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**CM-12246-CWP-2023; CM-18894-CWP-2023;
CM-10538-CWP-2023; CM-10539-CWP-2023 in/and
CWP-12743-2023
&
CWP-22626-2023**

DHEERAJ GARG

VERSUS

STATE OF HARYANA AND OTHERS

Present: - Mr. Amandeep Vashisth, Advocate and
Mr. Manish Soni, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, Sr. DAG, Haryana.

The instant writ petition had been filed for raising a challenge to the investigation and the proceedings arising out of the FIR No. 408 dated 29.09.2022 registered under Sections 409, 420 and 120-B of the Indian Penal Code, 1860 read with Section 7, 7-A and 13 of the Prevention of Corruption Act as well as the chargesheet dated 17.04.2023 and all ancillary proceedings arising therefrom.

During the course of arguments, it was submitted by the counsel for the petitioner that the Investigating Officer in the present case has been one Sh. Ramaswamy Parthasarathy, Dy. Superintendent of Police, Anti-Corruption Bureau (ACB), Faridabad who is a retired CBI Officer and has been engaged in the State Vigilance Bureau. The charge-sheet in question has been submitted in Court under his signatures alongwith the signatures of Superintendent of Police Sh. Seshan Balasubramony, again a retired Officer

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engaged on contract. The said officers having retired from the Central Government in 2022 had been engaged on contractual basis as consultants to guide the Investigating Officer in the ACB. However, in the present case instead of guiding the Investigating Officers, the said employees engaged on contract basis have not only conducted the investigation and filled up the case diary but have also filed the final report under Section 173 (8) Cr.P.C. The retired police officials, not being legally authorized, competent or empowered to perform the official duties of the Investigating Officer and not being the “Police Officers” under the Haryana Police Act, 2007 or empowered under the Prevention of Corruption Act, 1988 could not have conducted the investigation in the matter. It was argued that contractual appointment on the post of Superintendent of Police and Deputy Superintendent of Police runs contrary to the independence of the Investigating Agency and that such contractual appointment at the rank of Superintendent of Police and Deputy Superintendent of Police is impermissible under the Police Act since appointment to police service can only be done either by way of direct recruitment; by promotion or by deputation. Having been engaged on contract basis, they cannot discharge functions as Gazetted Officers required to carry out the investigation under the Prevention of Corruption Act, 1988 or being conferred with the power of an Investigating Officer competent to submit final report. Various other issues were also raised.

Considering that conduct of the investigation itself has been through persons engaged by the respondents on contract, the State Government was called upon to furnish details as to the provision of law under which an Investigating Officer, at the Gazetted ranks, could be

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engaged on contractual basis and being authorized under the Criminal Procedure Code and/or the provisions of the Haryana Police Act, 2007 or the Prevention of Corruption Act, 1988 to conduct investigation and to file a charge-sheet.

Reply by way of an affidavit of Pankaj Nain, Deputy Inspector General, Anti Corruption Bureau (Hq.) Haryana has been filed. In the said reply, the respondents have given a background specifying reasons for engagement of retired Officers and the procedure followed for such engagement and that the engagement having been approved by the Chief Minister, there was no perversity in the functions being discharged.

The State counsel was heard at length & the documents attached with the reply have been perused.

The proposal sent by the Director General, State Vigilance Bureau to the Chief Secretary to the Government in the Vigilance Department was for engagement of CBI officials on deputation basis. The initial proposal did not suggest engagement of retired officers, however, in para No.5 thereof, the proposal used a “slash” against “serving/retired” officers but referred to the same as “engagement by way of deputation”. The said proposal was stated to have been approved. The subject specified the proposal to be “for deputation of CBI Officers in the State Vigilance Bureau”. Notwithstanding that the proposal was initially sent for engagement on deputation, the subsequent letter dated 09.12.2016 arbitrarily substituted the word “Deputation” for “Engagement”. By virtue of a change of the aforesaid nomenclature, the file was sent to the Government to engage retired Officers from the CBI in the rank of SP/DSP on contract basis. The said proposal related to their engagement as “Outsourced Consultants”.

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Notwithstanding the aforesaid change in the subject from “proposal for appointment by way of deputation” to “proposal for engagement from the retired officers”, the same was approved by the Chief Secretary to the Government of Haryana. Surprisingly, even though the persons so engaged were to work as “Consultants” on a fixed honorarium of Rs. 50,000/- per month as outsourced officers, the terms of engagement were then sought to be modified to engage the said officials at the rank of Superintendent of Police and Deputy Superintendent of Police on the minimum basic pay + allowances which was approved in relaxation vide communication dated 09.04.2022.

There is no reference made in the reply furnished by the State as to under what substantive provision of law could the Police Officers be engaged on contract basis to conduct investigation of the cases and to exercise the powers of Gazetted Officers and also file the final reports.

An attempt was made by the counsel for the respondent to contend that the engagement is in exercise of the Executive Powers, however, perusal of the documents appended alongwith the reply does not show that any such power has been exercised by the competent authority. Further, the rank of Superintendent of Police, in the State of Haryana is assigned in the cadre of All India Services (Indian Police Services) and it is incomprehensible to perceive that appointment at the post of an IPS Cadre is being made on a contractual basis, more so when the State is not competent to make appointment to the substantive post itself.

The Criminal Procedure Code confers the powers to investigate the cognizable case on the Police Officers and the “Police Officer” is required to submit a report on completion of investigation under Section 173

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Cr.P.C. The expression “Police Officer” has not been defined under the Criminal Procedure Code, however, the Haryana Police Act, 2007 defines a Police Officer to be “a member of the Police Service of the State” constituted under this Act and includes the IPS Officer of the State Cadre. Hence, a Police Officer competent to investigate and to file a final report is required to ex-facie satisfy his status and test as a Police Officer under the Haryana Police Act, 2007. For a person to be “a member of the Police Service”, he has to be in the cadre as per the service jurisprudence since “Police service” means the “service constituted under this Act”. The Police Act does not approve or authorize engagement of a Police Officer on contract basis. Further, the Prevention of Corruption Act, 1988 mandates that in relation to the offences arising out of Prevention of Corruption Act, 1988, investigation is not to be conducted by an officer below the rank of DSP i.e. a Gazetted Officer. It is still not answered as to how the status of a Gazetted Officer could be conferred on a person who had been engaged on a contract basis under an initial engagement proposal as that of a consultant and as to under what order or capacity could he discharge the functions of an Investigating Officer and to file final reports.

The counsel appearing on behalf of the State could not get any satisfactory explanation other than reiterating that the file had been put up at the highest level and had been approved. A pointed query was also raised as to how, in the absence of any statutory power as an Investigating Officer, the same could be exercised and under what authority, an act which is beyond the statutory power could be validated by such approval.

The counsel for the petitioner prayed that the trial is about to commence and that the case is fixed for framing of charge. The proceedings

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ipso facto do not satisfy the requirements of law.

Since vital questions arise for consideration of this Court as to whether Investigating Officers could be appointed to the Gazetted rank of Superintendent of Police and Deputy Superintendent of Police by way of contract and as to whether they were authorized to conduct investigation in law and file charge-sheet or not which is yet to be determined.

Taking into consideration the circumstances noticed above and noticing that the same might impact the entire proceeding itself, it is deemed expedient and necessary at this juncture to issue the following interim directions:

- i) The investigation handed over by the State Vigilance Bureau to the persons engaged on contract basis shall henceforth be withdrawn with immediate effect till further orders; and
- ii) The charge-sheet filed by the above said contractual engagees as the Investigating Officer shall not be proceeded any further and the proceedings therein shall remain stayed till the next date of hearing.

To come up on 16.12.2023 for further consideration.

A photocopy of this order be placed on the file of connected case.

NOVEMBER 07, 2023
Vishal sharma

(VINOD S. BHARDWAJ)
JUDGE