

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

123

CWP-3156-2024
Date of Decision: 13.02.2024

SULTAN SINGH AND ANOTHER

... Petitioners

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

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

Present: Mr. Sanjay Ghalawat, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 26.05.2021
whereby the learned Lokayukta, Haryana has made the following
recommendations to the Authorities:

"For the foregoing, it is recommended to the competent authority:-

- (i) To conduct a discreet enquiry in the matter and whosever
found guilty, be punished besides registration of criminal
case against both the respondents E.A.S.I. Sultan Singh and
H.C. Ranbir Singh under appropriate provisions of the
Indian Penal Code.*
- (ii) To review the appellate order passed by the Inspector
general of Police and pass fresh order in accordance with
the Haryana Civil Services (Punishment & Appeal) Rules,
2016."*

Learned counsel for the petitioners further seeks quashing of the
order dated 03.01.2024 passed by the Director General of Police, Haryana in

exercise of powers conferred under Rule 16.28 of the Punjab Police Rules directing Inspector General of Police, Karnal Range, Karnal to conduct a fact finding inquiry in the matter.

Counsel for the petitioners has contended that the petitioners were posted as DPO Guard on 20.01.2019 at Mini Secretariat, District Panipat. Another guard namely Jagdeep Toor, who claimed to be posted at the office of Deputy Commissioner, Panipat, filed a complaint on the said date alleging that the petitioners caused beatings to him and snatched his mobile phone and that he was able to escape from their clutches. The complaint in question was handed over to the police officials, who reached the Camp Office of Deputy Commissioner, Panipat on the same day. He contends that the complainant Jagdeep Toor infact used to harass two girls namely Manisha and her sister Kusum while passing through the Mini Secretariat, Panipat on their way to the school. A complaint was orally made by the said girls to the petitioners about such several incidents and that they had asked the complainant Jagdeep Toor not to harass these girls failing which they would make a complaint to the higher authorities. It is contended that as a defence mechanism, the complainant Jagdeep Toor has levelled these allegations to settle his score with the petitioners.

He contends that on receipt of the said complaint dated 20.01.2019, ASI Surender and HC Raj Kumar inquired into the matter. The statements of the petitioners were also recorded wherein the allegations levelled by the complainant were refuted and it was pointed out that the complainant was not even present on duty on 20.01.2019. Other Guards including Jagbir Singh and Satbir Singh posted at the Labour Department, Mini Secretariat,

Panipat also got their statements recorded on similar lines and denied occurrence of any such event. Notwithstanding the statements of the witnesses denying occurrence of the said incident on 20.01.2019, the Superintendent of Police, Panipat passed an order of suspension against the petitioners on 24.01.2019. Further, the girl namely Manisha d/o Rishi Pal also lodged an official complaint against Jagdeep Toor in the office of Director General of Police, Haryana which was also forwarded to the Superintendent of Police, Panipat for taking further necessary action vide memo dated 03.04.2019. The same was also inquired into by the Deputy Superintendent of Police, Panipat and a conclusion report dated 19.08.2019 was submitted to the Superintendent of Police, Panipat. A conclusion was recorded by the Inquiry Officer in the said report that the petitioners had given warning to Jagdeep Toor, on the verbal complaint, and as such, a recommendation was made for taking action against them i.e. the petitioners herein. The matter was thereafter sent to the office of Superintendent of Police, Panipat for taking appropriate action. A show cause notice was thereafter issued by the office of Superintendent of Police, Panipat on 04.09.2019 proposing to stop three increments each of the petitioners. Reply to the said show cause notice was filed by the petitioners alongwith their supporting documents and averring that the inquiry proceedings had not been conducted properly by the Inquiry Officer.

An order imposing a punishment of three annual increments with cumulative effect was, however, passed by the Superintendent of Police, Panipat on 19.09.2019. Aggrieved of the abovesaid order of punishment imposed upon the petitioners, an appeal was filed before the Inspector General of Police, Karnal Range, Karnal on 23.09.2019. The petitioners also approached

this Court vide CWP No.35307 of 2019 for seeking setting aside of the order of punishment imposed by the Superintendent of Police, Panipat. Vide its order dated 05.10.2019, this Court disposed of the abovesaid writ petition directing the Inspector General of Police, Karnal Range, Karnal to decide the pending appeal expeditiously. In compliance thereto, vide his order dated 27.02.2020, the Inspector General of Police, Karnal Range, Karnal decided the appeal in favour of the petitioners and the order of punishment of stoppage of three increments passed by the Superintendent of Police, Panipat was set aside by recording a finding as under:

"... On perusal of record, it has been found that the pleas taken by the appellant are believable and justified. No PWs has given statement against the appellants except the complainant. Besides this, the inquiry officer has mentioned in the finding report that it was found that the complainant Jagdeep Tur (Toor) Chaukidar used to molest the girls coming towards Mini Secretariat, Panipat. One of these girls, Manisha D/o Rishi R/o Sector 6, Laxmi Nagar, Panipat had told verbally to the appellant and his co-defaulter being posted in Guard at Mini Secretariat, Panipat about the molestation upon which both the police employees had just warned/advised the complaint not to do so. Aggrieved to that, the complainant made concocted story and submitted such complaint against the appellant and his co-defaulter. The inquiry officer has also mentioned in finding that the father of the girl has requested him not to take any action on the application submitted by his daughter in view of his social dignity, his daughter being unmarried. Therefore, in view of finding report, I find that the charges cannot be proved..."

At the same time, one Ram Mehar, brother of the complainant Jagdeep Toor also moved a complaint bearing No.71 of 2019 dated 02.03.2019

before the learned Lokayukta, Haryana under Section 10 read with Section 26(1) of the Haryana Lokayukta Act, 2012 for taking action against the Superintendent of Police, Panipat as well as the petitioners herein and other officials. The said matter was contested by the petitioners before the Lokayukta, Haryana and the complete details as regards the complaint being a counterblast as well the factum of the Inspector General of Police, Karnal Range, Karnal having accepted the appeal filed by the petitioners was brought to the notice of learned Lokayukta, Haryana in the reply dated 01.03.2021 filed by the petitioners. The learned Lokayukta, Haryana disposed of the abovesaid complaint vide his order dated 26.05.2021 by making recommendations that have already been extracted above.

He further contends that pursuant to the abovesaid order 26.05.2021, the Director General of Police, Haryana, exercising his powers under Rule 16.28 of Punjab Police Rules issued a disagreement note-cum-show cause notice dated 14.01.2022 to the petitioners with an observation that the order dated 27.02.2020 passed by the Inspector General of Police, Karnal Range, Karnal ought to be reviewed and the punishment of stoppage of three annual increments with permanent effect be imposed. Thereafter, the petitioner No.1 was also served with similar disagreement note-cum-show cause notice dated 28.10.2022 under Rule 16.28 of Punjab Police Rules with the observation that the punishment of reduction in pension at the rate of 5% for three years be imposed on him.

The petitioners had preferred a CWP No.16297 of 2021 against the recommendations made by the learned Lokayukta, Haryana as well as the disagreement note-cum-show cause notice dated 14.01.2022 and 28.10.2022

passed by respondent No.2. The said writ petition was disposed of by this Court vide order dated 09.10.2023 by directing as under:

"4. Keeping in view the above said facts and circumstances, the present petition is disposed of with the following directions:-

- i) It would be open to the petitioners to file reply to the show cause notices dated 14.01.2022 (Annexure P-21) and 28.10.2022 (Annexure P-23) within a period of 10 days from the date of the receipt of the certified copy of the present order.*
- ii) Respondent no.3 is directed to consider the said reply in case filed by the petitioners within the aforesaid period, in accordance with law and to pass a final order with respect to the same within a period of two months from the date of receipt of the reply of the petitioners to the above said show cause notices.*
- iii) This Court has not opined on the legality or illegality of the order dated 26.05.2021 (Annexure P-16) and right of the petitioner to challenge the same is kept open."*

The legality and/or validity of the order dated 26.05.2021 passed by the learned Lokayukta, Haryana was not commented upon and the right of the petitioners to challenge the same later was kept open.

Pursuant to the abovesaid writ petition having been disposed of, the petitioners submitted their reply dated 12.10.2023 before the Director General of Police, Haryana.

The respondent No.2-Director General of Police, Haryana passed the impugned order dated 03.01.2023 on the disagreement note-cum-show cause notice dated 14.01.2022 as well as 28.10.2022 and directed the Inspector General of Police, Karnal Range, Karnal to personally conduct a fact finding

inquiry into the matter by joining all the stake holders and relevant witnesses and give his findings without being effected by any of the earlier inquiries and orders passed by the Authorities. Aggrieved thereof, the present writ petition has been filed.

Counsel for the petitioners has vehemently argued that the learned Lokayukta, Haryana has exceeded his jurisdiction while issuing directions to the respondent-Authorities for registration of a criminal case whereas no such authority is conferred upon the learned Lokayukta, Haryana under the Haryana Lokayukta Act, 2012. The powers vested in the learned Lokayukta are only recommendatory in nature, hence, the learned Lokayukta, Haryana has travelled beyond the contours of powers conferred upon him by the Statute in issuing a direction for registration of an FIR.

It is also argued that the order dated 26.05.2021 passed by the learned Lokayukta, Haryana suffered from gross misappreciation of the factual aspects in ignoring the fact that the other Guards who were present on duty on 20.01.2019 did not support the case of the complainant Jagdeep Toor as regards the incident having taking place in the manner and at the time and place as alleged. He further submits that the petitioners had duly established the motive that lay with the complainant to falsely implicate the petitioners. A complaint against complainant Jagdeep Toor was also submitted by the girls who were being harassed by him. However, the learned Lokayukta, Haryana did not consider the said aspect and recorded a finding that the abovesaid version was an afterthought. He had no substantive evidence available with him before discarding the defence as well as the evidence led by the petitioners before the learned Lokayukta, Haryana. The finding thus suffers from misappreciation of

evidence and the pleas raised before him. Consequently, the said findings being perverse are liable to be set aside.

It is further submitted that the direction to the effect that the order passed by the Inspector General of Police, Karnal Range, Karnal be reviewed and a fresh order be passed in accordance with the Haryana Civil Services (Punishment and Appeal) Rules, 2016 is also beyond jurisdiction as the said order of Appellate Authority was neither a subject matter of challenge before the learned Lokayukta, Haryana nor he had any disciplinary power to examine the legality and/or validity of the said order.

In support of his arguments, he placed reliance on the judgment in the case titled as **Shahank Kumar Sinha Versus Office of Hon'ble Lokayukta, Jharkhand through its Secretary and others** reported as **2019 SCC OnLine Jhar 3322** to contend that direction of registration of an FIR could not have been issued by the learned Lokayukta, Haryana.

I have heard the learned counsel for the petitioner and have gone through the documents and record available on case file with his able assistance.

Before proceeding further in the matter, it is necessary to examine the order that was passed by the learned Lokayukta, Haryana, which laid the foundation of all other orders that have been passed in the present matter.

It is evident from the perusal of the order passed by the learned Lokayukta, Haryana that on receipt of the said complaint, the matter was referred to Registrar for preliminary inquiry. A report was thereafter submitted by the Registrar on 09.09.2019. The same reads thus:

"This complaint has been brought by Mr. Ram Mehar S/o Sh. Mahender Singh, r/o Village Nimbri, Tehsil & District Panipat against (1) Superintendent of Police Sumit Kumar, HPS, Panipat (2) EASI Sultan Singh (3) HC Ranbir Singh, presently posted at Mini Secretariat, G.T. Road Panipat (4) Mr. Rajbir Nazar, O/o Deputy Commissioner Panipat.

2. In brief, the allegations of the complainant are that the brother of the complainant Jagdeep was employed as a Watchman in the O/o Deputy Commissioner Panipat. On 20.01.2019 at 9:00 PM, he was on duty in the Mini Secretariat Panipat. EASI Sultan Singh, Head Constable Ranbir Singh came under the influence of intoxication and ask the brother of the complainant to bring the bottle of liquor, bottle of water and eatables, at this the brother of the complainant told he was on duty and cannot leave. At this the both the Police officials started giving beating to the brother of the complainant namely Jagdeep. The mobile phone of his brother was snatched, the keys of the D.C. office were snatched, his clothes were removed and the brother of the complainant saved himself after jumping from one floor of building and narrated the incident to the Rinku, Computer Operator in the camp office of D.C. Thereafter Rinku Computer Operator got the Jagdeep admitted in the Civil Hospital Panipat, SHO of City Panipat and DSP came in the hospital and SHO told he had withhold CCTV footage of the Mini Secretariat. On 24.01.2019, complaint was made by the complainant to the SHO Police Station City, DSP City and complainant was assured that he would get the copy of FIR. Jagdeep remained admitted in the hospital from 20.01.2019 to 28.01.2019. On 28.01.2019 Jagdeep was referred to the PGI Rohtak. Complainant went to the office of Superintendent of Police but he was turned out of the office. Complainant alleged that S.P. Sumit Kumar did not register a case against EASI Sultan Singh and HC Ranbir Singh as he was favouring them. Ultimately complainant approached this Institution.

3. After receiving the complaint, copy of complaint was forwarded to the Director General of Police Haryana to get the matter enquired into and submit the report. The enquiry report received. Complainant filed the objections and parawise reply to the objections also received.

4. The enquiry report mark 'A' proves that the enquiry was conducted by Sh. Satish Kumar Gautam, DSP City Panipat, as per this enquiry report on 20.01.2019 an information was received in the Police Control Room Panipat that Jagdeep Singh Chowkidar who is posted as a Chowkidar in the camp office of D.C. was given beatings by Police officials, at this Sub Inspector Surender Singh alongwith other officials reached in the Camp Office. There Jagdeep gave an application on 20.01.2019 that he was on duty in the O/o D.C. Panipat and at night when he went to close the VIP gate then the Policemen Ranbir Sigh and Sultan Singh wanted to murder him and he escaped from there to save his life, his mobile phone, clothes and shoes were snatched by them. The enquiry report further proves that the enquiry was conducted by Sub Inspector Surender Kumar and since there was a suspension, so, report No. 25 dated 20.01.2019 was recorded in the Police Post, Sector-6/7, HUDA Panipat. Thereafter the enquiry was conducted by Mr. Sandeep Kumar, then SHO, P.S. City Panipat and in the enquiry it was found that EASI Sultan Singh No. 825/Panipat and HC Ranbir Singh No.199/Panipat misbehaved with said Jagdeep and both the officials were guilty of negligence in their duty and they have lowered down the reputation of the Police. Suspension and departmental action against both was recommended. Thereafter on 24.01.2019, the departmental proceedings were initiated against both and the departmental proceedings are being conducted by Satish Kumar DSP. The complainant has placed on the record mark 'B' which proves that on 20.01.2019 Jagdeep was medico-legally examined in the hospital and injuries were found on his person. Admittedly Jagdeep was a public servant and was

on duty, EASI Sultan Singh and HC Ranbir Singh used criminal force to deter Jagdeep Public Servant who was discharging his duty. Both of them also assaulted him. The medical report also proves that at the time of medical examination injuries were found on the person of Jagdeep, so, prima facie it is proved that both of them caused the injuries to deter Jagdeep, a public servant from his duty. Thus, prima facie there was sufficient evidence that both EASI Sultan Singh and HC Ranbir Singh committed the offence u/s 353 & 332 IPC. Even the CCTV footage could be taken into consideration to ascertain the truth but merely a daily diary was recorded and thereafter the matter was not further enquired into and the evidence available was not taken into account. It seems that since EASI Sultan Singh and HC Ranbir Singh were Police Officials, so, the matter was hushed up and only the recommendation was made to take the departmental action because of the misbehaviour of both and lowering down the reputation of the Police Department. It is very strange that on one hand the departmental action is recommended and on the other hand the evidence available on the spot as well as the medical evidence was not taken into consideration. It was the duty of then SHO Sandeep Kumar to get the FIR registered and then investigate the matter. Since the SHO Sandeep Kumar has failed to take the cognizance of offence, so, Sandeep Kumar SHO is guilty of dereliction of duty. The departmental action is required to be recommended against him being guilty of dereliction of duty. Since EASI Sultan Singh and HC Ranbir Singh had committed the cognizable offences, so, the recommendation is also required to be made for registration of FIR against them. There is no evidence that S.P. Panipat Sumit Kumar had any role to play in giving the protection to EASI Sultan Singh and HC Ranbir as such the complaint against him is not maintainable. Accordingly, the report is submitted to the Hon'ble Lokayukta that Sandeep Kumar then SHO is guilty of dereliction of duty as such the departmental

action is required to be recommended against him and since EASI Sultan Singh and HC Ranbir Singh committed the cognizable offence as such registration of FIR against EASI Sultan Singh and HC Ranbir Singh is required to be recommended as both of them have committed the cognizable offence punishable u/s 353 & 332 IPC."

It was concluded by the Registrar that the complainant Jagdeep Toor was medico-legally examined on 20.01.2019 and several injuries were found on his person. It was also recorded that the petitioners used criminal force to deter the complainant Jagdeep Toor and assaulted him, which made out a *prima facie* case under Sections 353 and 323 of the IPC. It was also noticed by the Registrar that the Inquiry Officer should have visited the site in question and taken possession of CCTV footage to ascertain the truth, however, the same was not done and only Daily Diary Entry was recorded and the matter was not inquired into any further and no evidence was collected. Since the petitioners were members of police department, hence, the police officials who were conducting the inquiry into the complaint, rushed to close the inquiry and only recommended the initiation of departmental inquiry on account of alleged misbehavior and completely side-lined the factum of injuries sustained by complainant Jagdeep Toor. The conduct on the part of the Investigating Agency in the submission of inquiry report was also doubted to the effect that the said officials chose not to preserve and collect the evidence available including the medical evidence but arbitrarily recommended a departmental action against the petitioners herein. It was noticed that there was a lapse of the then Station House Officer, Sandeep Kumar in not getting the FIR registered and seeking an investigation considering that a cognizable offence was *prima facie* made out,

on the basis of allegations levelled and the evidence available. It was thus reported by the Registrar that the then Station House Officer was guilty of dereliction in duty. So far as the superior officers are concerned, no such dereliction was noticed against them.

On receipt of the abovesaid report from the Registrar, the notice was issued to all the stake holders including the petitioners herein. Response was also filed and the matter was gone into.

The learned Lokayukta, Haryana also noticed that the matter was inquired into by Satish Kumar Gautam, the then Deputy Superintendent of Police, City Panipat in which he recorded a finding that the petitioners had misbehaved with Jagdeep Toor and they were guilty of lowering the image and reputation of the department by their misconduct. They were suspended and a regular departmental inquiry was ordered against them. It was on conclusion of such departmental inquiry that proceedings for imposition of punishment were initiated and punishment of stoppage of three annual increments was imposed. Said punishment of stoppage of three annual increment was, however, set aside by the Appellate Authority by placing undue reliance on the statement of the petitioners to the effect that Jagdeep Toor used to harass the girls on their way to school and that the said girls had purportedly made a verbal complaint to them, upon which a warning was issued.

The learned Lokayukta, Haryana also noticed that the abovesaid reliance by the petitioners was an afterthought and was given undue influence. In support of his aforesaid opinion, he placed reliance on the departmental inquiry conducted against the petitioners Sultan Singh and Ranbir Singh about misbehaviour with complainant Jagdeep Toor. At the stage of his inquiry, there

was nothing on record on the basis whereof the contentions of the petitioners about the girls having approached them against the misconduct of Jagdeep Toor could be accepted. It was also noticed by the learned Lokayukta, Haryana that in the event of there being any semblance of truth in the allegations levelled by the petitioners against the complainant Jagdeep Toor, the same disclosed commission of a *prima facie* offence under Section 354 of IPC for which an FIR ought to have been registered. The Authorities, however, chose not to proceed further into the matter as per law despite the offences having been brought to their notice. Noticeably, the father of the girls got his statement recorded that he does not intend to proceed any further in the matter. The attempt on the part of the Authorities in completely disregarding not only the first incident of a reported cognizable offence, but also the subsequent defence raised by the petitioners about the allegations of harassment by complainant Jagdeep Toor have been brazenly chosen not to be inquired into by the Authorities concerned, even if such allegations never appeared at an initial stage.

He thus concluded that the departmental inquiry, being prior in point of time was aptly conducted and there was no allegation by the petitioners or any other person that the inquiry was improper. The said departmental inquiry having given a specific finding about the occurrence of the event and abuse by the Authorities and it failed to conclude that the allegations levelled by the petitioners were substantiated, hence, the punishment had been imposed.

It was on the said basis that the learned Lokayukta, Haryana held that the matter requires to be inquired into and much weightage cannot be given to the reliance placed by the Inspector General of Police, Karnal Range, Karnal

on the defence raised by the petitioners herein for setting aside the order passed by the Disciplinary/Punishing Authority i.e. the Superintendent of Police, Panipat. A recommendation was thus made by the learned Lokayukta, Haryana to conduct a discreet inquiry into the matter and to punish the official(s)/officer(s) whosoever is found guilty. The said recommendation, in my considered view, cannot be deemed to be a direction to the respondent-Authorities to register an FIR against the petitioners. The recommendation was only with respect to inquiring into the matter and to ascertain a fact. The next course of action is dependent upon the conclusion of such discreet inquiry that is conducted by the Authorities concerned. The recommendation thus does not fall within the ratio of the judgment in the matter of ***Shahank Kumar Sinha (supra)*** relied upon by the petitioners. The recommendation at Sr. No.(i) made by the learned Lokayukta, Haryana thus cannot be deemed as a direction for registration of the FIR. To the said extent, the contention of the petitioners is rejected.

Adverting to the second direction issued by the learned Lokayukta, Haryana directing the Inspector General of Police, Karnal Range, Karnal to pass a fresh order in accordance with the Haryana Civil Services (Punishment and Appeal) Rules 2016, it is noticed that the Inspector General of Police, Karnal Range, Karnal recorded as under:

“I have carefully gone through the contents of the appeal, record of the departmental enquiry, findings report and final order etc. I have heard the appellant on 06.02.2020 in my office. During personal hearing, the appellant stated that the allegations leveled against him are absolutely false and incorrect as Sh. Jagdish Tur, Chaukidar was not present on duty on that day i.e. 20.01.2019. The

same has also been proved during the regular departmental enquiry but he has been awarded the punishment of stoppage of three future annual increments with permanent effect by SP/Panipat without considering his pleas and findings of the enquiry officer minutely in the end, the appellant has requested to set aside the order of punishment awarded to him

On perusal of record, it has been found that the pleas taken by the appellant are believable and justified. No PWs has given statement against the appellant except the complainant. Beside this, the enquiry officer has mentioned in his findings report that it was found that the complainant Jagdeep Tur, Chaukidar used to molest the girls coming in the morning towards the Mini Secretariat, Panipat. One of these girls, Manisha D/o Rishi R/o Sector- 6, Laxmi Nagar, Panipat had told verbally to the appellant and his co-defaulter being posted in Guard at Mini Secretariat, Panipat, about the molestation upon which both the police employees had just warned/advised the complainant not to do so. Aggrieving to that, the complainant made concocted story and submitted such complaint against the appellant and his co-defaulter. The enquiry officer has also mentioned in findings that the father of the girl had requested him not to take any action on the application submitted by his daughter in view of his social dignity, his daughter being unmarried. Therefore, in view of findings report, I find that the charges cannot be proved.

Hence, in view of above, appeal of the appellant is accepted and punishment of stoppage of three future annual increments with permanent effect awarded to the appellant by SP/Panipat vide his office order dated 19.09.2019 is hereby set aside.

A copy of this order be supplied to the appellant EHC Ranbir Singh No.199/PPT free of cost.”

It is evident from a perusal of the above said order that the Appellate Authority has nowhere recorded any finding that the initial

departmental inquiry suffered from any illegality and/or that the recommendations made by the Inquiry Officer in his report dated 19.09.2019 were misplaced and misconceived. The petitioners had participated in the superficial inquiry proceedings conducted by the inquiry officer and the conclusions of the Inquiry are extracted as under:

“In this departmental inquiry I have thoroughly pursued the statement of prosecution witness, Defence Witness, documents as well as reply filed by the charged employees and from the inquiry it has been found that on dated 20.01.2019 upon receiving information from Police Control Room Panipat, ASI Surender and his accompanying employee C. Raj Kumar 1049/Panipat reached at D.C. Camp Office where Jagdeep Toor and other employees of the Camp Office met and after sometime Nazir Rajbir has also came there. He was suffering injury which was looking simple. Jagdeep Toor gave an application to ASI Surender wherein he had levelled allegations against the guard duty employees EHC Ranbir and ASI Sultan. At that time Jagdeep Toor also altercated with Naazir Rajbir and also levelled allegations of beatings and after that ASI Surender and other officials came to the DPO Guard where EASI Sultan and EHC Ranbir were found on duty and they were informed about the quarrel and thoroughly verified the facts. Investigation from other chowkidars of the mini Secretariat and told about the facts to the senior officers. From investigation no quarrel took place there and complainant Jagdeep Toor on that day did not come there to join his duty. In this regard the SHO was also called on mobile phone as no quarrel took place so no case was registered. Apart from this it has been found about Jagdeep Toor that he is quarrelsome person and it has been found that while giving duty as chowkidar in the Mini Secretariat, Jagdeep Toor in the morning used to molest the girls. In this regard Manisha daughter of Rishi resident of Sector 6, Laxmi Nagar,

Near Mini Secretariat, Panipat had orally told the officials posted in the DPO Guard in the Mini Secretariat namely EASI Sulatna and EHC Ranbir and both the charged officials had warned Jagdeep Toor and due to this reason Jagdeep Toor has fabricated a false story and no truth has been found therein. Manisha and her father were called with regard to the application and their statements have been recorded and the father of Manisha has recorded in his statement that my daughter is unmarried and the application is true. Because the prestige of my daughter was at stake therefore, I cannot pursue my application. In the end it has been found that EASI Sultan 825/Panipat and EHC Ranbir 199/Panipat and given warning to Jagdeep Toor on the verbal complaint. Therefore, I recommend for taking action against them.”

The Inspector General of Police, Karnal Range, Karnal proceeded in the appeal in a whimsical manner reflecting a bias on his part favouring the personnel of the police force. There is, however, certain merit in the contention of the petitioners that the learned Lokayukta, Haryana could not have issued a direction for setting aside an order passed in appeal. The said argument of the petitioners is accepted. However, while examining the subsequent orders and being conscious of the fact that this Court is seized of the case under Article 226 of the Constitution of India, and that any illegality brought before this Court should not go unnoticed and unheard merely because the petitioners persuaded or were successful in subverting the inquiry that was conducted against their misconduct, by a sheer abuse of their office. Hence, the subsequent part of the order pertaining to the direction issued by the learned Lokayukta and a necessity for issuance of any such order is being examined by this Court in exercise of its power under Article 226 of the Constitution of India.

I find that the petitioners before this Court have chosen to take a plea of defence which is susceptible to doubt and apprehension for the following reasons:

- (i) That the entire defence raised by the petitioners is based on a complaint allegedly made to them by one Manisha and her sister who were already being harassed by the complainant Jagdeep Toor. Surprisingly, there is no relationship of the petitioners with the said girls and there was no such occasion as to why those girls would submit a complaint to the petitioners instead of approaching the concerned Authorities i.e. the concerned police station of the area where the incident is stated to have been occurred.
- (ii) The petitioners in their defence have neither given any time, place or the month or year when such a complaint is stated to have been made to them or the information was furnished.
- (iii) There is no satisfactory explanation as to why the petitioners did not choose to take the proper course of action as is mandated in law and get a DDR entry recorded to the said effect or resort to registration of a criminal case especially when an cognizable offence was made out and instead chose to proceed in an extralegal manner notwithstanding the mandate of the Hon'ble Supreme Court of India in the matter of "**Lalita Kumari Vs. Govt. of U.P.**" reported as **(SC) (2013) 4 RCR Criminal 979** mandating the registration of an FIR in the event of reporting of a cognizable offence.
- (iv) That the formal statements of the said girl witnesses was also not recorded by the Inquiry Officer i.e. the Deputy Superintendent of

Police concerned at the stage when the departmental inquiry was being conducted whereas it was mandatory for the said Inquiry Officer to have recorded the statements of those girl witnesses to ascertain the truth of allegations that have been levelled by the petitioners herein.

- (v) The Deputy Superintendent of Police as well as the police officers who reached the spot, on receipt of the complaint, chose not to preserve the CCTV footage that was available at the site and rather facilitated destruction of that evidence. It is correctly recorded by the learned Lokayukta, Haryana that the police officers turned a blind eye to the evidence that was available, for which proceedings ought to have been recommended against the Inquiry Officer as well as the persons who were deputed to conduct an inquiry into the allegations.
- (vi) It is also evident that the Inquiry Officer chose only to record the statement of father of the girls, whose statement at best could only be a hearsay statement, which was inadmissible in law. Strangely though, even the father chooses to get his statement recorded to the effect that he does not intend to proceed with the said complaint. There is no satisfactory explanation that may be acceptable under the given circumstances, that the said girls even moved a complaint to the Director General of Police, Haryana against Jagdeep Toor. Surprisingly, the girls as well as their father choose not to pursue the said complaint against the complaint Jagdeep Toor as well. Under the given circumstances, it does not appeal to reason that as to why only a

complaint would be submitted just to not pursue it any further, if the same had not been on the instance of the petitioners herein.

(vii) That the Inquiry Officer as well as the Inspector General of Police, Karnal Range, Karnal chose to turn a blind eye to blatant non-collection of evidence and infact made a recommendation for initiating disciplinary proceedings solely to extend the benefit to the petitioners later in point of time. If the version and the allegations of the complainant Jagdeep Toor were unworthy of any credibility, there was no occasion for the Inquiry Officer to make a recommendation for taking disciplinary action on the departmental side against the petitioners.

(viii) There is no explanation tendered either the Inquiry Officer or even by the Inspector General of Police, Karnal Range, Karnal with respect to the medical evidence that was available on record.

The abovesaid circumstances collectively and singularly establish clearly that the proceedings in the present case have not been conducted with independence and impartiality even though it was supposed to be. The direction issued by the learned Lokayukta, Haryana thus is not being tested on a merely technicality but also in the substratum or the intent and the context in which such direction has been issued.

Therefore, I don't find sufficient grounds at this juncture for interfering in the order that has been passed by the said Authority i.e. learned Lokayukta, Haryana and am of the view that the matter needs to be properly inquired into for which a fact finding inquiry has been rightly directed by the

learned Lokayukta, Haryana and also by the Director General of Police, Haryana.

In relation to the recommendations made in Clause–II of the order passed by the learned Lokayukta, Haryana, the said part of the order does have the semblance of travelling beyond the powers conferred upon the learned Lokayukta, Haryana, however, in the peculiar circumstances noticed above, these directions may now be deemed to have been issued by this Court in exercise of its power its power under Article 226 of the Constitution of India.

Since this Court has taken cognizance of the order passed by the Inspector General of Police, Karnal Range, Karnal itself and does not find it to be satisfactory on the basis of reasoning given by him, I deem it appropriate not to set aside the order passed by the Director General of Police, Haryana directing the Inspector General of Police, Karnal Range, Karnal to conduct an inquiry and satisfy himself before any fresh order is passed.

The present petition is accordingly dismissed at this stage.

FEBRUARY 13, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

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