



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-19766-2021 (O&M)

Date of decision: 15.05.2024

Naresh Kumar

...Petitioner

VERSUS

State of Haryana and others

...Respondents

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

Present :- Ms. Sonia G. Singh Samber, Advocate with
Mr. Amandeep Kaur, Advocate for the petitioner.

Mr. Pankaj Mulwani, DAG Haryana.

Mr. Arun Sharma, Advocate for respondents No.6 to 10.

VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the present petition is for modification of the order dated 04.02.2021 vide which the official respondents No.6 to 10 have been granted minor punishment of warning for an error committed by them intentionally.

2. Learned counsel for the petitioner contends that during the Covid-19 Pandemic times, the petitioner was not feeling well so he got his Covid-19 test conducted from the Government CHC Assandh on 20.11.2020. The Covid-19 test report was not provided to the petitioner, but on 21.11.2020, he was home quarantined by the authorities on the pretext that his test was detected Covid-19 positive. After two days, when the fever of the petitioner increased and he again approached the doctors at the CHC



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Assandh, he was recommended to go to the hospital with better facilities whereupon the petitioner got himself admitted in respondent No.11-Virk Hospital, Karnal. They did not conduct any re-examination of Corona and directly sent the petitioner to Corona rooms available, where he was admitted from 23.11.2020 to 01.12.2020. He again requested for the Corona test report but the same was yet not provided. At the time of discharge the Corona test was conducted which came negative and a sum of Rs.74,000/- was charged as full and final payment including the day to day charges of medicine etc., which came to Rs.2,50,000/-. After discharge, the Government Employee also provided the report of Corona Test done by them on 21.11.2020 and as per the same, the petitioner was Corona negative.

3. Learned counsel for the petitioner contends that the Virk Hospital charged the petitioner with all the things, which were exempted under the Government Policy as well as in excessive and without any report of him suffering from Corona. Strong medicines including Remdesivir and other injections were administered to the petitioner. Learned counsel contends that on account of the petitioner not been supplied the report of Corona, he had to undergo the unnecessary harassment, humiliation and had to undergo the pain and suffering of Corona apart from incurring heavy expenses towards the hospital bills and medicines. It is contended that the respondent-authorities initiated action against the erring respondents but have imposed minor penalty of warning on the said respondents for their failure to supply the Corona report to the petitioner well in time.

4. A short reply on behalf respondents No.1 to 5 had been filed,



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wherein it has been stated that the petitioner visited CHC Assandh on 20.11.2020 for Covid-19 Test, the test was conducted and the sample was sent to the Kalpna Chawla Govt. Medical College Hospital, Karnal for RTPCR Report. The petitioner was not feeling well and having fever with mild Covid-19 like symptoms and the petitioner himself stated to Sh. Ishwar, Dental Mechanic, CHC Assandh that he is Covid positive. Taking into consideration that there was high risk for others and by the potential risk that it might posed, the same was communicated by Sh. Ishwar to other staff members at CHC Assandh, who entered into good faith to break the spread of the pandemic disease and advised the petitioner to get himself home quarantine and to isolate. A Corona kit was also given to the petitioner as a preventive measure. The same was taken as a precautionary step and for benefit of other persons so that in the event of the test result coming positive, the spread could be curtailed. It generally takes two to three days to get the RTPCR Report. However, after two days of home isolation, the fever of the petitioner increased. He contacted Sh. Rajesh Boora, MPHW (M), PHC-Uplana (CHC-Assandh), who advised to petitioner to get himself hospitalized to Kalpna Chawla Govt. Medical College Hospital, Karnal.

5. It is further submitted that as per the established SOP, since hundreds of peoples were being tested on day to day basis, the report was being sent only with respect to the persons whose report was found to be positive and no report was sent to the persons who were found negative. The patients who were found to be negative, were required to collect the test report from the Hospital after 2-3 days, however, owing to his own



slackness, the petitioner never came to the hospital staff to collect his test reports and had shown no interest for asking about the same to any of the staff member. He himself assumed to be suffering from Corona on account of the symptoms that he experienced and got himself admitted to Virk Hospital, Karnal.

6. The primary issue in this case pertains to the sufficiency of punishment. Taking into consideration the circumstances under which the entire exercise has been undertaken and the SOPs as also the workload being discharged by the Primary Health Workers at that point in time, it may not have been possible for staff to be conveying each report. The SOP that was in practice was actually in relation to conveying the positive test report to the patients and also alarming the Government about Covid positive patient. Any assumption drawn by the petitioner was on the basis of an heightened apprehensions entertained by the public at large and precautionary measures were being taken generally and by everybody on experiencing any such symptom. Although there may be certain lapses and failure to convey the negative test report, however, under the totality of circumstances, such lapses cannot be said to be grossly negligent. Further, the High Court does not sit as a Court of appeal in a discretion exercised by the competent authority in imposing punishment for any departmental/supervisory lapse.

7. It also must be kept in mind that the health workers and primary workers who were working during the Covid-19 Pandemic were themselves under lot of tension being exposed directly to the Covid-19 Pandemic. The state of health and pressurizing circumstances under which they were

discharging day to day functions cannot be assessed in the objectivity of today.

8. I find that no sufficient grounds exist for interfering in the discretion so exercised by the competent authority which has taken all relevant facts in consideration. In exercise of powers of judicial review, the High Court does not sit as a Court of appeal against the discretion so exercised by the competent authority and supplant its own discretion for that of the competent authority by imposing a higher punishment in what has been deemed appropriate by the competent authority.
9. The present petition is accordingly dismissed.

15.05.2024

Mangal Singh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(VINOD S. BHARDWAJ)
JUDGE