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**(2014) 07 P&H CK 0003**

**In the Punjab And Haryana At Chandigarh**

**Case No : C.W.P. No. 12699 of 2009 (O&M)**

Devi Lal

APPELLANT

Vs

The District & Sessions Judge, Fatehabad and Others

RESPONDENT

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**Date of Decision :** 01-07-2014

**Acts Referred:**

**Citation :** (2015) 177 PLR 110

**Hon'ble Judges :** Gurmeet Singh Sandhawalia, J

**Bench :** Single Bench

**Advocate :** S.B. Kaushik, Advocates for the Appellant; Kshitij Sharma, Assistant Advocate General, Advocates for the Respondent

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## **Judgement**

Gurmeet Singh Sandhawalia, J.—The challenge in the present petition is to the charge sheet dated 17.7.2009 (Annexure P/10) issued by respondent No. 1 and all proceedings emanating therefrom including order dated 13.8.2009 (Annexure P/15) passed by the Enquiry Officer-respondent No. 2 whereby request of the petitioner for engaging a counsel or to be represented through some retired official of the department was declined. Challenge is also laid to the order of suspension dated 14.7.2009 (Annexure P/9) and for issuance of a direction to reinstate the petitioner in service. Counsel for the petitioner very fairly submits that order dated 14.7.2009 (Annexure P/9) is no longer in force and the petitioner has been reinstated in service and transferred to another District.

2. The challenge is thus to the charge sheet whereby the petitioner was charged by the then District and Sessions Judge, Fatehabad as many as on five counts including the count that his retention in service is no longer warranted and which was subject matter of enquiry proceedings by respondent No. 2. At that stage the application was filed by the petitioner that he is matriculate and remains ill and unable to face the present enquiry on his own. He, accordingly, prayed that permission may be granted to engage an Advocate who could represent him in the enquiry. The application was dismissed by the Enquiry Officer on the ground that no intricate question of law and fact was involved which warranted any

expert legal assistance and the department also had not engaged any lawyer and the Superintendent G-II was not a legal expert. It was also noticed that the petitioner employee was appointed in the year 1996 and had experience of 13 years at that point of time. On dismissal of the said application, immediately another application was filed by the petitioner whereby prayer was made for permitting him to be represented by some retired official of Court of law which was also dismissed on the same ground and the case was fixed for evidence of the department. Resultantly, the present writ petition has been filed.

3. Counsel for the petitioner has vehemently submitted that as per Rule 7 Sub Clause 5 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 (hereinafter referred to as the Rules), if the charge or charges are likely to result in the dismissal of the person from service of the Government, such person may with the sanction of the Enquiry Officer be represented by counsel. Accordingly, it is submitted that since there was a charge whereby the petitioner could be dismissed from service, the Enquiry Officer was not justified in rejecting the application of the petitioner.

4. Sub Clause 5 of the Rule 7 of the Rules is reproduced below:-

7. Inquiry before imposition of certain penalties.-

xxx xxx xxx

(5) Where the punishing authority itself enquires into any charge or charges or appoints an enquiry officer for holding enquiry against a person charged it may, by an order, appoint a Government servant or a legal practitioner to be known as a Presenting Officer to present on its behalf the case, in support of the charge or charges.

The person against whom a charge is being enquired into, shall be allowed to obtain the assistance of a Government employee or a retired Government employee if he so desires, in order to produce his defence before the Enquiry Officer. If the charge or charges are likely to result in the dismissal of the person from the service of the Government, such person may with the sanction of the Enquiry Officer, be represented by counsel.

Provided that if in any enquiry, counsel is engaged on behalf of any department of Government, the person against whom the charge or charges are being enquired into, shall also be entitled to engage counsel.

Provided further that the assistance of a particular Government employee will be allowed only if the Enquiry Officer is satisfied that he is of such rank as is appropriate in the circumstances of the case and that he can be spared by the department concerned for that purpose.

5. The submission of the counsel is not liable to be accepted since the word used is may, with the sanction of the Enquiry Officer. The Enquiry Officer has noticed that no intricate question of law and fact was involved which warranted any

expert legal assistance and even a perusal of the charge sheet would go on to show that there were certain directions issued to the employee to work in a certain manner which he did not comply with and due to the said non compliance, charge sheet was issued which also included non retention in service on account of the earlier warnings recorded against the employee. Thus, the Enquiry Officer was very much justified in rejecting the said application for being given the help of the counsel. The said proviso also provides that only where the counsel is engaged on behalf of the department, then the employee shall also be entitled to engage a counsel. The purpose is obviously very clear to put both the charged employee and the department at par.

6. However, the subsequent portion of the impugned order whereby application of the petitioner for engaging retired official of the Court of law to represent him was rejected is not justified. The same was dismissed on the grounds mentioned in the earlier order which could not be on the same count. The above noted provisions further provided that assistance of Government employee or retired Government employee shall be allowed in order to produce his defence before the Enquiry Officer. Accordingly, this Court is of the opinion that the Enquiry Officer was not justified in dismissing the second application which has unnecessarily stalled the enquiry proceedings for the last five years. It is also settled principle of law that the charge sheet is not to be quashed as it is the Enquiry Officer who is to go into the factual finding and it is not for this Court to opine upon the validity and veracity of the charges which have been levelled against the delinquent employee. Accordingly, the present writ petition is partly allowed and the subsequent portion of the order dated 13.8.2009 (Annexure P-15) whereby application for permitting the petitioner to be represented by some retired official of the Court was rejected is quashed and the petitioner is allowed to be represented by any retired Government official of Court during the enquiry proceedings.