

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3842 of 2013

Date of Decision: 24.09.2015

Satwant Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vaibhav Narang, Advocate,
for the petitioner.

Mr. Vaibhav Sharma, DAG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The petitioner was appointed as a Special Police Officer in the Punjab Police Department at Amritsar in the year 1999. His services were terminated on July 30, 2007 by the Senior Superintendent of Police, Amritsar on the allegation that he extorted illegal gratification to the tune of Rs.2,000/- from one Avtar Singh @ Romi who ran a chemist shop in the city known as Gill Medical Store. The date of occurrence is July 25, 2007. Avtar Singh @ Romi did not complain against the petitioner that money was extorted from him on the threat that he was selling drugs and the petitioner and one SPO Harpreet Singh had threatened him that they would get a case registered against him to avoid which situation he parted with

illegal gratification. The in-charge CIA staff made a secret inquiry based on secret information received from person unknown that the occurrence took place at Gill Medical Store involving the petitioner and SPO Harpreet Singh. During the secret inquiry, material was collected called evidence to establish petitioner's guilt. Within five days of the alleged incident the petitioner was discharged from the post of SPO. It is urged that a regular departmental inquiry was not required under the provisions of Rule 16.24 of the Punjab Police Rules, 1934 ("PPR") in the case of a SPO who are employed on daily wage basis. The conditions of service of Special Police Officers are governed by the provisions of the Punjab Police Act, 1861 ("PPA"). Section 17 of the PPA enables police officers, not below the rank of Inspector, to apply to the nearest Magistrate, to appoint so many of the residents of the neighbourhood where there has been "danga" to assist the police in preserving peace and protecting inhabitants and their property against riot or disturbance of good order. The Magistrate approached by the Police would comply with the application requesting appointment of SPOs unless he sees cause to the contrary. Section 18 enumerates the powers of Special Police Officer and prescribes that person appointed shall have the same powers, privileges and protection and shall be liable to perform same duties and shall be amenable to the same penalties and be subordinate to the same authorities as the ordinary officers of police. Section 18 confers status on Special Police Officers and the protection of Rule 16.34 which provides for inquiry procedure in case of misconduct.

2. Aggrieved by the order of discharge, the petitioner filed an appeal to the Appellate Authority who vide order dated October 08, 2007 rejected

the same and confirmed the order of discharge. This is how the petitioner stood removed from service.

3. Dissatisfied with the order in appeal, the petitioner filed Civil Suit No.256 of November 26, 2008 in the court of the civil Judge for a decree against the defendants-State of Punjab and two other defendants which are the disciplinary and appellate authority of SPOs. He prayed for reinstatement to service. The suit was contested by the State and the parties produced their evidence both documentary and oral for and against the removal order. The learned Civil Judge (Junior Division), Amritsar decreed the suit by setting aside the adverse orders and held that proper inquiry as per Rule 16.34 of PPR should have been followed. However, the Court also recorded that the allegations mentioned against the petitioner are quite serious in nature since an inquiry had not been held against the petitioner, the procedure of inquiry be resorted to and the same be concluded and a speaking order passed within six months from the date of decision, i.e., October 12, 2011. The State did not appeal against the order.

4. An inquiry was conducted by the Assistant Commissioner of Police, Traffic, Amritsar recording in his report dated May 07, 2012 that the petitioner was not guilty of the alleged misconduct of extortion of money. The inquiry officer held that the charge levelled was not proven and the petitioner was freed of the serious charge levelled against him. The inquiry officer noted that Avtar Singh @ Romi owner of Gill Medical Store near Guru Ramdas Hospital or his partner Palwinder Singh had made no written complaint against the petitioner and this fact was admitted by a witness Vikram Sharma, Incharge CIA Staff during the cross-examination that no

written complaint was filed against the petitioner by the owner of Gill Medical Store that money was extorted from him on the pain of registration of a criminal case. The inquiry officer recorded that Avtar Singh's partner Palwinder Singh appeared as a prosecution witness and informed the inquiry officer that his partner Avtar Singh @ Romi had permanently settled in Australia with his family four years back. He deposed that he had contacted his partner Avtar Singh @ Romi on telephone and enquired from him whether SPO Satwant Singh demanded extortion money from him but Avtar Singh @ Romi told him that did not know SPO Satwant Singh. Neither of them made any written complaint against him.

5. The prosecution even produced Ajit Kaur mother of Avtar Singh @ Romi as PW-4 who made a statement that her son had left India and was settled in Australia four years ago. PW-2 Inspector Vikram Sharma deposed in the inquiry that he never called Avtar Singh @ Romi to make a statement in order to record it in the investigation file. The Assistant Commissioner of Police, Traffic, Amritsar City noted from the statement of Vikram Sharma that SPO Satwant Singh was a hard worker, disciplined SPO who performed his duties well. On the basis of this evidence, the inquiry officer in his report dated May 07, 2012 reached the conclusion that the charge was not established. He affirmed the report was not been filed either by the petitioner or by the State in his written statement nor in the additional affidavit notarized on May 19, 2015.

6. The secret report on which discharge was based has come on record of this petition only on account of the interim order dated August 17, 2015 passed by this Court when after hearing the respective counsel at

length it was discovered that the inquiry report was not placed on file and the learned State counsel was asked to place the inquiry report on record through an application supported by an affidavit with an advance copy to the opposite counsel within 10 days. In this behalf, the affidavit dated August 27, 2015 has been filed and that is how the inquiry report dated May 07, 2012 is found on record and read. If the petitioner filed a half-baked petition without even caring to place on record the removal and the appellate order, not to speak of the inquiry report, it was the best evidence in proof of innocence. The respondent-State also derelicted in its duty towards not to mention the existence of the inquiry report dated May 07, 2012 in the written statement dated February 17, 2014 filed by Kuljit Singh, PPS, Additional Deputy Commissioner of Police, Headquarters Amritsar City on behalf of the respondents and would lie buried had this Court not passed the interim order dated August 17, 2015 calling for the vital document on which the case turns and the fate of the petitioner in the present litigation.

7. There is another important feature in the case which relates to an earlier interim order dated April 27, 2015 passed by Coordinate Bench where the State was asked to re-examine the matter in issue, particularly, in the wake of the order dated May 26, 2012 (P-4) and the order dated September 13, 2010 (P-6) in response to which an additional affidavit was filed by Kuljit Singh, PPS, Additional Deputy Commissioner of Police, Headquarters, Amritsar City on July 13, 2015, found at page 64 of the paper book. Even in that affidavit it was only disclosed that inquiry had been conducted in terms of the civil court decree and the petitioner had been

exonerated of the charges. In this affidavit, the petitioner has been castigated in para.3 as "bad character/took corruption". Though there is a mention that an inquiry was held but the exoneration was said to be on "technical grounds" since the main prosecution witness Avtar Singh @ Romi had migrated abroad permanently and Gill Medical Store had since been closed down. Due to this, the statement of the main witness could not be recorded during the inquiry proceedings. It has been explained that the matter was referred to Director General of Police, Punjab, Chandigarh vide office memo dated May 26, 2012 for appropriate orders in respect of the petitioner.

8. Rule 16.28 of the PPR empowers the DGP to review cases and to confirm/enhance/modify or annul the same or make further investigation and direct such to be made before passing order. The DGP, Punjab considered the case of the petitioner and rejected the same being devoid of force vide order dated September 26, 2012 by applying Rule 12.14 (1) of PPR which contemplates that a Constable recruit should be of "good character" and it was keeping in view this provision and the policy instructions of the Government bearing memo No.5060-86/E-3(4) dated May 11, 2009 (R-5) that the removal was maintained and therefore the petitioner could not be reinstated to service as SPO for the reason as stated earlier "being bad character/took corruption". Though it is open to the State in its written statement filed before the Court to disclose the real reason for removal and remains under a duty to reveal even if the worst is imputed against the delinquent but the real reason cannot be withheld and if such disclosure is made in written statement it would not by itself cast stigma

even when it amounts to one, since the State has a right to justify its action so long as the discharge on the face of it does not impute or publish anything which is stigmatic. This is because truth must always triumph. But the facts of the present case are different. The petitioner stands exonerated in the inquiry held by the police department under the directions of the civil court in the civil suit. The petitioner has not been let off by the inquiry officer on technical grounds and such suggestion is totally false as contained in the averments in para.3 of the affidavit dated July 13, 2015 filed by Kuljit Singh, PPS, Additional Deputy Commissioner of Police, Amritsar. Introducing such a concept is foreign to the regular inquiry report. The deponent Police Officer has virtually resorted to character assassination in para.3 of his affidavit imputing bad character and corruption as though it were a fact proved beyond reasonable doubt or in all its probabilities, by whichever standard applied. Contrary to the findings of the inquiry report the deponent asserts in para.5 of his affidavit that both the petitioner and Ex-SPO Harpreet Singh were corrupt and they took illegal gratification of Rs.2000/- from Avtar Singh @ Romi which if taken true might have deflected the course of justice. The deponent anchors his personal opinion , If I may say so, by reason of confession of guilt before the Inspector CIA Staff and in the presence of other police officials in a police station little realizing that if the petitioner appeared and confessed guilt, the confession before Police Officer was inadmissible in evidence in a court of law and should be held down to those standards in a domestic inquiry. Kuljit Singh, PPS, Additional Deputy Commissioner of Police, Headquarters Amritsar City has apparently deflected the administration of justice left, right and

centre in suppressing and mulling over facts and documents and has not represented the State before this court with clean hands, clean motive, clean mind and clean heart. It may be noted that the additional affidavit dated August 27, 2015 filed under the directions of this Court is by Dhruvan H.Nimbale IPS, Additional Deputy Commissioner of Police, Headquarters Police Commissionerate, Amritsar on behalf of the respondents where truth is spoken for the first time since 2013 when the writ was filed. Had the true position been made known or brought out candidly the case could have been resolved long ago. It is he who has placed on record the inquiry report dated May 07, 2012 which has been kept in the shadows throughout the present proceedings. One small line in para.3 of the affidavit dated July 13, 2015 also filed under Court directions in the previous affidavit is not enough to mention between the lines that an inquiry was conducted and the inquiry officer exonerated the petitioner from the charge levelled against him “on technical grounds” since the main prosecution witness had left the country and had settled abroad and due to this the statement of the prime witness could not be recorded during the inquiry proceedings which is said to have resulted in exoneration then there is no fault of the petitioner. If the Punjab Police fails to investigate a case properly or investigates it slyly on secret information leave alone in the setting of a domestic inquiry then God help the State of Punjab and its people. The Punjab Police Department had sufficient wherewithal to have compelled Avtar Singh @ Romi to make a statement even if it was by teleconferencing process in the digital age. They could have applied the ancient adage that truth must triumph but this course was not adopted and the benefit must go to Satwant Singh. Now that the

inquiry report is on record and has been read and re-read then it is plain to the eye that the inquiry officer did not say anything of the kind that he gave Satwant Singh the benefit of doubt. After all Avtar Singh @ Romi did not make a written complaint against the petitioner and this is the admitted position in the evidence in the inquiry. Therefore, far greater standards of evidence have to be applied to bring home the charge. I would only remind the Police department of the existence of an Act which empowers the inquiry officer of summoning witnesses. The Act has no more than 4 sections which are salutary in nature and are reproduced as below:-

*“The [Punjab] Departmental Inquiries (Powers) Act, 1958
(W.P. Act XIV of 1958).*

[23 September 1958]

An Act to confer powers for compelling attendance of witnesses and production of documents on officers conducting departmental inquiries against Government servants in the Province of [the Punjab]

Preamble.— *WHEREAS it is expedient to confer powers to compel attendance of witnesses and production of documents on officers conducting departmental inquiries against Government servants in the Province of [the Punjab];*

It is hereby enacted as follows:-

1. Short title and extent.— *(1) This Act may be called the [the Punjab] Departmental Inquiries (Powers) Act, 1958.*

[(2) It extends to the whole of the Province of [the Punjab], except the Tribal Areas.]

2. Power to summon witnesses and to compel production of documents.— *An officer conducting a departmental inquiry against a Government servant under any rules for the time being in force, may exercise the same powers for compelling the attendance of witnesses, production of documents and issuing commissions for the examination of witnesses as are exercisable by a civil court under the Code of Civil Procedure,*

1908:

Provided that the process issued by the officer conducting the departmental inquiry shall be served and executed by the civil court having jurisdiction in the place where the witness or the person in possession of the document, as the case may be, resides.

3. Penalties.— *Any person disobeying a process issued by an officer in exercise of the powers conferred by section 2 shall be liable to the same penalties to which he would have been liable if he had disobeyed a process issued by the civil court.*

4. Repeal.— *The West Pakistan Departmental Inquiries (Powers) Ordinance, 1958, is hereby repealed.”*

9. Armed with such wide powers the police had they wanted to could have done better. But then for what end could that has been for? The complainants never came forward to lodge a protest against the petitioner. If it is urged that the Act applies to Government servants and SPOs it would be begging the question when the Police itself rely on PPR, 1934 to say that a constable must be of good character in Rule 12.14 (1) of PPR enlisting standards of regular policemen then they treat them more than the status of daily wagers.

10. Nevertheless, the Civil Court was right in observing that the charge was serious but, however, grave the charge may be and suspicion to the highest degree it cannot take the place of proof even on standards of preponderance of probabilities. This Court cannot hold by applying standards of a domestic inquiry on probabilities that most probably Satwant Singh extorted money and therefore he deserved the impugned action taken in the extreme. For the reasons recorded above, this Court is of the considered view that the petitioner has been wronged for a long time while

the conduct of Kuljit Singh PPS has not been above-board in presenting the

view of the State. But for the interim order dated August 17, 2015 the truth may have evaded court resulting in grave miscarriage of justice.

11. A grave tragedy may have occurred if the petition had been dismissed off hand but the worst have been averted with the production of the inquiry report. The inquiry report was obviously not known to the petitioner for him to have produced the same as it was not communicated to him. It is another matter it was in his favour. In dealing with the petitioner, the Police Department itself had resorted to PPR including supporting the removal order on Rule 12.14 (1) PPR which appears to be wholly inappropriate provision to deal with the person who is already in service and whose character has been certified by PW-2 Inspector Vikram Sharma, Incharge CIA Staff representing the authority which held the secret inquiry against the petitioner which led to his removal within 5 days of the alleged occurrence. He is the one who conducted the secret inquiry when the alleged incident was brought to his notice through reliable sources. The police was not dealing with a criminal but a person who was charged with misconduct in the setting of a domestic inquiry proceeding which should have been resorted to in the first place when the alleged secret information was picked up. Besides, no FIR was registered against Satwant Singh for committing offences under the Prevention of Corruption Act, 1988 or the Indian Penal Code.

12. For the reasons recorded above, this petition is allowed. All the impugned orders throughout passed against the petitioner are set aside. The petitioner is reinstated to service with all consequential benefits. However the monetary benefits will accrue from May 07, 2012 when the petitioner

was exonerated of the charge against him and found innocent.

(RAJIV NARAIN RAINA)
JUDGE

24.09.2015
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