

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

120

CWP No.27315 of 2023

Date of Decision: 18.12.2023

Munesh

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Manish Soni, Advocate
for the petitioner.

Ms. Rajni Gupta, Addl. A.G., Haryana.

VIKAS BAHL, J (ORAL)

1. This is a civil writ petition filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned charge-sheet dated 22.08.2023 (Annexure P-5) and Enquiry Report dated 11.09.2023 (Annexure P-8) issued by respondent No.3-Enquiry Officer and also the show cause notice dated 19.09.2023 (Annexure P-9) issued by Deputy Commissioner of Police, Headquarters, Gurugram.

2. Learned counsel for the petitioner has submitted that the ex parte impugned orders against the petitioner are in violation of Rule 16.24 and 16.25 of the Punjab Police Service Rules, 1934, as applicable to State of Haryana. It is further submitted that the proceedings are also in violation of Rule 16.38, inasmuch as the concurrence of the District Magistrate has not been obtained for initiating the departmental proceedings. On the said aspect, reliance has been placed upon by learned counsel for the petitioner

on a judgment of the Hon'ble Supreme Court reported in *Civil Appeal No.5822 of 2008* arising out of *SLP(c) No.13753/2007* titled '*State of Haryana and others Vs. Ranbir Singh*' and also the judgment of the Single Bench of the Himachal Pradesh High Court reported as *CWP-634-2020, decided on 09.09.2022* titled '*Sucha Singh Vs. State of Himachal Pradesh and others*'. It is further submitted that in case the petitioner is granted an opportunity to file a representation, then he would be raising all the said pleas before the authorities concerned.

3. Learned State counsel, on the other hand, has submitted that in the present case, the proceedings were initiated against the petitioner on 22.06.2023 and the petitioner did not join the proceedings and accordingly, the report dated 11.09.2023 (Annexure P-8) was filed by the Enquiry Officer holding the petitioner guilty and thereafter, notice dated 19.09.2023 (Annexure P-9), which was a show cause notice asking the petitioner to show cause as to why the penalty of dismissal from service be not passed against him, was issued and thereafter, the petitioner filed the present writ petition. Learned State counsel has relied upon the judgments of a Co-ordinate Bench of this Court in *CWP-24413-2012, decided on 14.12.2012* titled '*Constable Pala Ram Vs. State of Haryana and others*', *CWP No.12815-2020, decided on 26.08.2022* titled '*Sahib Singh Vs. State of Punjab and others*' with the connected matters as well as the judgment in *RSA-491-1997* titled '*Constable Surinder Singh Vs. Haryana State*', *2014(3) PLR 449*, to contend that the concurrence of the District Magistrate as required in Punjab Police Rules 1934 as applicable to Haryana, Rules 16.38 (1&2) is required in a case where instead of prosecuting criminally, departmental proceedings are sought to be initiated but in a situation where the criminal proceedings have already been initiated, the concurrence of the

District Magistrate would not be necessary before initiating the departmental proceedings and since in the present case, criminal proceedings have already been initiated, thus, the concurrence of District Magistrate would not be required. Accordingly, it is submitted that all the proceedings are in accordance with the rules. Learned State counsel has, however, not disputed the fact that the final order in pursuance of the show cause notice dated 19.09.2023 has not been signed till date.

4. Keeping in view the above facts and circumstances of the case, and also the stand taken by the petitioner as well as the State, it would be appropriate to give one opportunity to the petitioner to file a representation before the Deputy Commissioner of Police, Headquarters, Gurugram, raising all the pleas raised before this Court by the petitioner and accordingly, the present petition is disposed of in the following terms:-

- (i) The petitioner would be at liberty to file a representation on the aspects argued before this Court, before the Deputy Commissioner of Police, Headquarters, Gurugram, within a period of 15 days from today.
- (ii) The petitioner is directed to file a reply to the show cause notice dated 19.09.2023 within a period of 15 days from today.
- (iii) In case, the said reply is not filed within a period of 15 days from today, it would be open to the respondent-authorities to pass ex parte final orders.
- (iv) In case the petitioner files a representation within a period of 15 days from today, then Deputy Commissioner of Police, Headquarters, Gurugram, is directed to consider the said representation 10 days prior to taking final decision on the show cause notice dated 19.09.2023.

(v) In case, the pleas raised by the petitioner in the said representation are found to be meritorious, then, it would be open to the respondent-authorities to initiate further proceedings, in accordance with the decision taken by them and in case, the said pleas are found to be meritless, then a speaking order rejecting the said representation, be passed 10 days prior to the passing of the final order on the show cause notice dated 19.09.2023. In case of rejection of the said representation, it would thereafter be open to the respondent-authorities to pass a final order on the show cause notice after a period of 10 days from the date of rejection of the said representation.

5. It is made clear that this Court has not opined on the merits of the case and it would be open to respondent No.2 to consider and take an independent decision both on the representation as well as on the show cause notice dated 19.09.2023, in accordance with law.

18.12.2023

D.Bansal

**(VIKAS BAHL)
JUDGE**

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