
(2018) 10 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No.. 4388 Of 2009 (O/M)

Amrish Kumar Jain

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 03-10-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 258, 309
Punjab Civil Services Rules, 1951 — Rule 7
Code of Civil Procedure, 1908 — Order 17 Rule 1

Citation : (2019) LabIC 249 : (2019) 1 SCT 491

Hon'ble Judges : A.B. Chaudhari, J;Kuldip Singh, J

Bench : Division Bench

Advocate : Puneet Jindal, Neha Anand Mahajan, Anju Arora, Deepali Puri

Final Decision : Allowed

Judgement

Petitioner Amrish Kumar Jain has invoked the writ jurisdiction of this Court under Articles 226/227 of the Constitution of India for issuing writ in the

nature of certiorari for quashing the adverse Annual Confidential Report (in short 'ACR') dated 9.6.2008 (Annexure-P-5) and order dated 26.11.2008

(Annexure-P-8), passed by respondent No. 1 as communicated on 8.1.2009 (Annexure-P-12) whereby services of petitioner have been dispensed

with as a member of Punjab Civil Services (Judicial Branch), allegedly during probation period as not being satisfactory, passed on the basis of letter

dated 25.11.2008 (Annexure-P-7), issued by respondent No. 2 High Court.

The petitioner having successfully qualified in Punjab Civil Services (Judicial Branch) Examination, conducted in the year 1993, was though not initially

appointed, but on the basis of decision of a Division Bench of this Court in CWP No. 13486 of 1999, decided on 5.12.2003 (Annexure-P-1), he was

appointed, vide appointment letter No. 4542, dated 3.11.2005 (Annexure-P-2), initially on probation for a period of two years, which could be extended upto three years. Petitioner successfully completed two years period of probation in November, 2007. While, he was posted as Civil Judge (Junior Division), Jalandhar, his work and conduct remained satisfactory under two District and Sessions Judges. However, according to petitioner, when Shri Gurdev Singh, was posted as District and Sessions Judge at Jalandhar in May, 2007, he became biased and inimical towards him. According to him, one Civil Suit No. 176 of 2007 was pending against him regarding very valuable land of 100 Marlas in posh Model Town, Jalandhar. On 12/13.6.2007, he had gone to see respondent No. 3 in connection with sanction of his leave, commencing from 14.6.2007 onwards. At that time, respondent No. 3 instructed the petitioner to decide the said civil suit in favour of defendants and dismiss the civil suit. Petitioner being a newly appointed judge, under probation, could not gather the courage to report the matter to Hon'ble High Court. Petitioner was not in a position to oblige respondent No. 3 and he decreed the suit on 30.7.2007. Yet in another Civil Suit No. 20 of 2001, titled as Ramesh Kumar Versus Pawan Kumar, filed on 10.1.1995, which was a dispute between two brothers, the defendant was very influential person as daughter of defendant was serving as senior IAS Officer, who was earlier posted as Deputy Commissioner near Jalandhar. Respondent No. 3, Shri Gurdev Singh, the then District and Sessions Judge, Jalandhar, in August, 2008, instructed him to oblige senior IAS officer, but petitioner decided the case against defendant i.e. father of senior IAS officer. Some other allegations have also been levelled against respondent No. 3, which need not be reproduced. Suffice to say, according to petitioner, respondent No. 3 became bias and inimical to him. On 13.2.2008, a complaint was made by one Naresh Mahajan. Petitioner was directed to send his comments on or before 18.2.2008. Infact, it was a transfer application for transferring a pending criminal case to some other Court. Petitioner sent the comments and requested that the case may be transferred to some other Court. On 10.6.2008, petitioner received ACR, for the period 2007-08, with adverse remarks 'integrity not above board, Grading 'C' below average'. The adverse remarks alongwith adverse report dated 9.6.2008 were given by respondent No. 3. All the minor irregularities pointed out by respondent No. 3 in his report were explained. Petitioner completed three years of his

probation period on 25.11.2008. However, his judicial work was withdrawn on 25.11.2008. On 28.11.2008, his representation was rejected. Petitioner

made a detailed representation dated 17.7.2008. Thereafter, on the recommendations of the High Court dated 25.11.2008, the services of petitioner were dispensed with being not satisfactory by respondent No. 1, vide order dated 8.1.2009/31.12.2008.

Respondent No. 2 High Court, in the reply, took the stand that probation period was of two years under Rule 7 of Part 'D' of Punjab Civil Services

Rules, 1951, which could be extended by one year and in case, no order is passed, it is deemed to have been extended. Therefore, the probation period

was deemed to have been extended till 25.11.2008. It was stated that the matter regarding clearance of probation period was to be placed before the

Committee constituted for the purpose of review of work and conduct of probationers. The Committee, on the basis of adverse remarks, regarding

integrity and general assessment, took the view that work and conduct of petitioner is unsatisfactory. The Committee, in its meeting held on

14.11.2008, recommended that the services of petitioner be dispensed with before completion of three years' probation period on 25.11.2008.

Accordingly, the Full Court in its meeting held on 21.11.2008 decided that report of Committee be accepted and services of petitioner be dispensed

with. Respondent also referred to adverse ACR of petitioner for the year 2007-08. It was stated that representation and adverse remarks in ACR

were rightly rejected.

Respondent No. 3, against whom personal allegations were levelled, did not file reply, despite opportunity being given to him.

We have heard the learned senior counsel for petitioner, learned State counsel, learned counsel for High Court and have also carefully gone through

the file.

The basis of dispensing services of petitioner is the adverse ACR for the year 2007-08. There is no other adverse ACR against petitioner. Therefore,

it is necessary to reproduce the said remarks given in the ACR in columns No. 7, 8 and 9, which are as under :-

7. Integrity Not above board. Apart from general reputation, adverse report received from D.J. one Naresh Mahajan appeared before me and made

complaint against his integrity. The D.J. had already recorded his statement on

13.2.2008 (annexed) and transferred the case from his Court. Â

8. General assessment-- Not maintaining integrity. regarding strength and shortcomings.

9. Grading-- C-Below Average.

PART-III Not maintaining reputation Remarks of the of honesty. Needs to improve. Administrative Judge' These adverse remarks were made after

the annual inspection by the then Administrative Judge in April, 2008.

The perusal of adverse remarks shows that the then Administrative Judge took into consideration general assessment, adverse report received from

then learned District and Sessions Judge and complaint of Naresh Mahajan, who appeared before the then Administrative Judge during annual

inspection and it was on that basis, it was recorded that he is not maintaining good reputation for honesty. Except this, there is no material.

First of all, we will discuss the adverse report received from then District and Sessions Judge.

Mr. Gurdev Singh, then District and Sessions Judge, Jalandhar, had made the said adverse report. The perusal of said report shows that then learned

District and Sessions Judge, Jalandhar, made the adverse report regarding two officers only and did not submit any other report regarding other judicial

officer, posted in Jalandhar Sessions Division. The perusal of report shows as under :-

a) Petitioner did not submit the explanation regarding a large number of cheque bounce cases to remove shortcomings ;

b) He has submitted the list of 103 cases, tried by Civil Judge (Junior Division), for which he blamed Ahlmad and did not take any action against

Ahlmad, despite lapse of two months ;

c) He has not consigned the records to the record room in time ;

d) He has not followed the instructions regarding use of Section 258 Cr.P.C. and has not submitted explanation, despite lapse of two months ;

e) He was asked to submit history sheets of 10 oldest cases i.e. 5 oldest civil cases and 5 oldest criminal cases, but he submitted only 5 oldest history

sheet cases and submitted the verification certificate ;

f) His Ahlmad did not appended the note below the zimni order regarding issuance of summons and processes and presiding officer did not take care

of lapses of Ahlmad ;

g) In the history sheet cases, unnecessary and unavoidable adjournments were granted ;

h) Provisions of Order 17 Rule 1 CPC and Section 309 Cr.P.C. have been given a just go bye ;

i) In case of Bhag Singh Versus State, 10 adjournments for ex-parte evidence of plaintiff have been granted.

It were these shortcomings, which were recorded by the Administrative Judge to be adverse.

We are of the view that petitioner was a new-comer and was under probation. The then learned District and Sessions Judge was supposed to guide

him. These kind of defects can be found in the working of any Court. Judge is himself not required to consign the files to record room. Therefore, it

was mere an excuse to record the adverse ACR. It appears that then learned District and Sessions Judge was not happy with the petitioner. That is

why, he chose to make such routine remarks and submitted the detailed report in several annexures to the Administrative Judge to make him biased. It

is to be noticed that it is always the discretion of the Court whether the evidence is closed by orders or not, and Judge cannot be directed that he must

do it in all cases. Adjournments are to be granted considering the facts and circumstances of the case. Regarding cases under the Negotiable

Instruments Act, 1881, in the representation dated 17.7.2008

(Annexure-P-6), petitioner categorically stated that there are more than 1000 of Negotiable Instruments Act, 1881, cases pending in his Court and he

has disposed of more than 600 old cases of Negotiable Instruments Act, 1881. Therefore, it could not be said there he was not taking care of cases

under the Negotiable Instruments Act, 1881. Therefore, Administrative Judge without critically examining the background and facts, relied upon the

report of then learned District and Sessions Judge to record adverse ACR. Therefore, same is liable to be expunged.

Regarding the complaint of one Naresh Mahajan, it has come out that Naresh Mahajan was an accused before the petitioner. He moved an

application before then learned District and Sessions Judge, in which his comments were called on 14.2.2008 (Annexure-P-3). In the comments dated

18.2.2008 (Annexure-P-4), the petitioner stated that said Naresh Mahajan tried

to approach him through his gunman Darshan Kumar, but he was snubbed and, therefore, he has filed the transfer application levelling allegations against gunman and he requested that case be transferred. The case was accordingly transferred. It was the same Naresh Mahajan, who appeared before Administrative Judge and thereafter, his complaint that gunman of petitioner is demanding money was treated to be a gospel truth without considering the background of Naresh Mahajan and it was assumed that petitioner is a dishonest officer. Such complaints are generally made by the litigants against judicial officers. Therefore, without examining the genuineness of complaint, his complaint could not be believed. Moreover, it was mere a transfer application and case was transferred much before the inspection. Therefore, on the basis of complaint of Naresh Mahajan to Administrative Judge, it could not said that petitioner does not enjoy good reputation of honesty. Except this complaint, there was no other material before Administrative Judge to record that petitioner is not maintaining good reputation for honesty and, therefore, his report is 'C' below average.

The learned senior counsel for petitioner has argued that in this case, the Court should lift the veil to see what was background of recording adverse remarks and for this purpose, he has relied upon following observations made in Ram Ekbal Sharma Versus State of Bihar and another, 1993 (3) SCT 621; 1990 (3) SCC 504 where it was held as under :-

On a consideration of the above decisions the legal position that now emerges is that even though the order of compulsory retirement is couched in innocuous language without making any imputations against the Government servant who is directed to be compulsorily retired from service, the Court, if challenged, in appropriate cases can lift the veil to find out whether the order is based on any misconduct of the Government servant concerned or the order has been made bonafide and not without any oblique or extraneous purposes. Mere form of the order in such cases cannot deter the Court from deriving into the basis of the order if the order in question is challenged by the concerned Government servant as has been held by this Court in Anoop Jaiswal case (1984 (2) SCC 369).'

The learned senior counsel for petitioner has further sought support from the authorities of Apex Court in Ramesh Kumar Choudhary Versus Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others, 2015 (9) JT 363,

State Bank of India and others Versus Palak Modi and another, 2013

(1) SCT 387 and Secretary, Haryana State Electricity Board Versus Suresh, 1992

(2) SCT 600 and has pressed this Court to lift the veil to see the

real cause of recording of adverse ACR.

In the given circumstances, we are of the view that present case is a fit case where the principle of lifting of veil to find the real cause of dispensing

services of petitioner needs to be applied.

The petitioner could not be punished by way of terminating services on the basis of such defects being pointed out by District and Sessions Judge,

since such defects can also be found in most of the Courts and on the basis of single complaint of an unscrupulous complainant, who is an accused in

a case and that too without any verification about truthfulness of said allegations.

In such circumstances, after examining background of case, we are of the considered view that there was no justification for recording adverse

remarks in the ACR. Except the said ACR, which was made basis for dispensing with his services during probation, just before completion of

probation period, there is no other material. It being so, the adverse remarks in the ACR for the year 2007-08 are hereby quashed and considering the

previous ACRs of petitioner, ACR for the year 2007-08 is ordered to be upgraded as 'B+'.

Once the adverse remarks in ACR for the year 2007-08 are expunged and same is upgraded as 'B+', there is no ground left to justify that work and

conduct of petitioner is not satisfactory and that he will not prove to be a good officer. Consequently, recommendations dated 25.11.2008 (Annexure-

P7) of Full Court meeting held on 21.11.2008, recommending dispensing services of petitioner and Notification dated 8.1.2009/31.12.2008 (Annexure-

P-12 Colly), issued by Government of Punjab, dispensing services of petitioner are also hereby quashed.

The learned senior counsel for petitioner states that since he has been working in his parent department after being terminated from judicial services,

therefore, he does not claim salary for the period for which he remained out of service in present case.

Consequently, we pass following order :-

(1) Adverse remarks in the ACR for the year 2007-08 are hereby quashed and grading in ACR 'C' below average, is ordered to be upgraded as 'B+'.

(2) The recommendations of Full Court meeting dated 25.11.2008 (Annexure-P-7) and order of the Punjab Government dated

8.1.2009/31.12.2008 (Annexure-P-12 Colly), dispensing services of petitioner, are also hereby quashed.

(3) Petitioner is ordered to be reinstated in service within one month from today with all consequential benefits i.e. seniority, continuity of service, increments, right to promotions etc., but without any arrears of salary.

In view of matter, civil writ petition is allowed.