

LOKAYUKTA HARYANA

ANNUAL REPORT FOR THE YEAR 2007-2008 (01.04.2007 TO 31.03.2008)

The Haryana Lokayukta Act, 2002 (hereinafter referred to as the “Act”) is an endeavour towards providing a transparent and corruption free administration to the public. The common man has been given the right to approach the Lokayukta by way of filing complaints and projecting grievances against denial of any right or maladministration or inaction on the part of any public servant.

During the financial year 2007-2008 a total number of 178 complaints were received, which have been listed in Annexure–I. This is against 133 complaints received during the immediately preceding year. This shows that the people are becoming more aware of their rights under the Act. In addition to the complaints received during the year, there were 73 complaints pending at the end of the preceding year i.e. 31.03.2007 which were at various stages of investigation. A total of 139 complaints were disposed of during the financial year. A list of the complaints/ grievances disposed of with gist of the orders passed therein, is enclosed herewith as Annexure–II. The remaining complaints are at different stages of investigation/ enquiry.

In order to ensure that action is taken against the erring public servants, in some cases the reports were not finalized until the action had been taken and reported to this office. A list of such cases is enclosed herewith as Annexure-III. In other cases, where the allegations or grievances were wholly or partly substantiated, the report containing the findings alongwith recommendations for appropriate action were forwarded to the Competent Authority under section 17(1)(b) of the Act. A list

of such cases alongwith gist of recommendations has been annexed herewith as

A-IV Annexure IV.

As per the provisions of section 17(2) of the Act, the competent authority is required to examine the reports and intimate this office within three months about the action taken on such reports. Unfortunately, no response has been received from the competent authority in respect of these cases upto the date of writing this report. This issue had been highlighted by me in my last also and the matter was also taken up with the Chief Secretary to Government, Haryana. The Chief Secretary had issued the necessary directions to all the Heads of the Departments, Commissioners, Deputy Commissioners and Universities vide circular Nos.40/9/06-Pol. (4P) dated 31.7.2007 and 4.12.2007 respectively. However, even after the issue of this circular, reports as envisaged under section 17(2) of the Act have not been received in this office except in one case i.e. Complaint No. 102 of 2007.

In the last report need for creating general awareness about the remedy available to the public under the Act had been highlighted. It had been pointed out that one of the impediments in this direction was absence of the Rules, which had not been framed and notified for almost four years after the passing of the Act. However, the rules have since been notified vide notification No. S.O.4/H.A.1/2003S.26/2008 dated 9th January, 2008. Accordingly, further steps are being taken for creating public awareness about the Act by way of distribution of pamphlets at the district level and issuing press notes. I also propose to visit the District Headquarters for interaction with the officials, N.G.Os, members of the bar and general public. The provisions of the Act and Rules have also been made available on the website. The website also contains information about the status of

the complaints and also all the reports made by the Lokayukta to the competent authority.

In my last report I had made certain observations/ recommendations regarding the slackness of the official machinery in dealing with the representations of the public and even with the letters sent by this office. A recommendation was also made regarding evolving of a time bound procedure for completing the departmental enquiries and for taking action against the erring officials. These recommendations were accepted and the Chief Secretary had issued necessary instructions vide circular letter dated 18.10.2007 addressed to all the Heads of Departments, Commissioner, Deputy Commissioners and Universities. It is hoped that these instructions are followed by all concerned.

Based on my experience in dealing with complaints/ grievances during the year, I would like to make the following observations/ recommendations:-

Departmental Proceedings - Delays

During the investigation in various complaints it has been observed that the departments drag their feet in taking action against the delinquent officials.

In complaint No. 21 of 2006 a citizen was facing harassment at the hands of police despite having been told that cancellation report under section 173 Cr. P.C. in that case against him had been submitted as the complainants had filed an affidavit to the effect that they had been misled into making the complaint. However, during investigation of the complaint it was found that the report dated 7.8.2004 had not been submitted before the Illaqa Magistrate upto 12.9.2006. Accordingly vide letter dated 13.9.2006 the concerned Superintendent of Police had been asked to submit his explanation about the inordinate delay of more than 2 years in filing the cancellation

report and take action against the persons responsible for this delay. The Superintendent of Police submitted his report vide letter dated 11.10.2006 and fixed the responsibility on one Head Constable. Several letters had to be written to him to report about the action taken against the delinquent official. It was only on 25.4.2007 that it was intimated that show cause notice for stoppage of three increments had been issued to the delinquent official. However, no information has been received about the final action taken in the matter.

In complaint No. 36 of 2007 despite a direction by the Motor Accident Claims Tribunal to register an FIR, the officials of the concerned Police Station registered the case after a delay of 21 days. It was reported that a regular departmental enquiry had been initiated against the delinquent officials. Consequently the complaint was disposed of on 25.6.2007 asking the Superintendent of Police to intimate this office about the action taken against the delinquent officials. However, no report has been received upto this date.

In complaint No. 63 of 2006 it was found that under a scheme meant for landless Harijans, one Gram Panchayat had allotted a plot to a person who was not eligible. The allotment was made in the year 1993. The factum of this illegal allotment had come to the notice of the Gram Panchayat in 1996 and it had passed a resolution on 23.2.1996 for cancellation of the said allotment. However, no action was taken by any authority. It was only after the complaint was received in this office on which the Deputy Commissioner was asked to give his comments that proceedings for cancellation of allotment were initiated in the year 2007. It was a clear case of dereliction of duty on the part of the Gram Panchayat and the officials supervising the functioning of the Gram Panchayat. The land had been allotted

without verifying the credentials of the allottee. The resolution of the Gram Panchayat dated 23.2.1996 was not carried out for 11 years. This clearly lent credence to the charge that all the concerned officials were helping the allottee. The complaint had been forwarded to the Deputy Commissioner on 30.8.2006 and thereafter also it had taken 8 months to pass a fresh resolution for cancellation of allotment on 9.5.2007 and that too after persistent reminders by this office. The land had, therefore, been in illegal possession of the allottee for almost 14 years causing financial loss to the Gram Panchayat which may have to incur further legal expenditure for getting the allotment cancelled. Directions were issued to examine as to whether the allotment had been made without obtaining necessary documents about allottee's eligibility or on the basis of forged documents furnished by him as in the first case the responsibility would be of the person who had made the allotment while in the later case the allottee was liable for criminal prosecution. Accordingly, vide order dated 4.7.2007, recommendation was made for conducting an enquiry and taking action against the delinquent persons in accordance with law. However, no action in this behalf has been reported upto this date.

In complaint No. 28 of 2007 the grievance projected was that the award of the Labour Court dated 13.01.2003 ordering the reinstatement of the complainant with continuity of service and full back wages was not being implemented by the Forest Department. It was pointed that the writ petition filed by the State Government challenging the award had also been dismissed by the Hon'ble Punjab & Haryana High Court on 20.09.2004. The complainant in his complaint dated 08.03.2007 had pointed out that the Award had not been implemented upto that date. When the matter was taken up with the concerned department it was intimated that

the complainant had been taken back in service on 25.5.2007 and an amount of Rs. 1,48,261/- disbursed to him on account of back wages. The slackness on the part of the concerned department has resulted in payment of wages to the concerned worker for more than four years (from 2003 to 2007) without his rendering any service. Thus, this delay has caused financial loss to the State.

In complaint No. 67 of 2007 it was observed that an order to charge sheet an employee was passed on 19.01.2006 whereas the charge-sheet was actually issued to him on 28.05.20207 after almost one and half years. Due to the pendency of these proceedings the concerned public servant was denied the benefit of voluntary retirement. When the matter was taken up with the concerned department, it was intimated that charge-sheet had already been issued to the officer/official who was responsible for the delay in issuing the charge-sheet. However, no intimation has been supplied by the department about the action taken against such officer/ official.

These instances show that unnecessarily long time is taken in the departmental proceedings initiated against the public servants and also in taking action against them.

Encroachments on Public Property.

It has also been observed that various Government authorities are reluctant to proceed against the encroachments on public property.

In complaint No. 8 of 2007 one of the grievances projected was inaction on the part of the Municipal Council in removing the illegal projections on the public road. When the matter was taken up with the Executive Officer, an attempt was made to justify their existence. It was only when he was persistently asked to state categorically as to whether the same were legal or not that it was admitted that the

same were illegal and it was reported that steps were being taken to remove the same. The matter had been brought to the notice of the authorities in January, 2007 and report on the same had been submitted by the Executive Officer in May, 2007 yet upto January, 2008 proceedings for removal of encroachments had not been initiated. It was, therefore, recommended that responsibility be fixed on the officers/officials found responsible for this laxity. No intimation about the action taken has been received in this office.

Pollution- Urban Vs. Rural Areas

While dealing with complaint No.11 of 2007 it was observed that the State Government has issued certain guidelines regarding installation of telephone/mobile towers in residential areas in order to check noise and air pollution. However, it was pointed out that these guidelines are applicable only to residential areas which fall within the limits of Municipal Corporation and Municipal Councils and not to the other residential areas. In other words there are no guidelines in respect of installation of such towers in rural areas. If a mobile tower is a health hazard on account of air and noise pollution in urban areas it would be equally so in the rural areas. I had, therefore, recommended that some guidelines be also issued for installation of such towers even in residential areas falling outside the Municipal Limits and an affective procedure for monitoring the functioning of such towers be evolved. This recommendation was made on 22.01.2008. However, no intimation about the same has been received so far.

Criminal Proceedings – Embezzlement and Misappropriation of Public Funds.

In complaint No. 20 of 2006 it was alleged that no proper action was being taken against a Junior Engineer in Public Health Department for his misdeeds

including misappropriation of public funds and unauthorised absence etc. because he was enjoying political patronage. During investigation it was found that he had been issued charge-sheets on four occasions between the year 1999 to 2007. His conduct had been of total non-cooperation during the enquiry. He had been found guilty of having made fictitious and inadmissible payments with ulterior motive and for willfully remaining absent from duty etc. He was also held responsible for the missing parts of a generating set. In other words, he had been found guilty of financial irregularities/ embezzlement/ misappropriation/ unauthorized absence and yet a lenient view had been taken on a number of occasions by not awarding him the maximum punishment under the rules. In fact the punishments were awarded to him only after this office had persistently asked for reports in the matter. The fifth charge-sheet was issued after the complaint was made in this office in which he was awarded the punishment of dismissal of service. Embezzlement or misappropriation of public funds is a criminal offence. It is, therefore, not understood as to why no criminal proceedings are initiated against the public servants who are held to have committed these offences. Asking a public servant to refund the embezzled or misappropriated amount and awarding him a punishment of stoppage of some increments cannot possibly act as a deterrent to other public servants from doing so unless criminal proceedings are launched against such delinquent officials. Failure to file criminal proceedings against such a Junior Engineer clearly shows the influential that he wields. It is, therefore, necessary that criminal proceedings should be launched against such public servants.

Forgery and Fraud

In complaint No. 49 of 2006 it was alleged that the health authorities were not taking action against a Class IV employee who had fraudulently obtained promotion to the post of Computer on the basis of a fake and forged Matriculation Certificate. It was also alleged that in October, 2005, the Deputy Commissioner had got an enquiry conducted through the S.M.O. Bawal in which the allegations against the employee had been found to be true but still no action was taken against him. The matter was taken up with the Director General, Health Services, Haryana, and the Deputy Commissioner vide letters dated 12.7.2006. After four reminders they informed that on the basis of enquiry report dated 15.8.2005, charge-sheet under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 had been issued to the concerned employee on 11.9.2006. Vide another letter dated 21.12.2006, the Director General further reported that an Enquiry Officer had been appointed and entrusted with the enquiry. The Enquiry Officer submitted his report on 21.3.2007 finding the charge of the delinquent public servant having obtained promotion by producing a fake/ forged certificate to be true. He was issued a show cause notice on 12.4.2007 proposing the punishment of reduction in rank, recovery of excess payment on account of promotion from Class IV to the post of Computer and stoppage of four annual increments with cumulative effect. The above penalties were imposed vide order dated 5.9.2007. Reluctance of the authorities to proceed against the delinquent public servant is apparent from the fact that the Madhya Pradesh Board had, as early as in July 2005, informed the authorities that the certificate produced by the delinquent official in fact pertained to some other student. It is, therefore, clear that the fact about the fakeness of the certificate produced by

the delinquent public servant was before the authorities in July, 2005 and yet it had taken two years to take action against him. The public servant had been found to have filed a forged certificate and had, therefore, played a fraud with the Government by seeking appointment on its basis. He was, therefore, clearly guilty of offences punishable under the Indian Penal Code but surprisingly no criminal action was taken against him. It was only after the Director General was asked to explain this position that directions were issued for lodging an FIR. The Government was, therefore, requested to issue guidelines about the manner in which such matters need to be dealt with.

Education Standards

During investigation in complaint No. 26 of 2007 it was found that a teacher in a Government Senior Secondary School had fraudulently obtained "Very Good" reports in his ACRs by misreporting his results. His results were below pass percentage of the Board, whereas in the information supplied by him and noted in his ACRs, the figures had been inflated to show his results to be above the pass percentage of the Board. The figures supplied by the teacher had been mechanically accepted by the District Education Officer without any verification. The allegation of the complainant was that this had been done by the teacher for seeking promotion to the post of the Principal. When the matter was taken up with the Commissioner and Director General, School Education, a circular came to be issued to all the District Education Officers to check the self appraisal before recording the ACRs. However, no action was taken against the teacher for supplying fake information nor were his ACRs reviewed. In fact an impression was given that even if correct information showing his results to be below the Board pass percentage had been

recorded, he would still have earned “Very Good” report and would have been promoted as the Principal. It is, therefore, clear that the ACRs of the teachers are recorded by the District Education Officers without verifying the factual position. It is also clear that the performance of a teacher vis-a-vis his results is not a consideration for promotion. In order to improve the education standards, it is necessary that the policy regarding grading and promotion of teachers needs to be reviewed and linked with their performance.

Gram Panchayats

A number of complaints are received alleging misappropriation of panchayats funds by the Sarpanches. It is alleged that the panchayats records either are not maintained or are totally fabricated. No action is taken by the supervisory authorities like the Block Development and Panchayat Officers etc. on the complaints of the local residents. One such complaint (Complaint No. 138 of 2007) was forwarded to the Deputy Commissioner for his comments. He got an enquiry conducted into the matter and found the allegations to be correct. Accordingly, he initiated proceedings under section 51(3) of the Haryana Panchayati Raj Act, 1994. This shows failure of the supervisory officers to properly discharge their duties. It is, therefore, evident that such complaints need to be attended to by the supervisory officers immediately on receipt. They should not wait for the intervention of this office or any other authority. It is, therefore, necessary that if the supervisory officers of the Gram Panchayats do not take action on the complaints received from the general public, they must be held responsible and accountable for this lapse if the complaint is subsequently found to be correct.

Fake Complaints

Section 16 of the Haryana Lokayukta Act, 2002(for short” the Act”) provides for punishment to a person who willfully or maliciously makes any false complaint

under the Act. This is to ensure that no public servant is maligned or involved in a false complaint. During this year this provision was invoked in one case i.e. Complaint No. 79 of 2006 in which the complainant was found to have made a totally false and malicious complaint to malign the police officials. Accordingly, as per order dated 29.2.2008, the District & Sessions Judge, Faridabad was asked to take cognizance of the offence committed by the complainant under section 16 of the Act.

Dated: 24.09.2008
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Sd/-
(N.K. SUD)
Lokayukta, Haryana