

(2013) 08 P&H CK 0723

High Court Of Punjab And Haryana At Chandigarh**Case No:** CWP No. 6315 of 2012

Suman Nain

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Aug. 2, 2013**Acts Referred:**

- Constitution of India, 1950 - Article 14, 226

Hon'ble Judges: Rajiv Narain Raina, J**Bench:** Single Bench**Advocate:** R.K. Malik and Mr. Vijay Dahiya, for the Appellant; Harish Rathee, D.A.G., for the Respondent**Final Decision:** Partly Allowed

Judgement

Rajiv Narain Raina, J.

Heard. Mr. R.K. Malik, learned senior counsel has brought to the notice of this Court that purchases made by the petitioner as Chairperson of the Purchase Committee when she was the Additional District Education Officer-cum-District Elementary Education Officer, Jhajjar were from an approved source which fact is not disputed by Mr. Harish Rathee, learned Sr. DAG, Haryana appearing for the respondents. In various correspondences, it is established on record that the Ambala Central Cooperative Consumer Store, Chandigarh is an approved store for making purchases by Government of "other general items of store" for use in its offices, departments etc. The Government of Haryana has declared the store located at Chandigarh and Ambala Cantt. as approved stores vide memo dated 30.4.2001 (P-8) from where the purchases were made of gas stoves, lighters, pipes, cylinders, regulators, burners for Rs. 3170/- + 4% VAT charges per set from the store at Chandigarh for 350 Government Primary Schools in District Jhajjar. These Gas Chulhas/Bhattis etc much hyped in the enquiry were purchased from out of fund allocation of total Rs. 17,50,000/- and duly sanctioned for two sets per school from the above approved store would be broadly covered by this memo dated 30.4.2001.

The only negative thing pointed out at the enquiry was that they did not bear the ISI mark or ISI specifications though purchased by the Committee from approved sources/store. The petitioner had pointed out in her reply to the dissent note that at the time of purchase on 29.10.2007 ISI marked Chulha/Bhattis were not available but were urgently needed to cook food for a large number of students for the Mid Day Meal Programme and were working well till date without any complaint on quality. The disagreement on this issue was, therefore, too technical to base harsh and severe punishment of compulsory retirement. If the Director Supplies and Disposal, Haryana had declared the Ambala Central Co-operative Consumer Store, Chandigarh and Faridabad as "non approved stores for the supply of Gas Chulha/Stove" it was on 31.1.2008 and such decision could operate only prospectively but not invalidate purchases made prior thereto to bring about a state of flux, which law usually abhors. If this is the position then the petitioner cannot be so severely penalized for making purchases from such store of items covered under the charge memo, and therefore, the pith and substance of the charges are misdirected and amount to excessive criticism or nitpicking and are unrealistic so as to shock the conscience of the Court. The charge was not one of corruption or receiving kickbacks it was of purchasing kitchen equipment from un-approved sources on higher prices which were more than the open market rates. The question of exaggerated price of Chulha/Bhattis should not hold good equipment being bought from Government approved source through bank drafts against bills duly presented against sanctioned expenditure. This is in substance established in the inquiry conducted by a retired IAS officer in which the petitioner was broadly exonerated but the Financial Commissioner and Principal Secretary to Government Haryana, School Education Department, Chandigarh disagreed and put a dissent note recording its opinion on disagreement with the findings recorded in the enquiry report and proceeded to pass the order of punishment of compulsory retirement which is not only perverse conclusion on the materials available on record but totally unreasonable, unfair and arbitrary. There should normally be reasonableness in imposition of punishments so as to make them look non-discriminatory when there is plurality in the decision making process such as in this case where the petitioner and four delinquent members of the purchase committee consisting of total 9 officials sat together in approving kitchen equipment and the expenditure involved in inter alia purchase of chulha/bhattis which are fabricated from angle iron. No doubt the petitioner was the Chairperson of the committee and owed greater responsibility by virtue of holding higher office but that alone may not be sufficient to sequester her for disproportionate treatment and to throw her out of service while doling out only minor punishments of censures to the others. The rest too were officers of Government at the level of Block Education Officers and held posts of responsibility and confidence. This would send a wrong message to subordinates who may have actually prevailed upon decision making process, no one knows.

2. The State in its written statement has appended four orders passed by the Financial Commissioner and Principal Secretary to Government Haryana, School Education Department, Chandigarh against the four members who sat with the petitioner in the committee. The total financial loss assessed by the Financial Commissioner is Rs. 8,56,380/- 50% of which is to be recovered from the pensionary dues of the petitioner after inflicting her with punishment of compulsory retirement and the balance 50% equally from the other four. The minor punishments awarded to the other four officers are Censure under Rule 4 (1) (ii) of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 and one fourth of half of total financial loss assessed. The one who had retired meanwhile has had an order of recovery only of his share assessed and no other punishment. It is urged that this is grossly disproportionate and excessively discriminatory and therefore arbitrary and liable to be struck down. When discrimination is alleged this Court in proceedings under Article 226 exercises primary review of administrative action by applying principles of proportionality on the touchstone of Article 14 of the Constitution. This case in my view does not pass muster of the acid test of non-discrimination and expected levels of fairness in action. When this court shifts its examination to secondary review testing presence of arbitrariness challenged in proceedings under Article 226 also on the touchstone of Article of the Constitution the impugned order would not survive the litmus test by application of Wednesbury principles to depth charge administrative action. In the view of this Court the letter dated 30.1.2008 declaring said source from where purchase was made is not an approved source for the purchase of commercial chulha/bhattis was an irrelevant fact to be applied to past transactions and the learned Financial Commissioner fell in error in accepting it as a valid reason for reaching adverse conclusion. The very fact of its issuance inferentially means that there was no such prohibition in the past.

3. The level of discrimination practiced in a particular case is for constitutional Courts to examine and determine whether interference is called for and to what extent or not at all. The guiding principles laid down by the Supreme Court in such matters is found in the erudite judgment delivered by His Lordship Justice M. Jagannadha Rao, in [Om Kumar and Others Vs. Union of India](#), and the salutary principles enunciated therein would have to be kept in mind in all such cases involving judicial review of administrative action. Measured from these angles I am unable to sustain Government action against the petitioner. I am also unable to reconcile myself to believe that from the total sanctioned amount of Rs. 17,50,000/- for purchase of kitchen equipment for 350 Government Primary Schools in Jhajjar District for the Mid Day Meal Programme a loss of Rs. 8,72,900/- determined in the statement of charges (P-2) can result to the State exchequer when the Government itself had put aside Rs. 5,000/- per school for the purpose. The actual purchase in District Jhajjar was of Rs. 11, 53,800/- for 342 Government schools and 8 Government aided schools (see P-22 colly). There is no technical report on record that the equipment purchased was of sub standard quality or does not work or does

not exist at site. It has been asserted by the petitioner at many places in the pleadings that till date there is no source which provides for commercial chulha/bhatti with ISI mark and this fact can be verified from the website of the Bureau of Indian Standards. This assertion has not been denied at all. After all chulha/bhatti was part of budget proposal and was named equipment to be purchased.

4. The Director General, State Vigilance Bureau, Haryana has investigated the matter including the conduct of the petitioner and had recommended departmental proceedings under rule 8 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 for minor misconduct but had exonerated her from criminal action. A case of cheating was recommended and registration of a criminal case against the fabricator of the chulha/bhattis-Rattan Singh, owner of The Haryana Fabrication, Village Nasibpur, District Narnaul and Smt. Vijay Sharma of the Ambala Cooperative Consumer Store, Sector 22-D, Chandigarh for conniving with each other for selling over priced chulha/bhattis and receiving excess money to the tune of Rs. 6, 54, 500/-. The Chief Secretary, Haryana has agreed with the report vide letter dated 29.12.2009 (P-22). It can be said that the petitioner has been exonerated of the criminal charge by the State Vigilance Bureau, Haryana with recommendation to proceed with domestic enquiry for minor penalty.

5. Therefore, and for the foregoing reasons I have no hesitation in quashing the order of compulsory retirement (P-7) based on much laboured, forced and unsound reasoning, and that too without hearing and to so do by applying the tests of primary and secondary review jurisdiction exercised by this Court as explained above on grounds of active and hostile discrimination between the petitioner on one side and the remaining four delinquents on the other, and of arbitrariness in the choice of extreme punishment of compulsory retirement imposed by the administrator without looking to the defence pleas in her reply in their correct perspective or to her past record of service and whether there were any mitigating circumstances to warrant lesser punishment or to the recommendation of the State Vigilance Bureau for departmental proceedings under rule 8, that is, for minor punishment. The size of the punishment consequently disturbs me as one which is shockingly disproportionate to the misconduct alleged or proved especially when it is juxtaposed with lesser and minor punishments of only ""censure"" meted out to the other four members of the purchase committee which consisted of four other officials as well, the punishment inflicted upon the petitioner then appears on the face of it rather exaggerated. Besides, it was inflicted without hearing the petitioner or issuing second show cause protected by the ratio of law laid down in [Union of India and others Vs. Mohd. Ramzan Khan](#), which also shows that there was hardly any fairness in action. In Government action there should be no witch hunting. I am also unable to make out what to do with the following averments in paragraph 7 (iii) of the writ petition which have not been rebutted in the written statement:

The petitioner has taken the explanation of Smt. Bimla Dhull Home Sc. Mistress for her willful absence who was the wife of sitting MLA Parminder Dhull and at his instance one Bijender Singh had filed civil writ petition no. 1289 of 2011 with a prayer to direct the department to finalize the departmental enquiry pending against the petitioner and in the influence of the said MLA the said harsh punishment was imposed on the petitioner and said writ petition was disposed of with liberty to the petitioner to challenge the said order dated 16.3.2012.

6. In the replication to the written statement the petitioner has drawn the attention of this Court that one of the officers who had purchased material for his district (Ambala) from the same source is none other than Zile Singh who has had the gumption to file and sign the written statement dated 7.2.2013 in this case. The petitioner states that he was also charged of the same misconduct. He should have reused. Strange, the petitioner has been compulsorily retired while Zile Singh stands promoted to higher rank. I think nothing can hurt a litigant more than this or to receive a final order where this fact is not noticed or dealt with by the Court. These are the workings of the corridors of power. This Court expresses its deep anguish at such deviant behaviour which can tend to pollute the fountains of justice, and therefore directs the registry of this Court to send a copy of this order separately to the Chief Secretary, Government of Haryana, Chandigarh for his knowledge, record and necessary action to ensure that such a thing does not recur and invite strictures. Consequently, the writ petition is partly allowed and the impugned order (P-7) is quashed. The petitioner is ordered to be reinstated to service. Consequential benefits would follow. The arrears of full salary for the period after the petitioner was unlawfully boarded out of service becomes the petitioner's due which would normally be made over to her within two months from the date of receipt of a certified copy of this order together with the interest @ 8.5% which rate is paid on Fixed Deposits by nationalized banks. However, given that this Court has interfered principally on quantum of punishment which is found too harsh it would be in the fitness of things that the State Government should have liberty to reexamine the matter holistically and to pass fresh orders, in case it is so felt in the interest of justice, but after affording full and effective opportunity of oral hearing to the petitioner by an officer other than those associated with this case, but this course would remain open only after full compliance of this order to the extent of reinstatement to service. In case this mode is adopted then I feel that justice and equity would demand that the monetary benefits due under this order be kept on hold, except salary after reinstatement, and till fresh orders are passed which would necessarily require the administrator to notice and deal with all contentions and issues in accordance with rules. In case such exercise is resorted to, it should be concluded within 60 days of reinstatement to service. In case the Government does not feel motivated enough to go ahead and pass fresh orders then the monetary dues kept on hold for the time being by virtue of this order will become due and payable as ordered above within two months from the date of receipt of a certified

copy of this order.