

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

**CWP No.27315 of 2015(O&M)
Date of Decision: 18.04.2023**

ASI Sultan Singh

.....Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Karan Nehra, Advocate
for the petitioner.

Ms. Palika Monga, DAG, Haryana.

RAJ MOHAN SINGH, J.(Oral)

[1]. The present petition has been preferred against the order dated 20.09.2012 passed by the respondent No.4, thereby imposing punishment of stoppage of five future increments with cumulative effect and order dated 18.07.2013 passed by the respondent No.3, reducing the punishment of stoppage of five annual increments to stoppage of one annual increment with cumulative effect. The petitioner has also assailed the order dated 23.02.2015 passed by the respondent No.2, dismissing

the revision petition summarily.

[2]. With reference to facts on record, learned counsel for the petitioner submits that the petitioner was appointed as Constable on 21.08.1982 and in due course, he was promoted to the post of ASI, CIA Staff, Karnal. In the year 2011, the petitioner was posted at Police Station Civil Lines, Karnal and the investigation of the FIR No.812 dated 13.10.2010 under Sections 379, 120-B IPC, Police Station Civil Lines, Karnal was entrusted to him on 30.03.2011. The said FIR was registered at the instance of one Sh. Jagdeep Singh Virk in respect of alleged theft of vehicle make Scorpio. The allegations were made against the accused namely Ujjawal Zombade, who happened to be the son of earlier business partner of the complainant i.e. Dr. S.S. Zombade. There was business dispute between the complainant and Dr. S.S. Zombade in respect of ownership of a private company namely M/s Poshak Agrivet Private Limited, Karnal. There was a contested litigation between the parties, which was ultimately decided by the High Court in CWP No.18105 of 2010 vide judgment dated 18.10.2011. The directions were issued to the respondents No.6 and 7 therein to vacate the premises in question within 24 hours from the date of receipt of copy of the order. The respondent No.6 was the complainant of the FIR i.e. Sh. Jagdeep Singh Virk. The concluding paras No.5 and 6 of the order passed in the

aforesaid writ petition are reproduced hereasunder:-

“5. The learned counsel appearing for the 8th respondent would say that the property is neither in the possession of the 2nd petitioner nor in the possession of the respondents No.6 and 7. The property, according to him, is in the possession of the Company. I affirm his statement only to this extent. The learned counsel's further contention that the 8th respondent must be termed to be in possession of the property, is in my view, not possible for me to hold in these proceedings. I am convinced that the whole action has been brought to this Court only by the Company operations coming to nadir and the factory being closed, in the presence of the police, on account of the fight between the 2nd petitioner and the 8th respondent. The 8th respondent did not come to Court to seek for removal of the police presence or for the removal of the locks. On the other hand, it is admitted by him that it is the 8th respondent, who brought the police to the premises in an alleged attempt to protect himself. It is a smart act on the part of the respondents 6 and 7 to move into the factory in such a situation and make a pretense of innocent statement that the petitioners themselves surrendered the property, when the prayer in the writ petition itself was for its recovery. In the dispute amongst the Directors, the respondents No.6 and 7 shall have no part to play. The respondents 6 and 7 are directed to be vacated immediately within 24 hours from the date of receipt of copy of this order. If their presence is still noticed or if they employ any person to prevent the Directors of the Company from coming into the

premises, anyone of the affected parties shall be at liberty to approach this Court again for appropriate directions. They shall also be at liberty to approach the police for appropriate protection for their re-entry into the premises. I give no direction for settling the disputes between the 2nd petitioner and the 8th respondent. They shall settle their own scores in the manner that the law would allow for in independent proceedings. I am informed that the 8th respondent has approached the Company Law Board complaining of oppression and mismanagement by the 2nd petitioner.

6. This intervention through writ petition becomes necessary only insofar as it concerns the improper State action of allowing for the property to go out of the hands of the Company to the hands of respondents No.6 and 7. In my view, it could not have been possible without the active connivance of the police when the respondents 6 and 7 were allowed to fish in troubled waters, with directors of the Company fighting with each other on administrative affairs of the Company. All the interim orders that had been passed shall not any longer survive for enforcement through this Court.”

[3]. Prior to the entrustment of the investigation to the petitioner, the vehicle in question was duly recovered by the earlier Investigating Officer namely ASI Manjit Singh on 29.01.2011. The complainant Jagdeep Singh Virk filed an application for taking the vehicle in question on superdari before the Court. In the said application, the then Investigating Officer made a report that CWP No.18105 of 2010 was pending in the

High Court with an interim order of *status quo* as existed at the time of passing of the order dated 05.10.2010. The said application was ultimately dismissed by the Judicial Magistrate First Class, Karnal vide order dated 07.02.2011 i.e. prior to entrustment of the investigation of the case to the petitioner on 30.03.2011.

[4]. Thereafter, Dr. S.S. Zombade father of the accused Ujjawal Zombade filed an application for releasing the vehicle on superdari before the Judicial Magistrate First Class, Karnal on 19.05.2011. In the said application, the petitioner being the Investigating Officer at the relevant time made the following report:-

“Sir,

The vehicle No.HR70A-6378 make Scorpio was recovered in the afore FIR on dt. 29.1.2011 as evidence and was taken in police custody and has been deposited in Malkhana. As per RC the vehicle is recorded in the name of Jagdeep Singh Virk son of Amir Singh Virk Director Poshak Feeds India (P) limited resident of 71/3 Mile Stone GT Road Karnal. The original RC of the vehicle is in custody of police. The local police have no objection in releasing of vehicle on Superdari to the true owner. Report is submitted.

Sd/- Sultan Singh ASI

CIA-II, Karnal

Dt. 22.05.2011

I.O. is directed to file detailed reply on 22.6.11.”

[5]. Evidently, the Investigating Officer/petitioner was directed to file detailed reply on 22.06.2011. In the complaint filed by the complainant, the petitioner also filed a police report on 13.06.2011, detailing all the facts and attending circumstances of the case with reference to pending writ petition and the fact that the vehicle had already been taken in police custody on 29.01.2011 from Parshant Vihar, Rohini, B-Block, Print Apartment by ASI Manjit Singh on the basis of '*nishan dehi*' conducted at the instance of the complainant. The complainant had applied to the Court for taking the vehicle on superdari, which had been dismissed by the Judicial Magistrate First Class, Karnal. The petitioner also pointed out that the complainant was no longer the Director of the company and the installments of the vehicle had been paid by the company.

[6]. On the application filed by Dr. S.S. Zombade, Managing Director of M/s Poshak Agrivet Private Limited, Karnal, superdari of the vehicle was given to him in a sum of Rs.7,00,000/- with one surety in the like amount to the satisfaction of the concerned Station House Officer with other conditions vide order dated 22.06.2011.

[7]. The order dated 22.06.2011, granting superdari in favour of Dr. S.S. Zombade was assailed by the complainant Jagdeep Singh Virk by filing CRM-M No.22952 of 2011. The said criminal miscellaneous was dismissed vide order dated

12.08.2014 on the premise that the execution proceedings in pursuance of award dated 10.05.2010 were pending and the parties were agitating their respective claims before the Executing Court, therefore no inference was called for in CRM-M No.22952 of 2011.

[8]. The complainant feeling aggrieved against the petitioner and earlier Investigating Officer namely ASI Manjit Singh, filed a complaint against them before the higher authorities alleging connivance with Dr. S.S. Zombade in getting the vehicle released on superdari in his favour on the basis of manipulating reports.

[9]. After investigating the case, the police filed report on 22.05.2011 finding that the vehicle in question was taken into police custody as case property on 29.01.2011 and deposited in the malkhana. According to the Registration Certificate, the same was in the name of Jagdeep Singh Virk. The police gave status of investigation conducted by different Investigating Officers and ultimately, prepared cancellation report on 29.07.2013, which was accepted by the competent authority in due course. The cancellation report was not signed by the petitioner as the petitioner was not posted at the relevant time. The cancellation report was prepared by the Officer Incharge, Police Station Civil Lines, Karnal on 29.07.2013 and was also endorsed by Lalit Singh and ASI Manjit Singh.

[10]. On the complaint filed by the complainant, the petitioner was proceeded departmentally on the charge of having connived with Dr. S.S. Zombade and for playing the role in getting the vehicle released on superdari on alleged wrong facts.

[11]. Vide order dated 06.07.2012, the petitioner was held guilty by the Enquiry Officer on the charge of having helped Dr. S.S. Zombade in getting the vehicle released on superdari. On the basis of enquiry report, a show cause notice was issued on 18.07.2012, proposing the punishment of dismissal from service. The detailed reply was filed by the petitioner to the aforesaid show cause notice on 20.09.2012. The Superintendent of Police, Karnal vide order dated 20.09.2012 passed an order of punishment, thereby stopping five annual increments with permanent effect. In appeal filed by the petitioner before the Inspector General of Police, Karnal Range, the punishment was reduced to stoppage of one annual increment with permanent effect vide order dated 18.07.2013. The petitioner remained unsuccessful in the revision filed before the Director General of Police, which was dismissed summarily on 23.02.2015. That is how, the present writ petition came to be filed.

[12]. Learned counsel for the petitioner submits that a well fought litigation in respect of company affairs, ultimately

culminated in the order dated 18.10.2011 passed in CWP No.18105 of 2010. The conduct of the complainant party was deprecated by the High Court in paras No.5 and 6 as reproduced in the preceding part of the order. The petitioner never gave any wrong report during the proceedings of superdari before the competent Court. The only inference that was drawn against the petitioner is that the status report was not followed by any legal opinion of the District Attorney. Otherwise, the report submitted in the superdari proceedings was in favour of the complainant himself, who was found to be registered owner of the vehicle in question. On being asked to file detailed reply on 22.05.2011, the petitioner filed detailed reply with reference to the state of affairs arising out of company dispute. The FIR registered by the complainant against the accused ultimately culminated in cancellation report prepared by the police on 29.07.2013, which was ultimately accepted by the Court in due course. Against the order dated 22.06.2011, granting superdari in favour of Dr. S.S. Zombade, CRM-M No.22952 of 2011 was filed by the complainant. On notice, the State contested the case. The petitioner was also impleaded as party respondent No.4 therein. As per reply filed by the DSP in the aforesaid criminal miscellaneous, the factual position as narrated by the petitioner was duly endorsed. The operative part of the stand taken by the respondent-State in the aforesaid

CRM-M No.22952 of 2011 as preliminary objections reads as under:-

"Accordingly, the report was called for by the learned Court upon which ASI Sultan Singh, respondent No.4 submitted a report dated 20.05.2011, wherein it has been mentioned "that Vehicle No.HR70-A-6378 make Scorpio was taken in to custody as case property in the case on 29.01.2011 and was deposited in the Malkhana. According to the Registration Certificate, the vehicle is in the name of Shri Jagdeep Singh Virk, Director Poshak Agrivet (P) Ltd., resident of 71/3 Mile Stone, G.T. Road, Karnal. The local Police has no objection, if the vehicle is released on superdari to the registered owner." Thereafter, the learned Court has directed respondent No.4 to submit a detailed reply to the aforesaid application. Accordingly, respondent No.4 submitted a detailed reply dated 13.06.2011 Annexure P-8. In its reply respondent No.4 has specifically mentioned that "till now, from the investigation and the pendency of CWP No.18105 of 2010 no case of theft is made out. The matter pertains to business dispute and further action will be taken only after decision of CWP No.18105 of 2010." It is further submitted that after taking in to consideration the arguments addressed by the Counsel of respondent No.2, the vehicle mentioned above was ordered to be released on superdari to respondent No.2 on his furnishing a superdginama in the sum of Rs.7,00,000/- with one surety in the like amount vide order dated 22.06.2011, passed by the Court of Shri Rajan Walia, learned Chief Judicial Magistrate, Karnal. In the circumstance stated above,

the vehicle Scorpio bearing registration No.HR-70-A-6378 was released on superdari to respondent No.2 by the local police in compliance of the order dated 22.06.2011.”

The stand taken in the preliminary objections was also endorsed by the State in the reply to para No.2 on merits also.

[13]. With reference to the aforesaid facts, learned counsel for the petitioner submits that in view of culmination of proceedings at different stages of litigation, the inference that has been drawn against the petitioner that he had not taken any legal opinion while submitting the police report in superdari proceedings is nothing but a farce. The perusal of the report would indicate that the factual position of the case was duly brought to the notice of the competent Court. The detailed report was in favour of the complainant himself being the registered owner and on being asked, the petitioner further highlighted the stand while submitting the second report. The Court while granting superdari in favour of Dr. S.S. Zombade, did not record any dissatisfaction against the petitioner, rather the order was passed on merits, granting superdari in favour of Dr. S.S. Zombade, which was unsuccessfully challenged by the complainant in CRM-M No.22952 of 2011. Even in the reply filed to the aforesaid CRM-M No.22952 of 2011, the stand of the State has ventilated the stand of the petitioner in the preliminary objections as well as in the reply to para No.2 of the petition.

[14]. During course of arguments, learned counsel for the petitioner has pointed out that the petitioner has since been retired on 30.09.2021 and with this punishment on record, his retiral benefits would materially affected.

[15]. *Per contra*, the learned State counsel opposed the petition on the ground that the petitioner had filed report during superdari proceedings on two occasions and the reports were not followed by any legal opinion of the District Attorney. The reports were submitted on the basis of wrong facts.

[16]. Evidently, the petitioner had given report to the extent of showing the complainant to be registered owner and the background of litigation arising out of company affairs. It was only the judicial discretion of the Court, which ultimately went in favour of the accused while granting superdari of the vehicle in favour of Dr. S.S. Zombade, which was also endorsed by the High Court while dismissing CRM-M No.22952 of 2011 filed by the complainant.

[17]. For the reasons recorded hereinabove, I find that the punishment awarded to the petitioner does not commensurate to the alleged misconduct. In fact, there is no misconduct on behalf of the petitioner. The submissions of the police reports without seeking legal opinion cannot be translated against the petitioner that too in view of apparent facts on record.

[18]. In view of above, this writ petition is allowed. Impugned

orders are accordingly set aside. Since the petitioner has already retired from the service, therefore, his retiral dues be paid without being influenced by any order of punishment.

18.04.2023
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No