9. From the perusal of the statement of allegations and the charge sheet (supra), it is apparent that the allegations are not only limited to that of sexual harassment at the workplace but also relate to misuse of powers by the petitioner. He has been charged of wrongfully terminating services of a Resource Person in addition to the charge of attempting to develop illicit relations with the lady. The second charge is with regard to appointing his own wife and his brother-in-law as Resource Person and misusing his power.

10. Learned counsel for the petitioner has argued that the entire inquiry proceedings initiated vide the aforesaid charge sheet and the findings arrived at by the Inquiry Officer cannot be looked into as the same is de hors of the Act of 2013. Learned counsel submits that the

inquiry has to be conducted in terms of the Act of 2013 and not under The Punjab Civil Services (Punishment and Appeal) Rules, 1970. A procedure having been laid down under the Act of 2013 with regard to conducting of inquiry for examining a complaint made with regard to allegations of sexual harassment to a working woman at the workplace, it was binding upon the respondents to have followed the said proceedings. However, as noticed herein, the nature of charges are not only in reference to sexual harassment but for violating the conduct Rules of 1966 namely terminating the services wrongfully of the Resource Person and for appointing wife and her brother as Resource Person. Such misconducts, as above, cannot be part of an inquiry to be conducted under the Act of 2013, while at the same time, there is no embargo with the disciplinary authority to conduct inquiry under the Rules of 1970 in relation to committing sexual harassment.

11. It may be noticed that under The Government Employees Conduct Rules, 1966 (hereinafter referred to 'the Rules of 1966'), it has been provided under Rule 3 that every Government Employee shall at all times maintain absolute integrity, maintain devotion to duty and do nothing which is unbecoming of a Govt. employee.

12. As per **Rule 4(1) of the Rules of 1966**, no Government employee shall use his position or influence directly or indirectly to secure employment for any member of his family in any company or firm. **Rule 4(2) of the Rules of 1966** further prohibits class 1 Officer from permitting his own son, daughter or other dependent to accept employment in any other company or firm having official dealing with

the Government except with the previous sanction of the prescribed authority.

13. Similarly, **Rule 22-A of the Rules of 1966** prohibits Government employee to indulge in any act of sexual harassment of any woman at her workplace. The Rules of 1970 provides under Rule 8 procedure for imposing major penalty with regard to conducting of an inquiry in reference to allegations to be imposed of misconduct or misbehavior by a Government employee. The said Rule would therefore, allow inquiry to be conducted with reference to any misconduct alleged to have been committed which is mentioned under the Conduct Rules. The submission of the learned counsel for the petitioner that the proceedings initiated against the petitioner are without jurisdiction and dehors the Act of 2013 is rejected.

14. The petitioner was served a show cause notice, however, he has projected as if it is a notice for termination/removal from service. At the stage of show cause notice, the delinquent is required to submit his reply. Copy of the Inquiry Report was made available to him alongwith the show cause notice. He could have raised all his objections before the disciplinary authority, where after, the disciplinary authority would have examined the Inquiry Report as well as the objections, and would have independently reached to a conclusion as to whether the Inquiry Report was required to be accepted or rejected. The disciplinary authority was also empowered to take view as to whether the entire charges proved by the Inquiry Officer are to be accepted with reference to the objections raised by the petitioner or to be rejected. He was also empowered to take

a decision relating to the nature of punishment to be awarded if he ultimately holds the petitioner guilty but before he could take such a decision, the petitioner filed the present writ petition pre-empting the conclusion of inquiry. The petitioner could not have approached this Court at the stage of show cause as no cause of action can be said to have arisen at the stage which could have taken away any of his legal or fundamental rights.

15. In Union of India and another v. Kunisetty Satyanarayana 2006(12) SCC 28, it has been held as under:-

“13. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.”

16. In view of the above, the present writ petition is held to be not maintainable as no final order has been passed by the disciplinary authority and the petitioner had rushed to this Court merely upon being served with a show cause notice of proposed punishment.

17. However, since an interim order was passed in favour of the petitioner, he continued to perform his duty and in the meanwhile, he has superannuated on 25.01.2019. The show cause notice proposed to terminate the services by removal or dismissal. But no final decision had been arrived at by the Authority. Thus it was prevented from passing final order due to the intervention of this Court. The order of stay passed by the Court is like passing of injunction order in terms of Order 39 Rules 1 & 2 CPC. on order in terms of 8 & 9 Rules. Section 144 CPC provides that:-

Section 144 CPC Application for Restitution:-

(1) Where and in so far as a decree 1[or an Order] is 2[varied or reversed in any appeal, revision or other proceedings or is set aside or modified in any suit instituted for the purpose the Court which passed the decree or Order] shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree 1[or Order] or 2[such part thereof as has been varied, reversed, set aside or modified], and, for this purpose, the Court may make any Orders, including Orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly 3[consequential on such variation, reversal, setting aside or modification of the decree or Order.]

4[Explanation.-For the purposes of sub-section (1) the

expression "Court which passed the decree or Order" shall be deemed to include,-

(a) where the decree or Order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(b) where the decree or Order has been set aside by a separate suit, the Court of first instance which passed such decree or Order;

(c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute, it, the Court which, if the suit wherein the decree or Order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.]

(2) No suit shall be instituted for the pr-pose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

18. If the petitioner would have been dismissed or removed by the disciplinary authority at that stage, after serving of the show cause notice in 2016, he could not have worked and retired on 25.01.2019.

19. Therefore, this Court, while dismissing this writ petition, restores the position as it stood on the date when the writ petition was filed with further direction to the disciplinary authority to pass an order on basis of the Inquiry Report and the reply filed by the petitioner in terms of the Rules of 1970 **as in 2016**. The disciplinary authority shall ignore the fact that the petitioner has retired in between and would be free to impose any of the punishment as available under the Rules of 1970 for the purpose.

20. It is informed that the petitioner was not granted any pension after retirement. It is made clear that no decision shall be taken on releasing the pension till a decision is taken on the inquiry for the purpose. The petitioner would be free to file an appeal / take recourse to remedies against the order of punishment, if any, imposed on him. The dismissal of the writ petition will not come in his way for taking all objections against the final order which may be passed except on the question relating to jurisdiction of conducting inquiry as already settled in the present case.

21. The writ petition is accordingly dismissed.

July 24th, 2023
mamta

(SANJEEV PRAKASH SHARMA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No