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IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

227

CWP-17344-2020 (O&M).
Date of Decision: 11.07.2024.

RISHITA RANA

... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS

... Respondent(s)

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

Present: Mr. Inderjit Singh Luthra, Advocate, for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab,
for respondents No.1 to 5.

Ms. Sonia Sharma, Advocate,
(through Video Conference)
for respondents No.6 to 8.

Mr. Randeep Singh Waraich, Advocate,
for respondents No.9 to 12.

VINOD S. BHARDWAJ, J. (ORAL)

The present writ petition has been filed for seeking issuance of a
writ in the nature of *mandamus* praying for calling the record of the Court of

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Enquiry and records relating to the complaint of the petitioner about event of the Republic Day Function held at Guru Nanak Stadium, Ludhiana on 26.01.2020, conducted by respondent No.7-Commanding Officer, 3 Punjab Girls Battalion, National Cadet Corps, Ludhiana. A further prayer has been made for seeking quashing of the Court of Enquiry conducted by respondent No.7 against the petitioner. The petitioner has also prayed that Enquiry No.06-5C/A.C.P.-Headquarters dated 26.01.2020 (Annexure P-19) conducted by official respondents No.1 to 5 be also quashed.

2 Learned counsel appearing for the petitioner has argued that the Petitioner was the student of B.A. IIIrd year of Arts Stream in Government College for Girls at Ludhiana and was pursuing her N.C.C. 'C' certificate at her college to achieve her aim of joining the Indian Military and to serve the nation. The petitioner attended various camps as cadet in the N.C.C. and was honoured by the NCC with various certificates and medals. She also attended the Annual NCC Republic Day camp at New Delhi and Prime Minister's Rally held at New Delhi from 01.01.2019 to 29.01.2019 as member of NCC. She was promoted as Senior Under Officer (S.U.O.) due to her dedication, experience and service in the N.C.C. and was appointed as 'NCC President' of her college. It is contended that in order to participate in the march-past/drill for the District Level Function for the Republic Day at Ludhiana, the petitioner joined the practice session at her college which continued till 24th of January, 2020. Respondents No.9 and 10 were the Care Takers to look after the practice sessions for march past/drill for

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Republic Day function. It is claimed that on 23.01.2020, the Drill instructor Sh.Raj Kumar announced during the training session of the Republic Day function that as per the decision of the Senior Officers, National Cadet Corps, the petitioner will lead the march-past/drill at the District level function for the celebration of Republic Day to be held on 26th January, 2020 at Guru Nanak Stadium, Ludhiana as the 'Parade Commander' for the 3 Punjab (Girls) Battalion, National Cadets Corps, Ludhiana. Respondent No.11 was stated to have been present there and she protested against the appointment of the petitioner as parade commander and demanded the drill instructor to appoint her as parade commander instead. On refusal by the drill instructor, respondent No.11 threatened that she will not let the petitioner to lead the march past/drill on Republic Day function at Guru Nanak Stadium as Parade Commander. She further threatened that her sister is a police officer and challenged that only she will lead the march past/drill on the Republic Day function. It is further argued that on the day of Republic Day Function i.e. on 26.01.2020, when the petitioner reached at the Guru Nanak Stadium at Rakh Bagh Road, Ludhiana, she was not allowed to lead the parade and instead respondent No.11 was appointed as the Parade Commander when she complained about the injustice done to her and raised her voice against the illegal and arbitrary act of the respondents to remove the petitioner as the Parade Commander, instead of carrying out an impartial and dispassionate enquiry against its officers and respondent No.11. Proceedings were initiated against the petitioner. Even

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the Court of Enquiry proceedings were not carried out in a proper manner. Findings were returned against the petitioner in the one sided Court of Enquiry solely to give undue favour to respondent No.11 and to justify their illegal, arbitrary and discriminatory acts. The enquiry was also challenged on various additional grounds as well.

3 Aggrieved thereof, the present writ petition has been filed.

4 A short reply was filed on behalf of respondent No.1 wherein they denied having any role either in the appointment of the Parade Commander or the Court of Enquiry.

5 A separate reply had also been filed by respondents No.2 to 4 wherein it was averred that enquiry was conducted on the representation submitted by the petitioner. It was found in the said enquiry that referral for the parade started from 08.01.2020 in which the petitioner, respondent No.11 and one Aastha Dhawan were appointed as Parade Commanders but the petitioner did not participate in the rehearsals whereas respondent No.11 attended the same. On 24.01.2020, the respondent No.8 Sub. Major Jaswinder Singh asked the petitioner to conduct final rehearsal but she refused. So much so, even the Children refused to march under the petitioner as a Parade Commander for the reason that petitioner had not done rehearsals with them. The said aspect was informed by respondent No.8 to the petitioner but the petitioner and her mother raised objection to the same. As no cause for any police action was made out, the complaint was filed.

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6 A separate reply was also filed by the contesting respondents No.6 to 8. The operative part of the same reads thus:-

“3. That as per given guidelines by the Director General, NCC (National Cadet Corps), no senior Cadet can perform the duties of an Instructor. Hence, the petitioner was only guiding and motivating Junior Cadets of her College and on 23.01.20, Naib Subedar Raj Kumar never made any announcement regarding who will lead the march- past/drill at the District Level Function. That also no threats were given by Respondent No. 11 as alleged in presence of NCC Staff. Naib Subedar Raj Kumar was never approached by anybody in order to influence who will be the Parade Commander. The allegations are wrong and baseless. That no announcement was made by Ms. Jasdeep Kaur in regard to who will be the parade Commander, then Respondent No. 11 and the petitioner practiced as Parade Commander. One reserve Parade Commander was catered for any eventuality that might happen at the last moment.

4. That Respondent No. 11 never restrained the petitioner from Commanding the contingent the presence of NCC Staff. That in fact, as new requirement of providing the Parade Commander for Guard of Honour had come, then Respondent No. 8 informed Respondent No. 11 that she will be the Commander for Guard of Honour. The allegations of threats by Respondent No. 11 are false and baseless. Both the cadets participated in the final dress rehearsal on 24th January 2020 wherein both of them as per mutual understanding of all cadets, CTO and the Pl staff performed the Duties of Parade Commander. However, it was also found that the parade was not good due to lack of Command skill of the Petitioner and the squad was satisfied

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and more comfortable with Respondent No. 11 as compared to the petitioner whose word of command was not audible to all the cadets.

5. That when the complaint was made by the petitioner, no staff was present there and moreover the representation was received by Respondent No. 7 who assured that matter will be investigated and further action will be decided based on investigation of the incident. The court of Inquiry was conducted as per the existing rules and regulations. It is also submitted that also there is no provision in NCC to recover expenses and other allied charges for the training and camps attended by the cadets. That the present petitioner was kept reserve to command the parade to cater for any eventuality that might can happen on the final day. Also that Respondent No.11 was very much part of the contingent and was nominated to lead the NCC contingent for the parade as Parade Commander.

6. That it is also submitted that that also there is no provision in NCC to recover expenses and other allied charges for the training and camps attended by the cadets. That as per Rule no. 40 para (4) of NCC Act and Rules, any cade indulging in any act of indiscipline can be punished. The Court of Inquiry is the preliminary fact finding exercise was conducted as per Rules and Regulations within his powers by Respondent No.7.

7. That the present petitioner was kept reserve to command the parade to cater for any eventuality that might can happen and the respondents have carried out their duties as per the existing rules and regulations and the Court of Inquiry has been

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conducted as per the rules and regulations by Respondent No.7. The Court of Inquiry is a preliminary fact finding exercise and had been conducted in a just and fair manner within his official capacity as per the existing rules and regulations as submitted above Hence, no discrimination, bias and illegality has been caused in the present case.

REPLY ON MERITS

xxx xxx xxx

3(o) That the contents of this para are wrong and hence denied. However, it is submitted that the Respondent No.11 was finally declared to lead the contingent on 26.01.2020 at District Level Event in consonance with NCC Staff responsible for preparation of contingent. As per the information received from the NCC Staff present there it was told that after the final announcement of Parade Commander was made, the petitioner's mother created disturbance on ground before commencement of the parade on 26.01.2020. She used abusive words for the organization, Staff and Respondent No.11. She disturbed whole parade and tried her best to not lead the parade/event happen. The police interrupted and send her forcefully out of the ground. (Copy of the letters dated 28.08.2020 is attached as R-1 (colly)).

xxx xxx xxx

14. That in reply to this para, it is submitted that no law point arises in the present writ petition. However, it is submitted that the respondents have carried out the duties as per the existing rules and regulations. That the petitioner was kept as reserved to command the parade to cater for any eventuality that might happen on the final day. Also that Respondent No.11 was very much part of the contingent and was nominated to lead the NCC contingent for the parade as Parade Commander. That as

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per Rule no. 40 para (4) of NCC Act and Rules any cadet indulging in any act of indiscipline can be punished capacity (Copy of the said Rule is attached as R-3). The Court of Inquiry has been conducted as per the rules and regulations by Respondent No.7. The Court of Inquiry has been conducted as preliminary fact finding exercise by the respondent No. 7 in a just and fair manner within his power of official capacity. Hence, no discrimination, bias and illegality has been caused in the present case.”

7 No replication was filed by the petitioner to the written statements filed by any of the respondents despite lapse of more than 03 years of the filing of the replies.

8 Counsel for the parties were heard at length. Counsel for petitioner reiterated the arguments as noticed above. The same were contested primarily by respondents No.6 to 8

9 Learned counsel appearing for respondents No.6 to 8 reiterates his reference to the written statement that was filed on 23.03.2021 wherein it is averred that no announcement was made by Naib Subedar on 23.01.2020 as to who would lead the march-past/drill at the District Level Function and that no threats were given by respondent no.11. The allegations of using influence regarding being announced as Parade Commander have also been denied. It is argued that both the cadets i.e. the petitioner and respondent No.11 participated in the final dress rehearsal on 24.01.2020 and as per mutual understanding of all cadets, CTO and the PI

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Staff performed the duties of Parade Commander. It was also found that the parade was not good due to lack of Command skill of the petitioner and the squad was satisfied and more comfortable with respondent No.11 as compared to the petitioner whose word of command was not audible. It is further submitted that the representation submitted by the petitioner was looked into and the Enquiry was conducted as per rules and it transpired that the present petitioner was kept reserve to command the parade in the event of any eventuality and that respondent no.11 was very much part of the contingent and was nominated to lead the NCC contingent for the parade as a Parade Commander.

10 It was also argued that during the enquiry proceedings it transpired on the information received from the NCC Staff persons that after announcement of the Parade Commander was made, petitioner and her mother created disturbance on the ground before commencement of the parade on 26.01.2020. She used abusive words for the entire staff and also respondent No.11. She disturbed the whole parade and tried her best not to allow the parade to lead on the Republic Day Function and they had to call the lady police to remove the petitioner and her mother from the ground. Further, despite numerous representations being sent to the petitioner, she did not appear before the Court of Enquiry and refused to sign the warning letters issued to her.

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11 Even though the aforesaid reply was submitted in March 2021, however, no rejoinder/replication has been filed on behalf of the petitioner to controvert the averments made therein.

12 After going through the case file and the petition as well as the reply filed, I find that it is a case giving rise to disputed questions of fact. Further, on a pointed query posed to the learned counsel appearing for the petitioner as to whether there is any communication sent to the petitioner declaring her as a Parade Commander, he contends that no such communication has been received, hence, it is a case of word of mouth of the petitioner against the affidavit filed by the respondents giving rise to the disputed questions of fact. The same cannot be adjudicated by this Court in exercise of powers under Article 226 of the Constitution of India.

13 The present writ petition is accordingly disposed of as giving rise to disputed questions of fact.

14 Liberty is, however, granted to the petitioner to take recourse to the alternative remedies available to her as per law. The period spent in pursuing the present writ shall however, be taken into consideration by the Court in computing the limitation in the event of petitioner approaching alternative forum.

July 11, 2024.
raj arora

(VINOD S. BHARDWAJ
JUDGE

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