IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Neutral Citation No. 2023:PHHC:134913 -DB

CWP-22426-2023
Decided on: 17.10.2023

Karan Garg

....Petitioners

Versus

Punjab & Haryana High Court & another .... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE SANJIV BERRY

Present: Mr.Raman Sharma, Advocate, for the petitioner.

Mr.Sanjeev Sharma, Sr.Advocate
with Mr.Ajaivir Singh, Advocate, for the respondents.

G.S. Sandhawalia, J. (Oral) :-

1. Challenge in the present writ petition, filed under Article 226/227 of the Constitution of India is to the order dated 12.07.2023 (Annexure P-5) passed by the Enquiry Authority whereby the claim for supply of photocopies of the documents, filed vide application dated 10.05.2023 (Annexure P-3) in pursuance of the earlier order dated 13.04.2023 (Annexure P-2) had been rejected.

2. The argument which has been raised by Mr.Raman Sharma is that the documents which had been directed to be inspected are voluminous in nature as they pertain to the returns filed of the assessee and therefore, the inspection which has been allowed on the earlier occasion on 13.04.2023 would not be an appropriate relief. It is thus submitted that the need to ask for photocopies of the same was felt by the petitioner who is facing departmental proceedings.

3. It is not disputed that the petitioner was serving as an Judicial Officer on the Establishment of this Court and was given an additional

charge as OSD (Recruitment). Thereafter, he was appointed as Member Secretary of the Centralized Recruitment of Staff in Subordinate Courts (SSSC). Chargesheet was served upon him on 27.11.2020 (Annexure P-1) under Rule 5 read with Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970. The article of charge with which we are concerned for deciding the present issue reads as under:

> "1. That you, while posted as Member Secretary, Society for Centralized Recruitment of Staff in Subordinate Courts (S.S.S.C.), have violated the Rules and Bye-laws of S.S.S.C. by making payment of Rs.35,49,681/- to M/s Software Solutions Infra Private Limited in cash instead of banking channel, which was not permissible under rules of the Society and no authorization or permission was taken by you from the authorities to make the said payment in cash. Further as per the report of your successor, a scrutiny notice from the Income Tax Department for the aforesaid payment of Rs.35,49,681/- under Sub Section (1) of Section of 142 of the Income Tax Act, 1961 was received and the Income Tax Authorities have disallowed the expenses in the assessment order and even penalty proceedings have been initiated by them.
>
> Although it is incumbent upon a judicial officer to work with prudence, without fear, favour, ill will and malice, you have failed to perform your duty with utmost devotion and committed a gross misconduct."

4. Apparently, the petitioner challenged the said chargesheet before the Apex Court in Writ Petition (Civil) No.1148 of 2021 wherein directions were issued on 05.05.2022 to complete the process of inquiry as early as possible and if there was any request for supply of any document of relevance, the same were to be complied with. The said order reads as under:

> "Mr.Talha Abdul Rahman, learned counsel for the petitioner prays for and is granted leave to withdraw the instant writ petition.
>
> The writ petition is, accordingly, dismissed as withdrawn.

> If there be any request for supply of any documents of relevance, the respondent shall immediately comply with the requisition. We also direct the respondent to complete the process of inquiry as early as possible."

5. Apparently an application had already been filed dated 04.09.2021 for supply of documents before the concerned authorities which was rejected on 02.06.2022 after passing of the order by the Apex Court. Petitioner thereafter also filed another application dated 13.06.2022 for supply of a number of documents. Thereafter, he filed application in the decided case bearing <u>Miscellaneous Application No.1621/2022</u> wherein observations were made by the Apex Court vide order dated 10.10.2022 that charges leveled against the petitioner were quite specific and the documents referred to in both the communications dated 04.09.2021 and 13.06.2022 were not required. The only benefit which was granted was that a reasonable extension be granted to file appropriate response on part of the applicant. The said order reads as under:

> "This Miscellaneous Application arises out of the dismissal of writ petition (Civil) No.1148/2021 vide order dated 05.05.2022 passed by this court.
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> While disposing of the petition, it was observed as under:
>
> "…
>
> > If there be any request for supply of any documents of relevance, the respondent shall immediately comply with the requisition. We also direct the respondent to complete the process of inquiry as early as possible."
>
> As on the day when the order was passed by this Court, an application dated 04.09.2021 preferred by the applicant herein was pending consideration. That application came to be disposed of by the respondents herein by order dated 02.06.2022.
>
> Soon thereafter, another application came to be preferred on 13.06.2022 requesting for supply of number of documents.
>
> On an issue whether the respondents were obliged to supply the documents in terms of the directions issued by this court, we

have been taken through the Charge-sheet filed against the petitioner. The charges leveled against the petitioner, are quite specific and in our considered view do not require the documents referred to in both the communications dated 04.09.2021 and 13.06.2022.

Mr.Neeraj Kumar Jain, learned Senior Advocate appearing for the applicant however submits that the time within which the response to the charge-sheet was to be filed by the applicant having expired, reasonable extension be granted to file appropriate response on part of the applicant.

Considering the entirety of the circumstances, we grant to the applicant further time of two weeks to put in his response.

The matter shall thereafter be taken up and concluded in accordance with law.

The Miscellaneous Application is disposed of accordingly."

6. Apparently, an application came to be filed before the Enquiry Officer (who is a serving Judge of this Court) seeking production of documents by the petitioner which was resisted by the respondents. However, the Enquiry Officer was of the opinion that it was pertinent to decide the relevancy of the documents for which the petitioner was seeking production for his defence and resultantly, keeping in mind the principle that procedure of law is hand-maid of justice, directions were issued to allow the inspection of the documents in the office of the Presenting Officer vide order dated 13.04.2023 (Annexure P-2). The documents which were permitted to be inspected are as under:

"(i) Original return of income for the assessment year 2016-17 filed by SSSC along with computation of income, profit & loss account and balance-sheet for each return (Sr.No.1.1 of the application).

(ii) Revised return of income for the assessment year 2016-17 filed by SSSC along with computation of income, profit & loss account and balance-sheet for each return (Sr.No.1.4 of the application).

(iii) Scrutiny notice issued under Section 142 of the Income Tax Act, 1961 and reply to the aforesaid notice. (Sr.No.1.2 of the application).

(iv) All other documents along with all the reply(s) filed by SSSC to the notices issued by the Income-Tax Department with regard to the objections raised in the aforesaid assessment year and the initiation of penalty proceedings against the SSSC (Sr.Nos.1.3, 1.5, 1.6 & 1.7 of the application).

(v) Proof of payment of penalty of Rs.93,082/- by SSSC which was assessed by ACIT, Chandigarh (Sr.No.1.11 of the application).”

7. It is pertinent to mention that the Enquiry Officer in his wisdom did not agree with the other documents which were sought to be inspected and no challenge was raised to that order. The application for discharge of witnesses for the said date was allowed by the Enquiry Officer vide a separate order passed on 13.04.2023 and proceedings were deferred for 10.05.2023.

8. Not satisfied with the said indulgence granted, fresh application dated 10.05.2023 (Annexure P-3) came to be filed that the record was voluminous and therefore, it was not possible to copy the said record by hand and the same was required by the Government employee to prepare his defence. Therefore, request for photocopying was made which was opposed. Request had also been made before the Presenting Officer earlier on 04.05.2023 regarding the non-supply of the Photostat copy of the record on account of the fact that it is causing serious prejudice to him even if there was no specific order passed. The application dated 10.05.2023 was opposed by the Presenting Officer by filing reply on 02.06.2023 (Annexure P-4).

9. The Enquiry Officer has rejected the request on 12.07.2023 (Annexure P-5) by coming to the conclusion that the documents are part of the record of a third Government agency and not part of the proceedings of the enquiry and without their permission the copies cannot be given. The employer being not the custodian or holder of the documents, it was held

that it would be inappropriate to directly supply of copies of the documents. The objection that the associate advocate was not allowed to inspect the documents was also rejected on the ground that the said advocate had not been given Power of Attorney in his favour so the Presenting Officer was within his right not to allow him to inspect the record. Resultantly, the application was dismissed.

10. We are of the considered opinion that sufficient indulgence has already been granted to the petitioner. The Apex Court had specifically directed vide order dated 05.05.2022 to complete the process of inquiry as early as possible. Dilatory tactics apparently are being adopted as the orders passed which are now sought to be impugned are dated 13.04.2023 and 12.07.2023. The writ petition was filed after more than two month thereafter on 14.09.2023 though dated 22.08.2023 and on account of various objections being raised, it was refiled thrice. Eventually it came up for hearing for the first time on 06.10.2023, which further goes on to show that it is only an effort to delay the proceedings.

11. The article of the relevant charge has already been noticed. The gravamen of the charge is regarding the cash payment made instead of through a banking channel which is stated to be not permissible under the rules of the Society. The lack of authorization or permission taken to make the payment in cash is part of the main charge. The consequent effect was that the SSSC was served with a notice by the Income Tax Department regarding the payment made and the expenses had been disallowed and penalty proceedings had been initiated.

12. The said documents as reproduced in para No.6, in our considered opinion, thus have been duly allowed to be inspected by the Enquiry Officer and they are only thus a fall-out of the misconduct which

had been committed. Therefore, we are of the considered opinion that the demand for photocopies of the said documents has rightly been rejected by the Enquiry Officer. This aspect has also been noticed by the Apex Court in its order dated 10.10.2022 while going through the applications dated 04.09.2021 and 13.06.2022 and it was noticed that the documents are not required. The Enquiry Officer had also noticed the said orders of the Apex Court and inspite of that being seized of the enquiry proceedings felt the need to allow the inspection of certain set of documents which we have also noticed above. Counsel who had not the authority had apparently attempted to inspect the documents to which an objection has also been raised by the Presenting Officer rightly so as the petitioner himself is a trained legal mind and is being represented by a counsel in the proceedings before the Enquiry Officer also which would be clear from the orders enclosed. However, the said counsel never chose to inspect the documents though liberty had been granted. In such circumstances, the Presenting Officer had objected to the said exercise and rightly so.

13. Resultantly, keeping in view the above, we do not find any ground to interfere in the well reasoned order passed by the Enquiry Officer who has duly applied his mind to the facts and circumstances in detail. Accordingly, finding no merit in the present writ petition, the same is dismissed.

(G.S. SANDHAWALIA)
JUDGE

17.10.2023 **(SANJIV BERRY)**
sailesh **JUDGE**

Whether speaking/reasoned : Yes
Whether Reportable : No