

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 3631 of 2012

Pronounced On : 22.01.2015

O. P. Verma Petitioner
Vs.
Punjab & Haryana High Court
and another Respondents

**CORAM : HON'BLE MR. JUSTICE SATISH KUMAR MITTAL.
HON'BLE MR. JUSTICE DEEPAK SIBAL.**

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Hitesh Vema, Advocate
for the petitioner.

Mr. Ashok Bhardwaj, Advocate
for respondents no. 1.

Mr. Ravi Dutt Sharma, DAG, Haryana
for performa respondent no. 2.

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DEEPAK SIBAL, J. :

The petitioner, who is a retired Additional District and Sessions Judge, Haryana, through the present writ petition, has approached this Court to challenge Show Cause Notice dated 26.07.2010 (Annexure P-12) and the

order dated 18.03.2011 (Annexure P-14), whereby a penalty of cut in pension to the tune of 20% for two years has been imposed upon him.

In the year 1998, when the petitioner was serving as a Civil Judge (Senior Division), Sonapat, he was charged for the following counts of misconduct :-

“1. That you while posted as Civil Judge (Senior Division), Sonapat appointed Sh. Rajesh Kumar as Process Server against leave vacancy of Sh. Dharamvir Singh, Process Server without your competency notwithstanding the fact that he was not even otherwise eligible being over aged. You had appointed Sh. Rajesh Kumar as Process Server and granted further extension from time to time in violation of the Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Services) Rules, 1997 coming into force w.e.f. 17.11.1998. However, when it came to the notice of Sh. S. K. Sardana, the then District and Sessions Judge, Sonapat, he rescinded your orders vide his order dated

26.04.2000 alongwith the appointment order of other employees namely Naresh Kumar, Amarjit Singh and Jai Kishan respectively.

Thus you having exercised your powers beyond your competency acted in a manner unbecoming of a judicial officer and thereby lowered the image of the judiciary in the eyes of public.

2. That you while posted as Civil Judge (Senior Division), Sonapat gave appointment of Sh. Rajesh Kumar as process server vide order bearing Endst. No. 6058, dated 11.09.1998 arbitrarily as he was not otherwise eligible for being appointed so. On being the Haryana Subordinate courts Establishment (Recruitment and General Conditions of Services) Rules 1997 coming into force w.e.f. 17.11.1998, you were no more competent to make appointments, however, you while exercising your powers beyond

your competency gave appointment to Sh. Rajesh Kumar as Process Server vide order bearing Endst. no.900 dated 12.11.1999 illegally. As such you having exercised beyond your competency has acted in a manner unbecoming of a public servant. Thus you misused the official powers and lowered the image of the judiciary in the eyes of public and acted in a manner unbecoming (sic.) of a public servant.”

The petitioner's response to the above charges having been found to be unsatisfactory, a regular departmental inquiry was ordered to be held against him. The Inquiry Officer, who was District and Sessions Judge-cum-Registrar (Vigilance), Punjab, conducted the inquiry into the above quoted charges and after sifting the evidence, both oral and documentary, reached the following conclusion :-

“On article of charge no. 1, it is held that the delinquent officer was not a competent authority to issue appointment letters of Rajesh Kumar complainant except the initial appointment for the period 09.09.1998 to 13.11.1998, but it is not

proved that the subsequent appointments were made with any malafide intention. On article of charge no.2 it is held that the officer did not look into the eligibility criteria of educational qualifications of Rajesh Kumar but this technical requirement was not necessary in case of short term appointment nor the officer can be found at fault due to the circumstances discussed on article of charge no. 1.”

A copy of the inquiry report was duly furnished to the petitioner and he was directed to file his comments to the same. As directed, the petitioner filed his comments to the inquiry report. Thereafter, vide the impugned Show Cause Notice dated 26.07.2010 (Annexure P-12), the petitioner was called upon to show cause so as to why cut in pension be not imposed upon him. The petitioner submitted a detailed reply to the Show Cause Notice, but apparently, the same was not considered favourably as after consideration of the reply, the impugned punishment of cut in pension to the extent of 20% for a period of two years was imposed upon him. It is the above referred Show Cause Notice and the imposition of penalty, which is challenged by the petitioner through the present writ petition.

We have heard learned counsel for the parties and with their able assistance, have gone through the record of the case.

The undisputed facts, which have surfaced, are that there were two Articles of Charge levelled against the petitioner and after inquiry qua both of them, he was not found guilty. So far as Charge No. 1 was concerned, it was held that the petitioner was competent to issue the initial letter of appointment of one Rajesh Kumar as a Process Server, but was not authorized to grant him extensions as in the integrum, the rules regarding the competent Authority to appoint Process Servers had changed. Nowhere in the inquiry was it proved by the Department that these changed rules were ever brought to the notice of the petitioner. Further, there is a categorical finding so recorded by the Inquiry Officer that the subsequent extensions, so granted to the above said Rajesh Kumar by the petitioner, were not on account of any mala fide intention.

So far as Charge No. 2 was concerned, there was a categorical finding returned by the Inquiry Officer in favour of the petitioner.

In view of the above, it is clear that so far as Charge No. 2 was concerned, the petitioner was clearly and unequivocally exonerated qua the same. So far as Charge No. 1 was concerned, the inquiry report clearly spelled out that the petitioner was competent to initially appoint the above said Rajesh Kumar as a Process Server, but so far as subsequent extensions were concerned, the same could not have been granted by him as the rules

qua the Authority competent to appoint Process Servers had been changed in the integrum. As these changed rules were never brought to the notice of the petitioner and in view of the categorical finding so recorded in the inquiry report that the extensions granted by him to the above said Rajesh Kumar were not on account of any mala fide intention, we irresistibly come to the conclusion that there was no misconduct on the part of the petitioner on this count.

Once we have as above, then there is no question of him being penalized for any misconduct or negligence.

Before parting with the judgment, we cannot help but notice the fact that the petitioner initially served this Court as a Judgment Writer from the year 1976 till the year 1986. While serving this Court as a Judgment Writer, he pursued his LLB Course by attending evening classes conducted by the Panjab University, Chandigarh and after having successfully graduated in law, he appeared in the HCS (JB) examination. He, having successfully cleared the examination, was appointed as a Sub Judge in the year 1986. After earning promotions from time to time, he retired in the year 2008, while serving on the substantive post of Additional District and Sessions Judge. Thus, he had a service of about 32 years, which indisputably was unblemished except the issue in question in the present writ petition.

In view of the above, we allow the present writ petition and

resultantly quash the impugned Show Cause Notice dated 26.07.2010 (Annexure P-12) and the order dated 18.03.2011 (Annexure P-14). Needless to say that on quashing of above said Annexures P-12 and P-14, impugned by the petitioner, he would be entitled to all consequential benefits, as may be admissible to him in law.

(SATISH KUMAR MITTAL)
JUDGE

(DEEPAK SIBAL)
JUDGE

Pronounced on : 22.01.2015
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