

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CWP No. 21977 of 2012

DATE OF DECISION: July 09, 2015

Kashmiri Lal

.....Petitioner

VERSUS

Punjab and Haryana High Court, Chandigarh

.....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Y.P.Malik, Advocate,
for the petitioner.

Mr. Vikas Suri, Advocate,
for the respondent.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court impugning the order dated 10.05.2010 (Annexure P-3) passed by the District and Sessions Judge, Jhajjar, vide which the services of the petitioner have been dispensed with during probation period on the ground that the same reflects upon the conduct of the petitioner which would, in effect, render him ineligible for consideration for any other appointment. It is further stated that the order being stigmatic and punitive in nature, a departmental enquiry should have been held against him and after holding a regular departmental enquiry, the respondents could have proceeded in accordance with the Statutory Rules governing the services of the petitioner. Challenge is also to the order dated

03.08.2012 (Annexure P-7) passed in the service appeal preferred by the petitioner rejecting the same.

It is the contention of the counsel for the petitioner that the petitioner was appointed as a Peon on 18.08.2008 on regular basis in the Sessions Division, Jhajjar. He was posted as Orderly with the District and Sessions Judge. The probation period of the petitioner was fixed as two years. The service of the petitioner is governed by the Haryana Civil Services Rules (Punishment and Appeal) Rules, 1987 and the Haryana Subordinate Services Establishment Rules, 1997 as also the High Court Rules and Orders.

Counsel contends that when the petitioner was in service, an incident occurred, on the basis of which the impugned order has been passed by the District and Sessions Judge, Jhajjar, which is not only punitive in nature but has an effect of virtually rendering the petitioner ineligible for appointment in future in any Government service, the same being clearly stigmatic. This, the counsel contends, is not sustainable in the light of the various judgments, which have been passed by this Court and the Hon'ble Supreme Court. Merely because the petitioner was on probation should not be taken as a plea for discharging him from service without giving him a proper opportunity, as has been provided for under the Statutory Rules and the protection under the said Rules is available to even an employee under probation if punitive action is to be taken against him. His contention is that the stigma, which has resulted because of the passing of the said order, itself renders the order unsustainable. Prayer has, thus, been made for setting aside the impugned orders.

Counsel for the respondent, on the other hand, contends that the

impugned order dated 10.05.2010 primarily deals and contains two parts. First part is with regard to the resignation submitted by the petitioner, which has been rejected and the second part deals with the conduct of the petitioner. What has been recorded therein is only the factual aspect of the matter and the observations made therein can not, in any manner, be termed as reflecting upon something which would deny him appointment in any other Government service in future. Anyway, it is the subjective satisfaction of the employer and nothing more than that. He, for this submission, places reliance upon the order dated 03.08.2012 (Annexure P-7) passed on the appellate side where it has been clarified that the service of the petitioner has merely been discharged and he is still eligible to apply for other Government jobs. Assertion has also been made that apart from the aspects, which have been referred to in the impugned order passed by the District and Sessions Judge, there are other aspects also with regard to the working of the petitioner, which have not been taken note of while passing the impugned order. He contends that since the petitioner was on probation, the order was so passed. However, because of the said order, it cannot be said that the work and conduct of the petitioner was satisfactory or it would confer any right on him which would obviously take away the right of the employer to assess the suitability of the petitioner for his continuation in service on completion of the probation period.

I have considered the submissions made by the counsel for the parties and have gone through the records of the case.

A perusal of the impugned order dated 10.05.2010 (Annexure P-3) cannot be said to be one which was not punitive in nature and in fact, the observations made therein are stigmatic and, therefore, the said order

cannot sustain and is set aside as the same has been passed without holding a departmental enquiry as per the Statutory Rules as per the requirement of law. The order dated 03.08.2012 (Annexure P-7) passed by the Appellate Authority is also set aside.

The writ petition is allowed. Petitioner is directed to be reinstated in service with liberty to the respondents to proceed, in accordance with law, against the petitioner. He shall be entitled to back wages.

It may be added here that mere setting aside of the impugned orders (Annexures P-3 and P-7) would not confer any right on the petitioner to be treated as having completed the probation period and it shall be open to the employer to take into consideration all aspects with regard to the completion of the probation period or extension thereof and as to whether he is suitable for confirmation or not. In case the petitioner is allowed to clear the probation period and is confirmed, he shall be entitled to all consequential benefits.

July 09, 2015
pj

(AUGUSTINE GEORGE MASIH)
JUDGE