
(2014) 03 P&H CK 0224
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 17983 of 2012

Ved Pal Gupta

APPELLANT

Vs

Punjab and Haryana High Court

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 2 SCT 793

Hon'ble Judges : S.S. Saron, J;Navita Singh, J

Bench : Division Bench

Advocate : Akshay Bhan, Senior Advocate and Animesh Sharma, Advocate for the Appellant; Deepali Puri, Advocate for the Respondent

Judgement

S.S. Saron, J.—Petitioner by way of the present petition under Article 226 of the Constitution of India seeks quashing of the charge sheet dated 30.04.2012 (Annexure P-1) served on him and subsequent proceedings arising therefrom. It is stated that the charge sheet served on the petitioner for allegedly violating Rule 15 of the Haryana Government Employees (Conduct) Rules, 1966 ("Conduct Rules"-for short) and subsequent proceedings arising therefrom is completely mala fide, baseless and against the record. The petitioner was appointed to the Haryana Judicial Services on 30.09.1987. He was promoted as Member of the Haryana Superior Judicial Services on 13.06.2001. At present he is posted as District Judge, Family Court, Hisar. According to the petitioner, he is performing his duties diligently and conscientiously. No complaint or inquiry of any nature has been filed or initiated against him during the course of his service. It is alleged that a completely misconceived and baseless charge sheet (Annexure P-1) was served on him on 30.04.2012 proposing to take action against him under Rule 7 of the Haryana Civil Services (Punishment and appeal) Rules 1987 for the alleged violation of Rule 15 of the Conduct Rules. It has inter alia been alleged in the said charge sheet that the petitioner acquired number of residential and commercial properties not for his personal requirement but he was indulging in the business of sale/purchase of immovable properties. It is

alleged that while he was posted as Additional District and Sessions Judge, Rewari, a plot in Sushant Lok, Gurgaon was inherited by his wife in pursuance of Will dated 21.10.1998 from her mother to the exclusion of her mother's other daughters and sons. This transaction has been alleged to be a "benami" one. The petitioner it is further alleged inherited a residential plot in Amravati Enclave, near Panchkula by way of Will dated 12.02.2008 from his father. The Will it is alleged seemed to be surrounded by suspicious circumstances. As per income tax returns of the petitioner's father, he was not in a financial position to purchase the plot worth Rs. 14,14,273/-. Moreover, a plot at Mansa Devi Complex, Panchkula was purchased by the wife of the petitioner from her relative for a consideration of Rs. 9.00 lacs whereas the Collector rate for the same was Rs. 47,25,500/-. Along with the charge sheet, a statement of imputation of misconduct was also served on the petitioner in respect of the same charges. On receiving the charge sheet, the petitioner filed his detailed reply (Annexure P-1/A), explaining the error of the charges levelled against him. It was explained that there was no violation of the Conduct Rules as whenever any immovable property was either acquired, inherited or sold by the petitioner or his spouse, the same was always done with the prior knowledge and with the sanction of the High Court. An explanation of the various transactions that have been alleged in the charge sheet have been mentioned in a tabulated form and which is supported by documents. Therefore, it is submitted that the charges against the petitioner that he had been indulging in sale/purchase of immovable property or that he had violated Rule 18 of the Conduct Rules stands disproved. It is submitted that a residential plot in Sector 31-32-A, Gurgaon only was allotted to the petitioner by the Haryana Urban Development Authority ("HUDA"-for short) and that too by draw of lots under the quota for Government Employees. The said plot was sold in the year 1993. Except for the said plot, the petitioner had not purchased any property. The other properties were either inherited by him or his wife or had been purchased by the petitioner's wife of her own exclusively out of her own funds and that too with the prior knowledge or previous sanction of the High Court. The petitioner has not violated Rule 15 of the Conduct Rules. As regards the plot at Sushant Lok, Gurgaon in the name of his mother-in-law, it is submitted that his mother-in-law was an income tax payee. The petitioner gave the exact details of his mother-in-law's income and accounts. He explained that she was very well off financially and had a number of properties in her name. His mother-in-law had not deprived the other sons and daughters in her Will dated 21.10.1998. None of the legal heirs of the mother-in-law of the petitioner had challenged the aforesaid Will. In fact relinquishment deed dated 27.11.2001 (Annexure P12) was executed in favour of his wife. The plot had been transferred in the name of the petitioner's wife after obtaining the consent of the High Court vide letter dated 24.08.2001. As regards the allegation that the father of the petitioner was not in a financial position to purchase the residential plot in Amravati Enclave, near Panchkula and thus the plot was purchased "benami" by the petitioner, it is submitted that the payment for the plot was made by his father from his own funds. The plot was transferred in petitioner's

name after obtaining permission from the High Court vide letter dated 29.05.2008. The petitioner's father, it is submitted, was financially well off and had bequeathed the said plot in petitioner's name out of love and affection. None of the legal heirs of the petitioner's father had ever challenged the Will in his favour. It is also stated that the calculations in charge sheet were completely wrong and the income tax returns/computation of income tax sheets as also Trading and Profit and Account, Capital Account and Balance Sheets therewith of the petitioner's father from the financial years 1999-2000 to 2007-2008 (Assessment years 2000-2001 to 2008-2009) (Annexure P-15 colly.) clearly indicate that his father was in a sound financial condition to purchase the said plot. It is also submitted that the petitioner cannot be expected to be aware of every source of his father's income. With respect to the plot in Sector-2 MCD, Panchkula, it is submitted that the plot was purchased by the wife of the petitioner from her relative who was the son-in-law of her elder brother. She has got no official dealings with him. The plot was purchased out of the sale proceeds of her plot situated at Sushant Lok, Gurgaon and after seeking necessary permission, which was granted to him by the High Court vide letter dated 13.05.2008. The seller of the said plot had himself purchased the plot for a consideration of Rs. 6.00 lacs from its previous allottee. Besides, paying the sale consideration of Rs. 9.00 lacs, the wife of the petitioner had also agreed to pay the remaining installments as well as the enhanced amount of compensation. The details of the payments made by the wife of the petitioner were given in the reply. It was also explained that the said plot was the absolute property of the wife of the petitioner and the petitioner had no direct or indirect interest in the same. The fact that the purchase of the said plot was less than the Collector rate, it was submitted in the reply that the Collector rate was not applicable to the property as was clear from the letter dated 10.08.2011 (Annexure P-16) sent by the Estate Officer. Moreover, market value of the said plot cannot be determined because of pending litigation regarding land acquisition of the said Sector. This was clear from the letter of the Collector dated 09.05.2012 (Annexure P-17). Moreover, the possession of the aforesaid plot had not been offered to the wife of the petitioner till date. Apart from this the wife of the petitioner was an income tax payee having her own PAN number. Her case for the assessment year 2009-10 during which year she had sold her plot at Sushant Lok, Gurgaon and purchased in Sector 2, MCD Panchkula was picked up for scrutiny by the Income Tax Department. The proceedings were completed and assessment order dated 24.10.2011 (Annexure P-18) was passed. Therefore, according to the petitioner all the allegations made against him in the charge sheet were totally baseless, based on presumptions and assumptions. He had not violated the provisions of the Conduct Rules nor misconducted himself in any manner as a Judicial Officer. Therefore, it is prayed that the charge sheet be quashed.

2. Notice of motion was issued in the case on 12.12.2012. Written statement on behalf of the High Court has been filed. It is denied that the petitioner is entitled

to invoke the extraordinary writ jurisdiction of this Court. The serving of the charge sheet dated 30.04.2012 is admitted. It is, however, denied that the same and the subsequent proceedings arising therefrom were mala fide, baseless and against the record. It is admitted that the petitioner joined Haryana Civil Services (Judicial Branch) on 30.09.1987. He was promoted as Additional District and Sessions Judge on 13.06.2001. He was presently posted as District Judge, Family Court, Hisar w.e.f. 02.04.2012. The other allegations were denied being wrong and incorrect. It is submitted that the property statement with regard to the acquisition of immovable properties acquired by the petitioner was analyzed by the Vigilance Department of the High Court. During the course of scrutiny of property statement of the petitioner, it was found that at the time of joining Judicial Services on 30.09.1987, he was having only one property i.e. half share in double storied house on plot measuring 131-1/2 square yards situated in Anaj Mandi, Gohana and its annual income was nil. The details of the properties acquired by the petitioner and his wife have been enumerated. It is submitted that during scrutiny of the property statement of the petitioner, it was found that the properties from serials No. 2 to 6 in the list of properties that are enumerated had been acquired/inherited by the petitioner during his service as a Judicial Officer. The matter was placed before the authorities and a discreet inquiry was ordered to be conducted. An interim report dated 17.08.2011 was submitted by the Officer on Special Duty ("OSD"-for short) (Vigilance), Haryana. It was concluded in the said report that the petitioner had large number of properties which might not be proportionate to his known sources of income. The two properties which had been acquired by way of Will, may have been actually acquired by the officer in the name of his father and mother-in-law with his own funds (from his own unknown sources). Therefore, a deep and thorough probe was necessary and for this purpose desirability of a regular inquiry may be considered. The matter was placed before the Hon'ble Acting Chief Justice and his Lordship vide order dated 17.08.2011 directed the matter to be placed before the Administrative Committee. The matter was considered by the Administrative Committee in its meeting held on 18.08.2011. It was resolved that the interim report of OSD (Vigilance), Haryana be placed before Vigilance/Disciplinary Committee for Judicial Officers (including District and Sessions Judges) for both the States of Punjab and Haryana. After considering the information sought from the officer (petitioner) and the Income Tax Department, the OSD (Vigilance), Haryana submitted another report dated 29.11.2011. The details of which are mentioned. The Vigilance/Disciplinary Committee for the Judicial Officers in its meeting held on 12.01.2012 resolved that it was prima facie of the view that a case of possession of disproportionate assets to his known sources of income was made out against the officer (petitioner) warranting a regular inquiry. A regular inquiry was recommended to be initiated. To ensure a fair inquiry, it was recommended that the petitioner be placed under suspension. In the Full Court meeting of the High Court held on 27.02.2012, the report dated 12.01.2012 of the Vigilance/Disciplinary Committee was considered and it was resolved that disciplinary proceedings be initiated against the officer. It was further resolved to

request the Vigilance/Disciplinary Committee for Judicial Officers (including District and Sessions Judges) for both the States of Punjab and Haryana to complete the proceedings at an early date. In compliance with the said orders, charge sheet was duly vetted by the Vigilance/Disciplinary Committee for the Judicial Officers in its meeting held on 04.04.2012 and approved by the Hon''ble Acting Chief Justice. It was served upon the petitioner vide letter dated 30.04.2012. The petitioner inspected the record relied upon in the charge sheet and furnished a detailed reply on 17.05.2012 with supporting documents. The reply of the petitioner was considered by the Vigilance/Disciplinary Committee in its meeting held on 12.07.2012. The explanation offered by the officer (petitioner) was found unsatisfactory. A case for the conduct of regular inquiry was made out. The Committee was of the view that requests made by the officer for grant of personal hearing was not required to be considered at that stage and it would be considered at an appropriate stage. The report of the committee was submitted before the Hon''ble Acting Chief Justice and his Lordship vide order dated 17.07.2012 nominated a Sitting Judge of this Court as an Inquiry Officer to conduct the regular departmental inquiry against the petitioner. An Additional District and Sessions Judge/Registrar (Recruitment) was appointed as Presenting Officer to present the case before the Inquiry Officer on behalf of the Department. The regular departmental inquiry against the petitioner was fixed at the time of filing the written statement for 05.04.2013 for evidence of the department. The fact as to whether or not the petitioner had acquired properties disproportionate to his known source of income in violation of the Conduct Rules, it is submitted, is to be ascertained by the Inquiry Officer in the departmental proceedings on the basis of evidence being adduced before him. Therefore, it is submitted that it cannot be said at this stage that the charges levelled against the petitioner were not sustainable or that he had not committed any violation of the Conduct Rules as claimed. The explanations given by the petitioner in respect of the transactions have also been controverted.

3. The petitioner filed his replication to the written statement of the respondent in which the averments against the petitioner were denied and those made in the writ petition were reiterated.

4. During the course of hearing, Mr. Akshay Bhan, learned Senior counsel appearing of the petitioner with Mr. Animesh Sharma, Advocate laid considerable emphasis on the order dated 09.07.2013 passed by this Court in the present case, which reads as under:-

Learned counsel for the petitioner submits that the petitioner is willing to have the petition treated as a representation, to be considered by the Disciplinary Committee with a right of hearing to him.

We consider it appropriate that this matter be placed before another bench on 16.07.2013 of which neither of us is a member.

5. The case has been listed before this Bench. Mr. Akshay Bhan, learned Senior

counsel for the petitioner on the strength of the said order has submitted that in fact the tenor of the said order is indicative of the fact that the co-ordinate bench was of the view that the writ petition that has been filed by the petitioner be treated as a representation by the Disciplinary Committee with a right of healing to him.

6. In this regard, Ms. Deepali Puri, Advocate appearing for the High Court has submitted a letter dated 11.11.2013 from the Registrar of the High Court addressed to her in which on the subject of the present petition, it is mentioned in the said letter that the pendency of the inquiry may be brought to the notice of the Bench but otherwise the High Court may have no objection to consider the writ petition as a representation.

7. In the departmental inquiry the position is that evidence in the case is going on. The Department is to examine four witnesses and two of them have been examined. The examination-in-chief of the third witness is complete and he has been cross-examined in part. The case is fixed for his further cross-examination. Besides, another witness remains to be examined. Therefore, at present cross examination of one witness and one more witness remains to be examined; besides, documents may have to be tendered in evidence. The inquiry proceedings are mid way.

8. Mr. Akshay Bhan, Senior Advocate for the petitioner has submitted that the Departmental Inquiry in any case may be kept in abeyance and the petitioner be heard on the writ petition by treating it as a representation in view of the tenor of the order passed on 09.07.2013. It is emphasized that the continuation of the Departmental Inquiry against the petitioner is absolutely baseless and has materially affected, besides, prejudiced his rights inasmuch as he was due for designation as District and Sessions Judge, which has been stalled in view of the pending inquiry. A reference has been made to the letter dated 21.08.2012 wherein the name of the petitioner does not figure amongst the Additional District and Sessions Judges invited to appear before the Screening Committee for consideration for designation as District and Sessions Judge. His name has been left out for no other reason than the fact that the inquiry proceedings are pending against him. As a result of this the petitioner was going to lose out from being designated as District and Sessions Judge in the State of Haryana although he is otherwise eligible for such designation. It is forcefully contended that keeping the inquiry proceedings in abeyance would not in any manner affect the respondent. However, the explanation, if accepted by the Disciplinary Committee, would result in his exoneration. In the facts and circumstances as also material available the explanation of the petitioner, it is submitted, is likely to be accepted. This would not affect the future prospects and career of the petitioner.

9. Ms. Deepali Puri, Advocate for the High Court has in response submitted that the petitioner was not called for appearing before the Screening Committee on 30.08.2012 for designation as District and Sessions Judge. However, the

Committee in its meeting held on 16.08.2012 decided that the case of the petitioner for designation as District and Sessions Judge be kept pending till the outcome of the Departmental Inquiry pending against him subject to the condition that in case he is exonerated he would be considered for designation from the date his junior is designated. Therefore, according to her, no prejudice of any kind is being caused to the petitioner.

10. The Departmental Inquiry at present is midway and as noticed, three witnesses have been recorded. Two of the witnesses were examined before the passing of the order by this Court on 09.07.2013 on the strength of which it is contended that the writ petition of the petitioner be treated as a representation with a right of hearing to him. Ms. Anita Sharma, Superintendent Grade I, Vigilance Branch, Punjab and Haryana High Court EW-1 was examined on 28.09.2012. Mr. Vijay Kumar Gupta, Superintendent Grade I, Confidential Branch, Punjab and Haryana High Court EW-2 was examined-in-chief on 30.11.2012 and was cross-examined on 05.04.2013. Besides, the examination-in-chief of Mr. Mohinder Thakur, Proprietor Yash Properties EW-3 was conducted on 17.05.2012 i.e. before 09.07.2013. However, part of his cross-examination was conducted after 09.07.2013 i.e. on 13.09.2013 and case is fixed for his further cross-examination on 21.03.2014. Therefore, the possibility of the Bench being apprised of this position on 09.07.2013 that some witnesses had already been examined cannot be ruled out.

11. Learned Senior counsel for the petitioner, however, submits that the Bench was duly apprised of this fact and despite that it was recorded that the petitioner was willing to have his petition treated as a representation to be considered by the Disciplinary Committee with a right of hearing to him.

12. It may be noticed that in fact only a contention of the learned Senior counsel for the petitioner has been recorded in the order dated 09.07.2013 and the order does not go on to say that it has necessarily ordered that de hors the pending inquiry, the writ petition is to be treated as a representation by the disciplinary committee with a right of hearing to the petitioner. It is only in the course of hearing that the said contention was recorded for consideration by the High Court on its administrative side. The High Court has instructed its counsel to inform the Court about the pendency of the inquiry and that otherwise it may have no objection if the writ petition is to be considered as a representation.

13. In respect of a Departmental Inquiry which has commenced against a delinquent official, premature termination of the same at an intermediary and interlocutory stage is not warranted. The procedure prescribed for the conduct of a departmental inquiry is not to be scuttled, circumvented or short circuited by quashing the proceedings mid way and neither would it be desirable in the facts and circumstances of the case. Ordinarily once the proceedings have been initiated against a delinquent officer these are liable to be tried and taken to their logical conclusion and the Court would be loath and reluctant to interfere with the proceedings at an interlocutory or intermediary stage, although there may be

cases when interference is warranted but before the jurisdiction of this Court to quash the Departmental Inquiry or the charge sheet is invoked, the situation prevailing at the particular point of time when its jurisdiction is sought to be invoked is to be kept in view. At present as already noticed the department proceedings are mid-way and cross examination of one witness is to be conducted and another witness is to be examined, besides, documents may have to be tendered in evidence. Therefore, keeping this position and the fact situation in view, the mid-way interference with the inquiry that is going on would not only be unjustified but even otherwise not warranted.

14. In *The Secretary, Min. of Defence and Others Vs. Prabhash Chandra Mirdha*, , it has been laid down by the Supreme Court that ordinarily a writ application does not lie against a charge sheet or show cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge sheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. It was further held that normally a charge sheet is not quashed prior to the conclusion of the inquiry on the ground that the facts stated in the charge sheet are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority. It was also held that neither the disciplinary proceedings nor the charge sheet should be quashed at an initial stage as it would be a premature stage to deal with the issues. The position prevailing at present in the department inquiry is that a sitting Judge of the High Court on the Administrative side is seized of the inquiry and proceedings are going on. Evidence is being recorded. The petitioner would have every right to submit his point of view in accordance with law before the inquiry officer. Therefore, at this stage, it would be wholly inappropriate to interfere in the inquiry that is going on at an intermediary stage and nullifying or in any case keep in abeyance the proceedings that are going on. At this stage it would in fact even be inappropriate to comment one way or the other on the charges that have been levelled and the reply that has been filed by the petitioner to the same. This is solely domain of the Inquiry Officer who is seized of the matter.

15. The learned Senior counsel for the petitioner has, however, referred to the case *State of Punjab Vs. V.K. Khanna and Others*, . In the said case the learned Senior counsel has laid emphasis on the aspect wherein it has been held that while it is true that justifiability of charges at the stage of initiating a disciplinary proceedings cannot possibly be delved into by any Court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide motive involved in the matter of issue of a charge sheet or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise

justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion. There is no dispute to said proposition, however, the same would more appropriately apply in case there is a charge of mala fide. In the present case though it has been alleged that the issuance of charge sheet and subsequent proceedings arising therefrom are completely mala fide, baseless and against the record, however, the allegations of mala fide have been made in a vague manner. In *State of Punjab and Others Vs. Chaman Lal Goyal*, with respect to the charge of mala fide, it was observed that the said charge was made in a vague manner. It was not specified which officer was ill-disposed towards the respondent (delinquent official in the said case) and in what manner did he manage to see that the charges are served upon him when his case was to come up for consideration for promotion. It was held that in the absence of any clear allegation against any particular official and in the absence of impleading such person co nominee so as to enable him to answer the charge against him, the charge of mala fide cannot be sustained. The ratio of the said judgment applies in the present case and in the absence of specific allegations of mala fide, the averment is unfounded and would not warrant any consideration.

16. The fact that the High Court has instructed its learned counsel to state that it may have no objection to consider the writ petition as a representation it may be noticed that the same is with a rider that the Court may also be apprised of the pending inquiry. It would, therefore, in the facts and circumstances be appropriate that at the prevailing situation, the departmental inquiry is completed in which needless to say that the petitioner would be heard by the Inquiry Officer and in case the inquiry report is adverse to him and he is affected by it or the disciplinary authority at the second stage of the inquiry comes to a tentative conclusion of the guilt of the petitioner at the conclusion of the inquiry and decides upon the punishment proposed to be inflicted, his case is heard at the time of consideration of the Inquiry Report by the concerned authority or committee that is to consider the same. At the first stage of the inquiry before the Inquiry Officer, a delinquent official has a right to be heard in respect of the charges attributed to him. At the second stage i.e. in case the disciplinary authority reaches at a tentative conclusion of the guilt of the delinquent official and proposes to impose on him a punishment, a delinquent official has no right of hearing. However, it has been accepted as a fundamental rule of law that no decision adversely affecting the rights of a person must be taken without first giving the person an opportunity of putting forward his case. Therefore, as a safeguard the delinquent officials at the second stage has a right to make a representation against the action proposed to be taken in regard to him. In view of the concession given by the High Court that the High Court may have no objection to the considering the writ petition as a representation and the

contention of the learned Senior counsel for the petitioner as recorded in the order dated 09.07.2013 that the petitioner is willing to have the petition treated as a representation to be considered by the disciplinary committee with the right of hearing to him, it would be just and expedient in the facts and circumstances that the petitioner is given a hearing in case he so desires and if the circumstances so warrant at the time of considering the report of the inquiry officer and it is proposed to act upon the same or the authority concerned comes to a tentative conclusion of the guilt of the petitioner at the conclusion of the inquiry and decides upon the punishment proposed to be inflicted. Accordingly, the writ petition is disposed of in the manner that in case the disciplinary authority or the concerned committee nominated by it comes to a tentative conclusion of guilt of the petitioner at the conclusion of the inquiry and decides upon the punishment proposed to be inflicted upon to the petitioner, the petitioner would be entitled to be heard by the concerned authority on the representation that he makes on the proposed action, if any.

There shall be no order as to costs.