



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

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CWP-28634-2024

Date of Decision: 22.10.2024

GULAB SINGH BOORA

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

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

Present: Mr. Abhishek Sharma, Advocate
(Legal Aid Counsel) for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 22.03.2024 (Annexure P-13) whereby the complaint No.114 of 2017 filed by the petitioner against respondent No.5 has been dismissed by learned Lokayukta, Haryana.

Learned counsel for the petitioner contends that originally a complaint was published in the Magazine namely "Desh Abtak" on 27.11.2010 as well as in the newspaper "Punjab Kesri" dated 06.12.2010 about certain embezzlements, on the basis whereof a letter was sent to respondent No.5 regarding making false entry in the Measurement Book bearing No.628/1219 dated 30.12.2010. It is averred that a preliminary inquiry was conducted into the allegations of embezzlement and misappropriation of funds, in which the employees of Public Health Engineering Department were found involved and liable for the loss that had occasioned. No action was, however, taken against the said officials, whereupon a complaint was filed by the petitioner against respondent No.5 before the learned Lokayukta, Haryana, but the same has been dismissed, leading to the present writ petition.



Learned counsel for the petitioner contends that the evidence has not been properly appreciated by the learned Lokayukta, Haryana and that the complaint in question has been dismissed ignoring the fact that the recovery was to be effected from respondent No.5. He also contends that the necessary steps for conducting an impartial inquiry have not been initiated by the official respondents and that as a result of such violation, there has been a loss caused to the State Exchequer.

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

It is evident from a perusal of the order dated 22.03.2024 passed by the learned Lokayukta, Haryana in Complaints No.384 of 2016 and 114 of 2017 that on receipt of the complaint dated 22.11.2016, a copy thereof had been sent to the Addl. Chief Secretary, Government of Haryana, Public Health Engineering Department for inquiring into the matter and submission of report. The petitioner thereafter chose not to press or pursue the complaint against the contractor and instead pressed the complaint against respondent No.5. Later, he made another communication to learned Lokayukta, Haryana on 31.07.2017, which was diarized in the Registry on 07.08.2017 to the effect that the complaint preferred by him may not be filed and suitable action be taken, as per the inquiry report of Engineer-in-Chief Public Health Engineering Department, against the delinquent officials.

Another separate complaint No.114 of 2017 was filed by the petitioner against respondent No.5 as well.

Be that as it may, the said complaint was also taken on record and an inquiry was ordered to be conducted by the Registrar in the learned

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Lokayukta, Haryana. A preliminary inquiry was hence conducted and a report dated 22.01.2021 was submitted by the Registrar. As per the findings so recorded on various allegations of embezzlement, it was reported by the Registrar that the complaint had already been inquired into by the State Vigilance Bureau as well as the Vigilance Cell of the Public Health Engineering Department. Upon inquiring into the allegations pertaining to different works, the State Vigilance Bureau as well as the Vigilance Cell of the Public Health Engineering Department did not find that any charge/allegation of embezzlement/misappropriation or abuse of the authority was established against respondent No.5. All the 16 allegations that were levelled by the complainant against the respondent No.5 regarding embezzlement had been examined on two occasions and the charges were not found to be established. The pleadings before the Lokayukta were in addition to the same. The operative part of the order dated 22.03.2024 reads thus:

“4 After going through the allegations of the complainants made in the complaints, inquiry report (Mark A), objections filed by the complainant (Mark B) and the action taken report (Mark C) as well as the status report (mark D), it is amply clear that the complainants had made as many as 16 allegations against the respondent regarding embezzlement of Rs 5,58,407/- without execution of work of staff quarters, misuse of Government budget during construction of clear water tank at boosting station of Prem Nagar and Sultan Puri Railway Station, Gohana Town, misuse of Government money for personal use, while constructing second water works at Gohana, misuse of Government jeep, claiming false TA/DA for inspection of pipes, use of low ratio material during construction of structure of RCC at 8.3 MLD STP at Gohana



Town, purchase of material without calling tender, allotment of work to Sh. Jagmair Mor, contractor on very higher rates, diverting of funds of special repair, allowing the private agencies to use Government money of Rs 70 lakhs and Rs.85 lakhs for private purposes, bifurcation of quotations and purchase of material without approval and misuse of regular Government staff for his personal/private purposes etc. As per the inquiry report (Mark A), the allegations No.2,7,8 of the complaint were proved, while the action on allegations at Serial No.1,3 and 6 has been taken and the matter was decided by the Government and further action on the allegations at Serial No.10, 11 and 12 has also been taken but the allegations at Serial No.5,14 and 15 cannot be inquired on account of failure of the complainant to prove the same by documentary evidence. However, as per the report, the allegations at Serial No.4,9 and 13 were not proved. It was concluded in the inquiry report (Mark A) as under.

"1. The clear water tanks at Boosting Station Prem Nagar and Sultan Puri Gohana were constructed of size different than that provided in DNIT of the work and though Sh. S.S. Lohan, Executive Engineer (now Superintending Engineer) has given the justification for change in size of the Clear water Tanks was not got approved from the competent authority and thus irregularity has been committed by Sh. S.S. Lohan, Executive Engineer (now Superintending Engineer) who also got executed the work as Sub Divisional Engineer alongwith Sh. Surjit Singh Malik, Junior Engineer and Ram Bhaj Saini, Junior Engineer

2. Sh. S.S Lohan, Executive Engineer (now Superintending Engineer) who is also concerned Sub Divisional Engineer for some of the vouchers mentioned in the allegation No.7 of the complaint, Sh. Adarsh Singla, Sub Divisional Engineer, Parkash Rathi, Sub Divisional



Engineer, Anand Garg Sub Divisional Engineer, Sunil Ranga Sub Divisional Engineer, Shish Pal Sharma Sub Divisional Engineer, Tarun Garg Sub Divisional Engineer and S/Sh. Krishan Verma Junior Engineer, V.K. Sharma Junior Engineer, Sunil Sharma Junior Engineer, Balraj Mor junior Engineer, Ram Bhaj Saini Junior Engineer, Sirikrishan Junior Engineer, Parveen Kumar Junior Engineer and Sanjay Malik Junior Engineer are responsible for the excess payment amounting to Rs. 12,564/ on account of purchase of the same item on some/adjacent dates from same/different shops thus causing a loss amounting to Rs. 12,564/ to State Exchequer

3. Sh. S.S. Lohan, Executive Engineer (now Superintending Engineer) recommended the allotment of much higher rates for the same item and subsequently issued allotment letter on these rates for two similar works within a time span of 40 days, thus causing a loss of Rs. 38,725/- to the State Exchequer."

5. Further, the perusal of the annexure D-2 with the inquiry report shows that the respondent Sh. S.S. Lohan was charge-sheeted regarding the 1st and 6th allegations of the complainant and the inquiry officer submitted the inquiry. report but as per findings of the inquiry officer, the charges were not proved and as such he was exonerated. As per annexure D8 attached with the inquiry report (Mark A) was issued charge-sheet under Rule 7 of the Haryana Civil Services Punishment and Rules, 1987 but as per order annexure D9 dated 06.01.2017, although the charges were proved against him and a show cause notice was issued to which he submitted his reply and after hearing in person, the ACS to Government of Haryana, Public Health Engineering Department observed/ordered that in view of the facts on record, treatment of other officers in similar position, perusal of the reply to show



cause notice and other material available on the file, a punishment recorded warning is awarded to Sh. S.S. Lohan, Executive Engineer.

6. *According to the action taken report (Mark C) and the order dated 22.12.2020, it is clear that the matter regarding taking disciplinary action against the delinquents namely, Sh. Adarsh, Anand Garg, Sunil Ranga, Tarun Garg, the then SDES, Surjit Singh Malik, the then JE, Krishan Verma, Sunil Sharma, Balraj Mor, Shri Krishan, Sanjay Malik JEs was put up through. ACS to Government of Haryana, Public Health Engineering Department to Government, who after careful consideration decided to drop the matter against Sh. S.S. Lohan, the then Executive Engineer, Parkash Rathi, SDE, Sh. Shishpal Sharma, SDE, Ram Bhaj Saini, JE and V.K. Sharma, the then JE in the light of rule read 12(2)(b)(ii) of Haryana Civil Services Pension Rules, 2016. It was also decided as per the letter dated 22.12.2020 to drop the matter against Sh. Anand Kumar Garg, the then SDE, who had also retired like above said other officials.*

7. *Further also vide letter dated 22.12.2020 of ACS to Government of Haryana, Public Health Engineering Department, the Government also decided to drop the matter against Sh. Adarsh, the then SDE, Sh. Sunil Ranga, the then SDE, Sh. Tarun Garg, the then SDE, Sh. Krishan Verma JE, Sunil Sharma, the then JE, Sanjay Malik, the then JE, Sh. Balraj Mor, JE, Parveen Kumar, the then JE, that mistake a warning that warn to be more careful in future. The complainant in his objections (Mark B) has reiterated his allegations of the complaint and claimed that huge amounts of Government funds were embezzled by the respondent in connivance with his subordinates and private contractors but the said amount even after being proved to be misappropriated was not recovered from him. He has also claimed that during the inquiry, the statements and records were manipulated by the*



respondent and his junior officials so as to save him and as such the truth was suppressed. He has further alleged that the documents provided by him were not taken into account and as such the inquiry report was meaningless. He has pointed out that even the conversation in the compact disk produced by him along with the complaint was not taken into consideration by the inquiry officer.

8. *It is clearly evident from the inquiry report and the action taken report that although the respondent and the other officials working under him were found to be guilty of embezzlement and misuse of Government funds and various violations of the rules as well as misconduct as public servants but they were either let off with a light punishment like a warning or allowed to go scot free on the ground that they had already retired from their service. It appears that the serious allegations of financial embezzlement of huge amounts by the respondent and the staff working under him amounting to crime were found to be proved but not a single penny was ordered and attempted to be recovered from them. It lends credence to the contention of the complainant that there is nothing on record so as to show that as to under what facts and circumstances, the respondent and his co-culprits were allowed to digest large amounts proved to be grabbed by them through corrupt practices, without any hitch or hindrance, which clearly amounted to not only gross misconduct but also constituted criminal offences of misappropriation and embezzlement of the Government funds for which they could have been prosecuted and punished. Thus, prima facie there exists reasonable ground for conducting further investigation in the matter by constituting a special investigating team comprising senior police officers and civil servants with expertise and experience in building construction works, in the interest of transparency, clean*



administration and containing the corruption in Government machinery engaged in public works.”

The aforesaid inquiry report was duly supplied to the petitioner/ complainant for filing his objections, which were filed by the petitioner on 05.10.2023, wherein he stated that the findings recorded by the Registrar in the Preliminary Inquiry Report are reasonable and justified. He, however, reiterated that respondent No.5 is guilty of embezzlement and misuse of Government funds, but the said respondent has been let off with lighter punishment of warning and allowed to go scot-free on the ground that he had already retired from service. Respondent No.5 superannuated in the month of December 2018. A communication was also received from the Principal Secretary to the Government of Haryana. Public Health Engineering Department as per which, the proceedings against respondent No.5 were dropped by the Govt. vide communication dated 22.12.2020 and all other employees had superannuated. It was also reported that as per the report dated 30.09.2021 passed by the Superintending Engineer, (Vigilance) Head Quarter, no loss was established to the State Exchequer on behalf of respondent No.5 and other retirees on the allegations No.7 and 8, therefore, no disciplinary proceedings were proposed to be initiated. The chargesheet with respect to embezzlement of Rs.5,58,407/- was also dropped and it was found that there was no embezzlement of the amount that was spent on the repair of staff quarters. Similarly, the allegation of misuse of Govt. budget and embezzlement by misuse of power during construction of Clear Water Tank at Boosting Station of Prem Nagar and Sultan Puri Railway Stations, Gohana Town were also examined by the Superintending Engineer (Vigilance), as per which it, there was a mere

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irregularity in changing the size of the Clear Water Tank but there was no loss that was established. There was no evidence to show misuse of the assets/ property of the State Government or causing loss to the State Exchequer.

After noticing that as the matter had been looked into by the State Vigilance Bureau as well as Vigilance Cell of Public Health Engineering Department vide report dated 30.09.2021, the learned Lokayukta, Haryana filed the complaint submitted by the petitioner.

The discussion with respect to the various allegations is extracted as under:

“A communication dated 14.12.2021 was received from the Principal Secretary to Government, Haryana, PHE As per the communication, the Engineer-in-Chief, Public Health Engineering Department, the instant complaint had already been dealt on the basis of facts/ actual position and as per approval of competent authority (i.e. Hon'ble CM), the government vide communication dated 22.12.2020 has already dropped the matter against Shri S.S. Lohan, the then EE now SE (retired on 31.12.2018) and other official namely Shri Shishpal Sharma, SDE (Retired on 30.9.2016), Ram Bhaj Saini, JE/Retired on 30.6.2018) and Shri V.K. Sharma, the then JE (now SDE Retired on 30.9.2016) in the light of rule 12(2)((b)(ii) of the Haryana Civil Services (Pension) Rules, 2016 In the communication dated 7.12.2021 of the office of Engineer-in-Chief, PHE has also reported that in view of the report dated 31.9.2021 of the S.E. (Vigilance) HQ no loss was established to the State Exchequer on behalf of Shri SS Lohan and other retirees on the allegation Nos.7 and 8 and therefore, in the absence of any loss, no disciplinary action is proposed against the retiree officials.



Further the Engineer-in-Chief of PHE Department has got the matter enquired from S.E. (Vigilance), PHE on the similar allegations as made in the present complaint regarding embezzlement of Rs. 5,58,407/- made by the officers in the form of bogus payment without execution of any work of staff quarters for mechanical staff at Site of 4 Nos. Boosting Stations at Gohana Town, District Sonapat, the matter has been decided by the government. The charge sheet issued to various delinquent officials was dropped as it was found that there was no embezzlement as amount of Rs. 5,58,407/- was spent on repair of staff quarters.

Similarly, for the allegation of mis use of government budget and embezzlement by mis-using power during construction of Clear Water Tank at Boosting Station of Prem Nagar and Sultan Puri Railway Station, Gohana Town have been looked into by the S.E.(Vigilance). As per the report of S.E. (Vigilance) though the allegation is proved to the extent that Clear Water Tanks at Boosting Station Prem Nagar and Sultanpuri Gohana were constructed of size different than that provided in DNIT of the work and though Shri SS Lohan, Executive Engineer (now S.E.) has given the justification for change in size of the Clear Water Tank in his statement. But the change of size of the Clear Water Tanks was not got approved from the competent authority. Thus irregularity was committed by Shri SS Lohan. However, no loss has been found established by the Enquiry Officer in his report.

The allegation of the present complainant for mis-using the government jeep and to cause loss to the State Exchequer has also been not established. The SE (Vigilance) in his report dated 30.9.2021 has given his finding in the concluding para, which reads as under

"It was desired by the IDMS (DM Section) Head Office on behalf of Engineer-in-Chief, Haryana, Public Health



Engineering Department, Panchkula addressed to the Additional Chief Secretary to Govt. Haryana Public Health Engineering Department, vide memo No.71459-PHE/DM (2) dated 7.9.2021 to re-examine the loss calculated at Sr. Nos.8 and 7 by worthy Chief Vigilance Officer on PUC dated 30.9.2021 against Shri S.S. Lohan (Superintending Engineer Retd) for which it is found as well as mentioned in the Inquiry Report at Sr. No.8, the payment paid to Shri Jagmer Mor Contractor for account of tender on higher rates caused loss to State Exchequer of Rs.38725/- but I do not agree with the findings of the then Superintending Engineer's (Vigilance) Inquiry Report as the tenders were called through most transparent process which is e-tendering and regarding Allegation at Sr. No. 7 where purchases made on higher rates on same adjacent dates caused loss to the Sate Exchequer of Rs. 12564/- whereas, the recovery from the concerned agencies have been made

There is no loss caused to State Exchequer by Shri S.S. Lohan as calculated from the Inquiry report of the then Superintending Engineer (Vigilance) Head office in regard to Sr. No. 8 and Sr. No. 7. It is further added that Govt. vide memo No. 4/2/2016-PH1 dated 22.12.2020 has decided to drop the matter against Shri S.S. Lohan, the then Executive Engineer now Superintending Engineer Retd."

In the concluding para of the report dated 30.9.2021, it is observed that there is no loss caused to State Exchequer by Shri SS Lohan and therefore the Government has decided to drop the matter against Shri SS Lohan.

Furthermore, the State Vigilance Bureau in Enquiry No. 3 of 2011 has also looked into similar allegations against Shri S.S. Lohan and in his report dated 13.10.2021 did not find any loss attributed to Shri SS Lohan.

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Since the matter has been looked into by the State Vigilance Bureau as well as by the Vigilance Branch of the office of Engineer-in-Chief, PHE in the report dated 30.9.2021, and no loss has been found established against Shri SS Lohan, the present complaint deserves to be closed.”

The argument of learned counsel for the petitioner that respondent No.5 has been lightly let off by the respondent-Department in its internal proceedings cannot be gone into at this stage, since the orders passed by the Competent Authority after culmination of the departmental proceedings are not subject matter of challenge in the present petition. It is evident from a perusal of the documents and evidence available on record that inquiry has been conducted twice over against respondent No.5 not only by State Vigilance Bureau but also by the Vigilance Cell of the Public Health Engineering Department and the charges as well as the allegations levelled by the petitioner have not been established. I do not find that the order dated 22.03.2024 passed by the learned Lokayukta, Haryana suffers from any illegality, perversity, impropriety or misappropriation of evidence that has been brought before it.

The present petition is accordingly dismissed in *limine*.

OCTOBER 22, 2024.*rajender***(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No