

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

**CWP No.3861 of 2015 (O&M)
Date of decision: 04.05.2015**

Sukh Pal

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. A.R.Takkar, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl.A.G.Haryana.

AMIT RAWAL J. (Oral)

The present writ petition has been filed for quashing of the order dated 27.11.2014 (Annexure P-1) passed by respondent No.4 i.e. Deputy Commissioner of Police, Headquarter Gurgaon, District Gurgaon, as well as order dated 26.02.2015 (Annexure P-5) passed by respondent No.3 i.e. Joint Commissioner of Police, Headquarter, Gurgaon, District Gurgaon, whereby, it has been ordered that the petitioner was not required by the department beyond the age of 55 years.

It has alleged in the petition that petitioner had more than 70% 'Good or above remarks as recorded in the ACRs, as extracted

at page No.6 and 7 in para No.4 of the writ petition for the period except 1.4.2009 to 11.11.2009, whereby, the allegation qua alleged integrity was recorded which was conveyed to him.

On 03.03.2015, this Court after noticing the averments made in the writ petition passed a detailed order, which reads thus:-

“Learned counsel for the petitioner inter alia contends that petitioner has more than 70% 'Good' or above remarks as recorded in the ACR, as extracted at page No.6 and 7 in para No.4 of the writ petition for the period except 1.4.2009 to 11.11.2009, vide which the petitioner has been found 'Corrupt'. In this regard, petitioner has filed a civil suit and lost in both Courts and RSA is still pending for adjudication before this Court. He further referred to written statement, whereby, the respondents vide order dated 7.10.2010 have initiated departmental enquiry against the petitioner and that departmental enquiry, in this regard has culminated into exoneration of the petitioner. The order dated 7.10.2010 has been extracted at page nos.14 and 15 of the writ petition.

He further submits that petitioner has been awarded 49 Commendation Certificates during his service and therefore, the notice contemplated under Rule 9.18 of the Punjab Police Rules, 1934, applicable to Haryana, is not in consonance with his ACR as well as judgment of

this Court passed in CWP No.13678 of 2011 titled as Nirotam Parshad vs. State of Haryana and others decided on 09.12.2013, whereby, two writ petitions of identical nature were disposed of and this Court while referring to the pleadings of the parties recorded prima facie view that ACR of the persons, who have 70% good and above confidential rolls with three average gradings to their credit, will not be sufficient to issue notice of compulsory retirement as contemplated under rule 3.26 of the Civil Services Rules read with rule 9.18 (1) (c) of the Punjab Police Rule, 1934 as applicable to the State of Haryana. He also contends that validity of three months notice is going to expire on 04.03.2015.

Notice of motion.

At the asking of the Court, Mr. Gagandeep S.Wasu, Additional Advocate General, Haryana, accepts notice on behalf of the respondents-State and seeks time to file reply.

List on 24.04.2015.

To be shown in the urgent list.

In the meantime, operation of the impugned order dated 26.02.2015 (Anneuxre P-5) shall remain stayed till the next date of hearing.

Learned counsel for the petitioner is directed to supply a

complete set of paper book to the learned State counsel during the course of day. In case, copies are not supplied, the interim order deemed to be vacated.”

The State has filed written statement by taking preliminary objection that a departmental enquiry is pending against the petitioner for having been involved and arrested in case FIR No.922 dated 01.11.2014 under Sections 294, 354, 509, 511 IPC P.S. Civil Lines Gurgaon, while posted in Traffic Staff on 01.11.2014 which involves the charges of Moral Turpitude and that this fact has been concealed by the petitioner.

Learned counsel for the petitioner very fairly submits that the petitioner has not only conceded this fact but even did not divulge during consultation and therefore, the aforementioned fact could not be pleaded.

This Court has appreciated the fairness on behalf of Mr. A.R.Takkar, learned counsel for the petitioner, in making the aforementioned statement.

In view of the fact that the petitioner has not only concealed the registration of FIR, much less, of the pendency of departmental enquiry, *ibid*, petition deserves to be dismissed, in view of the law laid down by Hon'ble the Supreme Court in case *S.P.Changalvaraya Naidu (dead) by LRs. vs. Jagannath (dead) by LRs* 1994 AIR 853 SC.

Since FIR and departmental enquiry are pending, the

petitioner cannot be said to be having more than 70% 'Good' ACRs.

The respondents have though in the order challenged the factum of pendency of FIR, as well as, departmental enquiry, but the fact remains that the petitioner is facing charge sheet of moral turpitude.

On the basis of both the FIR and, as well as departmental enquiry, it would not be in the fitness of things for the department to retain the petitioner. Accordingly, the order whereby, the petitioner was not required beyond the age of 55 years warrants no interference by this Court.

There is no merit in the present writ petition.

Accordingly, the writ petition is dismissed.

(AMIT RAWAL)
JUDGE

May 04, 2015
savita