IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP NO. \_\_\_\_\_\_OF 2019

ANIL KUMAR ………….PETITIONER

VERSUS

STATE OF HARYANA & ORS ………. …RESPONDENTS

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TOTAL FEE RS. 69/-

NOTE:

1. That the main law points involved in the writ petition are contained in para no. at page no.

2. Relevant Statutes/Rules:

i. The Constitution of India.

ii. Haryana Civil service (Punishment & Appeal ) Rule-2016

3. Similar case if any: Nil

4. No notice of caveat has been received.

**DECLARATION**

The copies, as required by rule 16 of Chapter I Part A(a) of the Rules and Orders of Punjab and Haryana High Court, Volume-V, have been served upon----------- (the person upon whom the copies have been served)----------- at-----------(time) on-----------(date) in--------(place).

CHANDIGARH (**SURESH AHLAWAT**)

DATED: 20 .03.2019 ADVOCATE

COUNSEL FOR THE PETITIONER

P-

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. \_\_\_\_\_\_\_\_\_\_\_\_\_OF 2019

ANIL KUMAR ……………..PETITIONER

VERSUS

STATE OF HARYANA & ORS ………….. …RESPONDENTS

TOTAL COURT FEE AFFIXED

CHANDIGARH (SURESH AHLAWAT)

DATED: 20 .03.2019 ADVOCATE

COUNSEL FOR THE PETITIONER

LIST OF DATES & EVENTS

**2007**  That the petitioner recruited and appointed as a clerk in Food and Drugs Department ,in 2007.

**29.3.2017** While working as Clerk in the department involved in a false criminal case in FIR No. 7 dated 29.03.2017, Police Station Gurugram, under Sections 7/13 of Prevention of Corruption Act.

**6.9.2017** That simultaneously on the same set of allegations, a charge-sheet dated 06.09.2017 has been issued under Rule 7 of the Haryana Civil Services ( Punishment and Appeal) Rules-2016.

**9.10.2017** That the petitioner given a written representation of charge-sheet that during the pendency of the criminal proceedings, departmental proceeding be kept in abeyance till the outcome of the criminal proceeding.

**18.5.2018** That despite the representation of the petitioner, the respondent no.2 appointed the Inquiry Officer vide Office Order dated 18.05.2018.

**12.6.2018** But the petitioner again requested on 12.6.2018 to respondent no.2 regarding deferment of the department proceedings till the outcome of the criminal proceedings.

**15.2.2019** That the Inquiry Officer intimated to the respondent no.2 vide letter dated 15.2.2019 and directed to appear the petitioner before him on 26.2.2019.

**24.2.2019** But the petitioner again requested to the respondents vide letter dated 24.2.2019 that the departmental proceeding be kept in abeyance till the outcome of the criminal proceeding.

**27.2.2019** That the Inquiry Officer further intimated to the petitioner vide letter dated 27.02.2019 to appear the petitioner on 19.3.2019 in the departmental proceeding and last opportunity was also given, failing which the ex-parte proceeding will be taken against

Hence, this present petition.

CHANDIGARH (SURESH AHLAWAT)

DATED: 20 .03.2019 ADVOCATE

COUNSEL FOR THE PETITIONER

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. \_\_\_\_\_\_\_\_\_ of 2019

MEMO OF PARTIES

Anil Kumar son of Sh. Hari Singh, aged about 31 years, Clerk (under suspension ), office of the Sr. Drugs Control officer Gurugram resident of Norang Pur Distt. Gurugram. --------------------Petitioner

VERSUS

1. State of Haryana through Additional Chief Secretary, Govt. of Haryana ,Department of Health ,Haryana Civil Secretariat , Sector-17, Chandigarh.

2. Commissioner, Food and Drugs administration Department, Haryana,SCO-94, Sector-5, Panchkula.

3. Inquiry Officer,Mr. Ramesh Krishan IAS (retd.) House no. 491.Sector-6 Panchkula.

---------------Respondents

CHANDIGARH (SURESH AHLAWAT)

DATED:20 .03.2019 ADVOCATE

COUNSEL FOR THE PETITIONER

Civil Writ Petition under Articles 226/227 of the Constitution of India for the issuance of a Writ in the nature of Certiorari thereby quashing the order dated 18.5.2018 (Annexure P-4) and 27.2.2019 (Annexure P-7) whereby the departmental proceedings has been allowed to continue during the pendency of the criminal proceedings pending in the Criminal Court in FIR No. 7 dated 29.03.2017 u/s 7,13 of P.C. Act PS SVB Gurugram on the same facts and allegations leveled against the petitioner which is contrary to the law laid down by the Hon'ble Apex Court of India in case of  **M. Paul Anthony Vs Bhart** **Goldmines Ltd. AIR 1999 SC 1416.**

AND further a writ in the nature of Mandamus thereby directing the respondents not to proceed the departmental proceedings till the finalization of the criminal proceedings.

AND/OR

Issue any other appropriate writ, order or direction to which this Hon’ble High Court may deem fit and proper in the facts and circumstances of the case in favour of the petitioner.

It is further prayed that during the pendency of the present writ petition further proceedings in pursuance of the charge-sheet (P-2)may be stayed in the interest of justice.

RESPECTFULLY SHOWETH:

1. That the petitioner is a resident of State of Haryana and being citizen of India thus is entitled to invoke the extra-ordinary writ jurisdiction of this Hon’ble Court under Articles 226/227 of the Constitution of India.

2. That the petitioner recruited and appointed as a clerk in Food and Drugs Control Administration (Health) Department in 2007. It is submitted that nothing adverse was ever initiated against the petitioner throughout his service period except his false implication on 29.3.2017 **While** working as Clerk in the department involved in a false criminal case in FIR No. 7 dated 29.03.2017, Police Station Gurugram, under Sections 7/13 of Prevention of Corruption Act. The relevant portion of the FIR No. 7 dated 29.03.2017 is reproduced as under:-

“ I am a registered pharmacist HSPC reg.no. 19798/2010 . That I have applied for grant of retail drug license under the name and style of M/S Bajrang Medicos, Shop no.1 opposite bank of India Sohna Road Gurugram on 24.3.2017 with Senior Drug Control Officer Gurugram Zone ,Gurugram as pharmacist as well as proprietor of above said from. My file is complete in all respect but officers/officials of the department especially Mahavir,Anil and Manoj Madam are lingering in the license on one pretext or other even I personally met drug inspector Amardeep Chouhan and explain all the facts but in vain. Inspection of my show shop has been carried out by Mahavir clerk on 27.3.2017 . After inspection he told me that without giving Rs. 15,000/- the department will not issue license . This fee is for five years . After giving the Rs. 15,000/- nobody including drug inspector of our department will neither take sample nor harass you. All of us have share in this amount . When I resisted that government fee is Rs. 3000/- only then how can you demand huge amount . On this he told that this is our set fees and without this we will not issue the license to you this is our power . I am wondering from one seat to another but nobody is ready to perform official duty without taking bribe. I do not want to pay bribe and without taking bribe the concerned officers/officials (above stated) will not issue license . Except this I have no personal or official dealing with the above said of persons. I have no enmity or ill will except this with these officers. Today , I am required to pay bribe of Rs. 15,000/- as per discussion to Mahavir and Anil . I have brought the requisite amount with me . Kindly take necessary legal action and oblige. Yours sincerely:- Rajesh. ” A true relevant extract translated copy of the Police report u/s 173 Cr.P.C. dated 27.2.2018 in FIR is attached herewith as **Annexure P-1**.

3. That simultaneously on the same set of allegations, a charge-sheet dated 06.09.2017 has been issued under Rule 7 of the Haryana Civil Services ( Punishment and Appeal) Rules-2016. A true translated copy of the charge-sheet dated 06.09.2017 is attached herewith as **Annexure P-2**.

4. That the petitioner given a written representation of charge-sheet dated 6.9.2017 to the respondent no.2 on 9.10.2017 with a prayer for withdrawal of department proceedings during the pendency of the criminal proceedings as per law or departmental proceeding be kept in abeyance till the outcome of the criminal proceeding. A copy of the said representation on 9.10.2017 is attached herewith as **Annexure P-3**.

5. That despite the representation of the petitioner, the respondent no.2 appointed the Inquiry Officer vide Office Order dated 18.05.2018. A copy of the Office Order dated 18.05.2018 is attached herewith as **Annexure P-4**. But the petitioner again requested on 12.6.2018 to respondent no.2 regarding deferment of the department proceedings till the outcome of the criminal proceedings. A copy of the said representation dated 12.06.2018 is attached herewith as **Annexure P-5**.

6. That the Inquiry Officer intimated to the respondent no.2 vide letter dated 15.2.2019 and directed to appear the petitioner before him on 26.2.2019.But the petitioner again requested to the respondents vide letter dated 24.2.2019 that the departmental proceeding be kept in abeyance till the outcome of the criminal proceeding. A copy of the said representation dated 24.2.2019 is attached herewith as **Annexure P-6**.

7. That the Inquiry Officer further intimated to the petitioner vide letter dated 27.02.2019 to appear the petitioner on 19.3.2019 in the departmental proceeding and last opportunity was also given, failing which the ex-parte proceeding will be taken against him. But the petitioner could not attend on 19.3.2018 on account of his ill health and financial difficulties. A photocopy of the letter dated 27.02.2019 is attached herewith as **Annexure P-7**.

8. That the impugned orders are illegal, unjust and contrary to the law and the same are liable to be quashed/set aside interalia on the grounds mentioned below:-

a. That the allegations and witnesses in the FIR/Challan Annexure P-1 and the Charge-sheet Annexure P-2 are the same and similar one. Therefore, the defence of the petitioner will be disclosed in case he files the reply to the charge-sheet thus, in the interest of justice and equity fair play. The departmental proceeding be postponed till the final outcome of the criminal proceeding as held by the **Hon'ble Apex Court of India in case reported as AIR 1998 SC 2118 titles as Kusheshwar Dubey v/s Bhart Coking Coal Ltd. and M. Paul Anthony Vs Bhart** **Goldmines Ltd. AIR 1999 SC 1416.Wherein the Hon’ble Supreme Court has held that** it is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal court the employer should stay the domestic enquiry pending the inquiry of the criminal case . Further , it has been held that if the departmental proceedings and criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of grave nature which involves complicated questions of law and facts .it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. It submitted that in the present case the charges against the petitioner are grave and the departmental proceedings as well as the criminal case are based on the same set of facts and evidence in the both the proceedings without there being any variance. Thus in these facts , the case of the petitioner is fully covered by the ratio of law laid down in the above noted judgments and the departmental proceedings in the present case are liable to be stayed till the conclusion of the criminal trial against the petitioner. Cited judgment shall be produced before this Hon’ble Court at the time of hearing. Thus, on this score alone the impugned orders are liable to be set aside.

b. That the witnesses namely Rajesh Kumar Complainant Sh. Neresh Kumar D.S.P. State Vigilance Bureau ,Gurugram Sh. Jai Bhagwan Duty Magistrate and other officials of the petitioner’s department were cited in the criminal case are identical who are also the witnesses in the departmental proceeding. The same witnesses are cited as witnesses in the criminal case as well as in the departmental proceeding, therefore, it is unreasonable for the petitioner to disclose his defence while cross-examining the witnesses, in that way his case will be prejudiced before the criminal Court, thus, on this score alone the impugned orders are liable to be set aside.it is pertinent to mention here that in the criminal proceeding next dated for evidence of the prosecution is 12th April-2019.

c. That no departmental proceedings be initiated in the present case as per law and also Haryana Government Law and Legislative department guidelines.

d That furthermore the alleged co-accused Sh. Mahabir, clerk is continuing in service without any suspension and without facing departmental proceedings and he is also granted regular bail by the Hon’ble Sessions Court Gurugram with petitioner which is clear decimation to the petitioner.

9. That the following questions of law are involved in this writ petition for the kind consideration of this Hon'ble Court:-

a. Whether on the same set of charges in the criminal case and the departmental proceeding, can the departmental proceeding be allowed to continue?

b. Whether the impugned order is violative under Articles 14 and 16 of the Constitution of India?

c. Whether a great in manifest justice has been caused?

10. That the petitioner has not filed any such or similar writ petition either in this Hon'ble High Court or in the Hon'ble Supreme Court of India.

11. That there is no other efficacious remedy available to the petitioner except to approach this Hon'ble High Court by way of present writ petition. Nor any remedy of appeal or revision is available to the petitioner.

It is, therefore, respectfully prayed that for the submissions made above and to be made at the time of hearing this Hon'ble High Court may summon the record from the respondents and after perusing the same this Hon'ble High Court may be pleased to:-

i. Issue a Writ in the nature of Certiorari thereby quashing the order dated 18.5.2018 (Annexure P-4) and order dated 27.2.2019 (Annexure P-7) whereby the departmental proceedings has been allowed to continue during the pendency of the criminal proceedings pending in the Criminal Court in FIR No. 7 dated 29.03.2017 on the same facts and allegations leveled against the petitioner which is contrary to the law laid down by the Hon'ble Apex Court of India.

ii. Issue a writ in the nature of Mandamus thereby directing the respondent not to proceed the departmental proceedings till the finalization of the criminal proceedings.

iii. Any other interim or final relief to which the petitioner is found entitled in the facts and circumstances of the case may also be granted/ordered in the interest of justice.

iv. Dispense with the filing of certified/true typed copies of Annexures P-1 to P-7 .

It is further prayed that during the pendency of the present writ petition further proceedings in pursuance of the charge-sheet (P-2)may be stayed in the interest of justice.

Chandigarh

Dated: 20 .03.2019

THROUGH COUNSEL

(SURESH AHLAWAT)

ADVOCATE

COUNSEL FOR THE PETITIONER

VERIFICATION:

Verified that the contents of above writ petition from paras no.1 to 8,10&11 are true and correct to my knowledge and those of para no.9 is believed to be true and correct on the basis of legal advice sought from the counsel. No part of it is false and nothing has been concealed therein.

Chandigarh

Dated: 20 .03.2019

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. \_\_\_\_\_\_\_\_\_\_\_\_\_OF 2019

ANIL KUMAR ---------------PETITIONER

VERSUS

STATE OF HARYANA & ORS -----------------RESPONDENTS

Affidavit of Anil Kumar son of Sh. Hari Singh, aged about 31years resident of Norangpur Distt. Gurugram.

I, the above named deponent do hereby, solemnly affirm and declare as under:-

1. That the deponent is filing the accompanying writ petition, which may also be treated as a part of this affidavit.

2. That the deponent is well conversant with the facts and circumstances of the case. The averments made in the present writ petition are true and correct to my knowledge. No part of it is false and nothing material has been kept concealed therein.

Chandigarh

Dated: .03.2019

### VERIFICATION:

Verified that the contents of para no.1 and 2 of my above mentioned affidavit are true and correct to my knowledge. No part of it is false and nothing has been concealed therein.

Chandigarh

Dated: .03.2019

**Police report u/s 173 Cr.P.C.**

Prosecution No.7 dated 29.3.2017 u/s 7,13 P.C. Act and 120-B State Vigilance Bureau, Gurugram.

**Name of the Complainant In Custody Bail out**

Rajesh s/o Sh. Karan Singh

Resident of Kalanor Distt. Rohtak.

1.Anil kumar s/o Sh. Hari Singh resident of Norangpur Distt. Gurugram presently posted clerk, Food and Drugs dept. Gurugram

2.Mahavir s/o Sh. Bhagwana Ram resident of Jorasi Tehsil Tawru Distt. Mewat presently peon Food and drugs deppt. Gurugram

Sir,

Facts of this case are as under that on 29.3.2017 DSP Neresh Kumar Ahlawat along with me, were present in the govt. office State Vigilance Bureau-Gurugram with vehicle that Rajesh Kumar s/o Sh. Karan Singh cast Jat resident of Kalanor Distt. Rohtak submitted an written application which facts are under :-

To

The SP, state Vigilance Bureau Gurugram . R/Sir with due respect , I Rajesh s/o Sh. Karan Singh resident of V& PO Distt. Rohtak at present GS-116 Ist Floor ,Malibu Town, Sohna rosd, Gurugram hubly I want to submit that :-

“ I am a registered pharmacist HSPC reg.no. 19798/2010 . That I have applied for grant of retail drug license under the name and style of M/S Bajrang Medicos, Shop no.1 opposite bank of India Sohna Road Gurugram on 24.3.2017 with Senior Drug Control Officer Gurugram Zone ,Gurugram as pharmacist as well as proprietor of above said from. My file is complete in all respect but officers/officials of the department especially Mahavir,Anil and Manoj Madam are lingering in the license on one pretext or other even I personally met drug inspector Amardeep Chouhan and explain all the facts but in vain. Inspection of my show shop has been carried out by Mahavir clerk on 27.3.2017 . After inspection he told me that without giving Rs. 15,000/- the department will not issue license . This fee is for five years . After giving the Rs. 15,000/- nobody including drug inspector of our department will neither take sample nor harass you. All of us have share in this amount . When I resisted that government fee is Rs. 3000/- only then how can you demand huge amount . On this he told that this is our set fees and without this we will not issue the license to you this is our power . I am wondering from one seat to another but nobody is ready to perform official duty without taking bribe. I do not want to pay bribe and without taking bribe the concerned officers/officials (above stated) will not issue license . Except this I have no personal or official dealing with the above said of persons. I have no enmity or ill will except this with these officers. Today , I am required to pay bribe of Rs. 15,000/- as per discussion to Mahavir and Anil . I have brought the requisite amount with me . Kindly take necessary legal action and oblige. Yours sincerely:- Rajesh. Sd- English Action taken.

xxxxxxxxxxxxxx

LIST OF WITNESSES

1. Rajesh s/o Sh. Karan Singh,resident of Kalanor Distt. Rohtak

2. Sh Jai Bhagwan, Naib Tehsildar Gadhi Harsru (Duty Magistrate)

3. EHC Ravinder no. 1329/GGN PS. SVB Gurugram ( Shadow Witness)

4. Neresh Ahlawat DSP, PS. SVB Gurugram

5. SI Suresh Chand no.4/17 PS. SVB Gurugram

6. ASI DharmPal no.745/GGM, Draftsman office of Police Commissioner- GGN.

7.. SI Ram Nand no./1/41 HAP PS. SVB Gurugram

8. Ram Parshad no.540/Bhiwani Mohar SI PS. SVB Gurugram

9. EASI Vijay Singh, no.1268/ PS. SVB Gurugram

10. Kamran Khan. JMIC Gurugram

11. Pawan Kuamr s/o Roshan Laa resident of amadal Shahpur Distt. Jhajjar presently Clark office of the Sr. Drugs Controller- Gurugram.

12. Ram Niwas nain , Sr. Scientific Asstt. Report no. 17/Chem-2381 dt. 19.5.2017 FSL Madhuban.

13. Ins. Dinesh Kumar, PS. SVB Gurugram

14. Ins. Kulwan Singh, PS. SVB Gurugram

15. Pushpa Khatri, DSP, PS. SVB Gurugram circle- Gurugram.

16 Ashish Choudhry, DSP PS. SVB Gurugram

SHO

SVB Gurugram

Gurugram Circle. Gurugram.

Dt.

True relevant extract and translated copy