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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 11158/2024**

DR OM PRAKASH SINGH

.....Petitioner

Through: Mr. Sukumar Pattjoshi, Senior
Advocate with Ms. Sanjivani Pattjoshi, Advocate

versus

FOOD CORPORATION OF INDIA

.....Respondent

Through: Mr. Manoj, Standing Counsel with
Ms. Aparna Sinha, Advocate

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

12.08.2024

CM APPLs. 46116/2024 and 46117/2024

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 11158/2024, CM APPLs. 46114/2024 and 46115/2024

3. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:

“A. Issue a Writ in the nature of Certiorari or any other appropriate Writ, Order or Direction against the Respondent to quash the Show Cause Notice dated 03.05.2021 and Memorandum dated 25.09.2023 instituting Departmental Enquiry against the Petitioner herein for purported contraventions under Regulations 31, 32 & 32-A(5), (9), (18), (22) and (3) of the FCI Staff Regulations, 1971 vide FCI HQ-VIG019/228/2022-VIG (E-4197) [annexed and marked herewith as ANNEXURE P-1(COLLY)] and all other consequential proceedings emanating therefrom against the present Petitioner; AND

B. Issue a Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction against the Respondent to forthwith release any and all consequential relief emanating from grant of the aforementioned



prayer (A); AND

C. Issue a Writ in the nature of Certiorari or any other appropriate Writ, Order or Direction against the Respondent to quash the Investigation Report forming the basis of the aforementioned SCN and Memorandum; AND

D. Pass any such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts of the case and in the interest of justice."

4. At the outset, it needs to be noticed that Petitioner had approached this Court in W.P.(C) No.9389/2024 and had sought exactly the same reliefs which are extracted hereunder for the purpose of ease of comparison:

““A. Issue a Writ in the nature of Certiorari or any other appropriate Writ, Order or Direction against the Respondent to quash the Show Cause Notice dated 03.05.2021 and Memorandum dated 25.09.2023 instituting Departmental Enquiry against the Petitioner herein for purported contraventions under Regulations 31, 32 & 32-A(5), (9), (18), (22) and (3) of the FCI Staff Regulations, 1971 vide FCI HQ-VIG019/228/2022-VIG (E-4197) [annexed and marked herewith as ANNEXURE P-1(COLLY)] and all other consequential proceedings emanating therefrom against the present Petitioner; AND

B. Issue a Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction against the Respondent to forthwith release any and all consequential relief emanating from grant of the aforementioned prayer (A); AND

C. Issue a Writ in the nature of Certiorari or any other appropriate Writ, Order or Direction against the Respondent to quash the Investigation Report forming the basis of the aforementioned SCN and Memorandum; AND

D. Pass such other further order or orders as this Hon'ble Court may deem fit and proper in the facts of the case and in the interest of justice."

5. Comparing the prayers sought in the two writ petitions there can be no doubt that by this writ petition, Petitioner has again agitated the same issues and claimed the same reliefs, which he did in W.P.(C.) 9389/2024. In fact, learned senior counsel for the Petitioner after canvassing arguments at some length in his endeavour to prove that the reliefs were different, now fairly concedes that the reliefs are identical. What is, however, urged is that at that



stage, this Court had overlooked and not dealt with the prime issue that the basis of the show cause notice dated 03.05.2021 and charge memorandum dated 25.09.2023 issued against the Petitioner was an Investigation Report rendered by Mr. H.S. Dhaliwal, who himself was on a DI List by Central Vigilance Commission and was incompetent to even enter into the investigation against the Petitioner. It is also argued that the Court has not dealt with the relief claimed in the earlier petition pertaining to release of consequential benefits emanating from grant of prayer (A).

6. Mr. Manoj, learned Standing Counsel for the Respondent, takes a strong objection to the maintainability of this petition and submits that it is not open to the Petitioner to file a fresh petition seeking similar reliefs as sought in the earlier petition, which was disposed of vide order dated 11.07.2024, with an understanding on instructions from the Petitioner, who was present in Court, that the Petitioner be granted opportunity to cross-examine two material witnesses of the department, i.e. PW-1 and PW-2 and liberty be granted to raise all other objections, contentions and legal issues at appropriate stage during and after the conclusion of the inquiry proceedings. Despite being a consent order, though not so recorded in the order, Petitioner challenged the order dated 11.07.2024 before the Division Bench in LPA No.707/2024, which was, however, withdrawn with liberty to approach the Single Judge as per law. The liberty granted cannot imply filing of a fresh writ petition on the same cause of action and thus this petition deserves to be dismissed with exemplary costs.

7. Heard learned Senior Counsel for the Petitioner and counsel for the Respondent.



8. As noted above, from a comparative of the prayer clauses as well as the averments/grounds in the two writ petitions, there is no doubt that they are identical in all respects and the present writ petition is a verbatim copy of the first one, save and except, for mentioning the developments subsequent to the disposal of W.P.(C) No.9389/2024 to the extent of referring to the order dated 11.07.2024 and the order of the Division Bench. There is no gainsaying that no litigant can be permitted to file two writ petitions on the same cause of action, more particularly when the earlier one was disposed of with the consent of the Petitioner chartering further course of action. Order dated 11.07.2024 clearly indicates that on instructions from the Petitioner, earlier counsel appearing on behalf of the Petitioner had restricted the relief to grant of an opportunity to cross-examine two material witnesses of the department, i.e., PW1 Sh. H.S. Dhaliwal, GM (Genl.) and PW2 Sh. Avinash K. Dubey, Mg (HK) RO (CG) and all legal issues, objections and contentions were left open to be raised by the Petitioner at the appropriate stage, during and after the conclusion of the inquiry proceedings. Recording this submission, the writ petition was disposed of and relevant part of the order dated 11.07.2024 reads as follows:

“8. In view of the aforesaid, this petition is disposed of with a direction to the Inquiry Officer to grant an opportunity to the Petitioner to cross-examine PW1 Sh. H.S. Dhaliwal, GM (Genl.) and PW2 Sh. Avinash K. Dubey, Mg (HK) RO (CG) and thereafter to file the written defence brief. As assured on behalf of the petitioner, the cross-examination shall be concluded within a period of two weeks from today, subject however to the availability of the witnesses, but in no case later than four weeks from today. All other contentions and legal issues raised in the present petition are left open, granting liberty to the Petitioner to raise them at the appropriate stage, during and after the conclusion of the inquiry proceedings, as the case may be. It is made clear that Court has neither entered into nor expressed any opinion on the merits of the matter.”



9. It is not correct for the Petitioner to urge that at that stage the Court had overlooked or not dealt with the argument that the Investigation Report which formed the basis of the charge sheet was by an officer who was himself under a vigilance inquiry and therefore, the show-cause notice and the charge-sheet were bad in law. As a matter of fact, at the initial stage of the argument, this issue was raised on behalf of the Petitioner but thereafter liberty was sought to raise this issue at the appropriate stage and Court was called upon not to enter into the merits of the contentions raised. Thus, it is unfair on behalf of the Petitioner to make this submission in a fresh writ petition. Pertinently, Petitioner had challenged the order before the Division Bench but withdrew the appeal which undoubtedly implies that the Division Bench did not find any error in the order. The liberty granted by the Division Bench was on the request of the Petitioner and as the order reads was to approach the learned Single Judge as per law. This cannot imply that the Division Bench permitted filing of a fresh writ petition on the same cause of action, with the same contentions and reliefs, as rightly argued by Mr. Manoj. Therefore, this writ petition is not maintainable and deserves to be dismissed.

10. Mr. Pattjoshi calls upon this Court to adjudicate on the issue of Investigation Report and relies in this context on a judgment of the Supreme Court in *State of Punjab v. Davinder Pal Singh Bhullar and Others, (2011) 14 SCC 770*, to contend that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the matter. For the reasons stated above, this Court is not entering into this issue at this stage as that would amount to recalling the order dated 11.07.2024 disposing of the earlier writ



petition, wherein the same issue was raised. Needless to state, it is open to the Petitioner to raise this issue at the appropriate stage.

11. At this stage, Mr. Sukumar Pattjoshi, learned Senior Counsel submits that Respondent is not releasing Petitioner's retiral benefits, which are payable as per law during the pendency of the disciplinary proceedings and in this context relies on the judgment of this Court in ***Union Bank of India and Another v. Sh. D.C. Chaturvedi and Another, 2022 SCC OnLine Del 836.***

12. Responding to this submission, learned Standing Counsel for the Respondent relies on Regulation 60-A of the Food Corporation of India (Staff) Regulations, 1971 ('1971 Regulations'), wherein it is stipulated that during the pendency of the disciplinary proceedings, the disciplinary authority may withhold payment of gratuity for ordering recovery from gratuity or the whole or part of any pecuniary loss caused to the Corporation, if the employee is found in a disciplinary proceedings or judicial proceedings to have been guilty of offence or misconduct as mentioned in the relevant Sections of the Payment of Gratuity Act, 1972 (39 of 1972) or to have caused pecuniary loss to the Corporation by misconduct or negligence during his service, including service rendered on deputation or on re-employment after retirement, provided that the provisions of relevant Sections of the Payment of Gratuity Act, 1972 shall be kept in view in the event of delay payment, in case, the employee is fully exonerated.

13. Insofar as the gratuity is concerned, in view of Regulation 60-A of 1971 Regulations, it is in the domain of the Respondent to take a decision. This issue shall be examined by the Respondent within a period of 6 weeks from today and the decision taken thereon, in accordance with law, shall be



communicated to the Petitioner, leaving it open to him to take recourse to legal remedies, if aggrieved. Insofar as CPF is concerned, learned counsel for the Respondent fairly submits that on completion of necessary formalities, the amount due to the Petitioner will be released to the Petitioner within 4 weeks from today.

14. In my view, this writ petition is a gross abuse of the process of Court and is accordingly dismissed, except for the aforesaid directions with cost of Rs.20,000/- to be paid by the Petitioner to Delhi High Court Bar Clerk's Association, UCO Bank Account No. 15530100006282, IFSC Code UCBA0001553, Delhi High Court Branch, within 6 weeks from today. Pending applications are dismissed.

JYOTI SINGH, J

AUGUST 12, 2024/kks