

(2016) 02 SHI CK 0048
In the High Court Of Himachal Pradesh
Case No : CWP No. 2799 of 2008

Chanchal Ram

APPELLANT

Vs

District and Sessions Judge, Mandi

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Himachal Pradesh Subordinate Courts Typist (Grant of License, Regulation and Control) Rules, 2001 — Rule 17

Citation : (2016) ILRHP 1

Hon'ble Judges : Dharam Chand Chaudhary, J.

Bench : Single Bench

Advocate : Mr. Sanjeev Bhushan, Senior Advocate with Ms. Abhilasha Kaundal, Advocate, for the Petitioner; Mr. Ramakant Sharma, Senior Advocate with Mr. Basant Thakur, Advocate, for the Respondent No. 1; Mr. G.R. Palsra with Ms. Leena Guleria, Advocates, for the Resp

Final Decision : Disposed Off

Judgement

Dharam Chand Chaudhary, J.(Oral)—The grouse brought to this Court is that the 1st respondent has closed the complaint filed by the petitioner against the 2nd respondent vide impugned order, Annexure P-3, without application of mind and in complete departure to the material available on record, particularly the report Annexure P-2, submitted by learned Civil Judge (Senior Division)-cum-Chief Judicial Magistrate, Mandi.

2. The 2nd respondent is a Petition Writer having been granted the licence to do the typing work in District Court Complex, Mandi. The copy of licence is Annexure R-2A. The petitioner made a complaint Annexure P-1 against the 2nd respondent, stating therein the instances when he misconducted himself as a typist, with request to cancel the licence of the said respondent. Rule 17 of the Himachal Pradesh Subordinate Courts Typists (Grant of Licence, Registration and Control) Rules, 2001, provides for cancellation of licence, granted to a typist on the ground of misconduct. This Rule reads as follows:

"17. Cancellation of Licence for misconduct - The licence of a typist shall be liable to be cancelled, if he/she is found guilty of misconduct or engages in any other employment, trade, business or profession etc;

Provided that before taking any action under this rule, the District Judge may hold such inquiry as he may deem fit after giving reasonable opportunity to show cause to the typist."

3. Therefore, on receipt of complaint Annexure P-1, the 1st respondent entrusted the matter to learned Civil Judge (Senior Division)-cum-Chief Judicial Magistrate, Mandi, for holding an inquiry into the allegations against the 2nd respondent. Consequently, the inquiry was conducted. Eight persons, including Panchayat, Kot Gehri, were associated during the course of inquiry and their statements recorded. Learned Civil Judge (Senior Division)-cum-CJM, Mandi, after holding the inquiry has concluded that the instances of misconduct referred to in the complaint against the 2nd respondent are established and that the provisions contained under Rule-17 are attracted in the matter. The inquiry report Annexure P-2 was submitted to the 1st respondent for further necessary action. The 1st respondent seems to have called for the response of the 2nd respondent on the inquiry report, who in turn, filed objections Annexure R-2B. The 1st respondent has ordered to file the complaint with one line order that since litigation between the petitioner and the 2nd respondent herein is pending in various courts, therefore, they are inimical to each other.

4. The impugned order has been challenged on the ground of being unjust, unfair and arbitrary as well as non-speaking. The grouse is that the matter should have not been closed by a single line order. It is averred that had there been any occasion to the 1st respondent to have disagreed with the inquiry report, he should have recorded the reasons therefor.

5. It is in this backdrop, the writ petition has been filed with the following prayers:

(i) That a writ in the nature of certiorari may kindly be issued and the impugned order dated 7.6.08 (Annexure P-3) passed by learned Sessions Judge, Mandi may be quashed and set aside.

(ii) That further writ in the nature of mandamus may be issued directing the respondent No. 1 to take an appropriate decision against respondent No.2 in accordance with law."

6. In reply to the writ petition, the stand of 1st respondent is that since the petitioner and 2nd respondent are inimical to each other on account of litigation, therefore, the complaint was rightly ordered to be closed after affording an opportunity of being heard to the petitioner. Similar is the version of 2nd respondent, which is supported by the documents, viz. Annexure R2-A, the copy of licence; Annexure R2-B, objections he preferred to the inquiry report; Annexure R2-C, the report of Gram Panchayat Nichla Lot, Tehsil Sadar, District

Mandi; Annexure R2-D, a certificate issued by the Secretary, District Bar Association, Mandi; Annexure R2/E, the report of Additional District Magistrate in the matter of obstructing path by the petitioner herein and Annexure R2-F, a copy of order passed by Sub Divisional Magistrate, Sadar, Sub Division, Mandi, H.P. , in a complaint under Section 145 Cr. P.C., which was filed by the petitioner against the 2nd respondent. Another copy of order Annexure R2-G whereby Judicial Magistrate, 1st Class, Mandi, has exempted the petitioner from appearance in the Court, has also been pressed into service.

7. As noticed supra, the impugned order Annexure P-3 has been sought to be quashed and a direction sought to the 1st respondent to take appropriate action against the 2nd respondent in accordance with law.

8. Having gone through the record of this case and the submissions made on both sides, it would not be improper to conclude that the order Annexure P-3 is terse having been passed without assigning any reason to disagree with the report submitted by learned Civil Judge (Sr. Division)-cum-CJM, Mandi. Even objections to the report filed by the 2nd respondent have not been discussed. Of course, the proper course available to the 1st respondent was to have afforded an opportunity of being heard to the 2nd respondent on the submission of Inquiry Report Annexure P-2. Though objections to the report were called from the said respondent and even the objections were filed also before the 1st respondent, however, he should have been given an opportunity to cross-examine the persons associated by learned Civil Judge (Sr. Division)-cum-CJM, during the course of inquiry and the complaint disposed of thereafter by a reasoned order.

9. The impugned order, therefore, is neither legally nor factually sustainable. The same as such is ordered to be quashed and set aside. Consequently, there shall be a direction to the 1st respondent to proceed in the matter afresh from the stage of affording the 2nd respondent, if he so desires, an opportunity to cross-examine the persons associated by learned Civil Judge (Sr. Division)-cum-CJM, Mandi, during the course of inquiry. It is thereafter, the complaint be disposed of in accordance with law, after hearing the petitioner and the 2nd respondent, by a speaking order. The petition is accordingly disposed of. Pending application(s), if any, shall also stand disposed of.