
(2006) 08 P&H CK 0365
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 12395 of 2006

Amar Nath

APPELLANT

Vs

District and Sessions Judge

RESPONDENT

Date of Decision : 10-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 08 P&H CK 0365

Hon'ble Judges : M.M.S. Bedi, J;M.M. Kumar, J

Bench : Division Bench

Advocate : N.C. Kinra, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The petitioner who has been working as a Clerk in the Court of Civil Judge (Sr. Division), Rohtak has invoked the extra ordinary jurisdiction of this Court under Article 226 of the Constitution by filing the instant petition with a prayer to quash the order dated 3.4.2006(Annexure P.3) passed by the learned District and Sessions Judge, Rohtak upholding the adverse remarks made in his ACR for the year 2003 as conveyed on 4.11.2004. A copy of the adverse remarks as conveyed on 4.11.2004 has been placed on record as Annexure P.1 and the same reads as under: Report given by Shri H.S. Dahiya, Civil Judge (Sr. Division) Rohtak

- 1 Industry and honesty Integrity doubtful
- 2 Handwriting and neatness Average
- 3 Efficiency and Intelligence Average
- 4 Knowledge of rules and orders with special reference to the notes Poor
- 5 Promptness in disposing of the work Poor
- 6 Power and manner in working with others Poor

7 Punctuality and regularity OK

8 Reputation for honesty Poor

9 Defects, if any Integrity doubtful

10 Whether the official stays at the headquarters after the close of the office and during vacations or not No contrary reports

11 Qualification for promotion (also record in the column of the official can do his work satisfactorily) Not fit Special defect Classification: (Outstanding, Very Good, Good, Average, Below Average)

"C" with integrity doubtful

Sd/16.10.2004 Civil Judge/S.D./RTK

2. The petitioner has filed a representation against the afore-mentioned adverse remarks before the learned District and Sessions Judge, Rohtak which is the accepting authority. The learned District and Sessions Judge has rejected the representation by passing the impugned order. The operative part of the order dated 3.4.2006 reads as under:

I have gone through the comments submitted by the Presiding Officer and the representation made by the employee and also the service record of the employee. Ordinarily, the Presiding Officer gets an opportunity to watch and evaluate the performance of the official of his Court and he alone is the authority to record confidential reports by making evaluation of work, performance of work and knowledge of rules etc. subject to the approval of the reviewing authority. Per record, the official had worked with Shri H.S. Dahiya, Civil Judge (Sr. Division), Rohtak with effect from 25.9.2003 to 31.12.2003 who recorded the confidential report of the official and in view of the instructions contained in Haryana Government letter No. 7116/3S/76 dated 14.2.1977, if more than one such officer had seen the work of the Officer/official reported upon during a particular year in such cases remarks are to be recorded only by that reviewing/accepting authority who may have last seen the work of the Officer/official reported upon in the reporting year for atleast three months.

An opportunity of personal hearing has also been afforded to the official. In the present case, the official had worked with Shri H.S. Dahiya, Civil Judge (Sr. Division), Rohtak (as he then was) from 29.9.2003 to 31.12.2003 for more than three months, so, the contention of the representationist that the officer was not competent to record Annual Confidential Report on his work and conduct is totally wrong, vague and contrary to the record and it is rejected.

Since, remarks recorded in column No. 7 and 10 are not adverse, so, the prayer of the representationist to the effect that the same are not adverse is accepted. I find no substance/force in the representation made against the adverse remarks recorded against column No. 1 to 6,8,9 and 12 and being satisfied that the Presiding Officer has rightly recorded the remarks for the year ending 2003,

reject the representation of the employee.

The official concerned be informed accordingly.

3. Mr. N.C. Kinra, learned Counsel for the petitioner has vehemently argued that the reporting officer Shri H.S. Dahiya Civil Judge (Sr. Division), Rohtak did not acquire competence to record adverse remarks against the petitioner as he did not have the opportunity to watch and evaluate his performance. According to the learned Counsel Shri H.S. Dahiya had joined on 25.9.2003 and proceeded on leave from 26.9.2003 to 1.10.2003. Learned Counsel has also emphasised that he also remained on leave for the following periods:

26.9.2003 to 1.10.2003 6 days 13.10.2003 1 day 11.11.2003 1/3rd day
17.11.2003 to 19.11.2003 3 days. 20.12.2003 One day Winter vacation 7 days
(from 25.12.2003 to 31.12.2003) Total 17-1/3 days.

4. The contention raised is that the petitioner has worked for a total period of 54 days under the supervision of Mr. Dahiya who is the reporting officer of the petitioner. In support of his submission, learned Counsel has placed reliance on para 7 of the consolidated instructions and the explanatory note underneath the afore-mentioned para and submitted that the reporting authority is required to actually and factually watch the working of the official atleast for a period of three months in order to acquire competence to record his ACR.

5. We have thoughtfully considered the submissions made by the learned Counsel and are of the view that the adverse remarks conveyed on 4.11.2004 to the petitioner do not suffer from any illegality including the vice of incompetence. It has come on record that Shri H.S. Dahiya, Civil Judge (Sr. Division) joined on 29.9.2003 and the period of ACR came to an end on 31.12.2003 which is obviously more than three months. The afore-mentioned period clothe the reporting officer with the competence to record the ACR of the petitioner which is consistent with the requirement of para 7 of the consolidated instructions which reads as under:

Minimum period for which a Reporting Officer should have seen the work of a Subordinate before recording remarks on him.- No reporting officer should record his remarks in the confidential report of an officer under him unless he has seen his work and conduct for atleast three months during the financial year.

Explanatory Note:- The period of three months referred to in this paragraph means the period for which the reporting authority has actually seen the work of the officer/official reported on. Besides regular leave (as distinct from casual leave which is treated as duty) the period of suspension when a Government employee does not discharge any duties is not to be counted in calculating this period. Similarly the period, if any, during which the reporting authority is on leave or under suspension is not to be counted.

6. A perusal of the afore-mentioned para would show that the petitioner remained under the supervision of the reporting officer for more than three

months from 29.9.2003 to 31.12.2003.

7. The contention of the learned Counsel that the use of the expression "actually seen the working of the official/officer" as used in explanatory note appended to para 7 requires no detailed examination because even if the officer has gone on holidays for some period, the official like, the petitioner, continues to work under his supervision. The hyper technical argument raised by the learned Counsel for the petitioner in order to divest the reporting officer the power to write his ACR has been taken to absurd limits. It is well known that Copying/ Clerk, like the petitioner, working under the Presiding Officer, the Civil Judge (Sr. Division) would continue to work under his control and supervision even during leave and vacations. Even otherwise, the constructive control of the petitioner would be deemed to be in the hands of his superior. Therefore, the argument does not commend itself to us and we have no hesitation to reject the same.

8. For the afore-mentioned reasons, this petition fails and the same is dismissed.