

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13196 of 2016

Date of Decision: 05.09.2016

Lal Chand

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr. R.S. Mamli, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.

1. The domestic charge of misconduct brought against the petitioner was that he gave his home address as Village Patan whereas the complaint made against him by a private person in March 2011 was that the petitioner was serving in his Local District, Bhiwani whereas he had given a wrong address with a view to serve as a Constable in Haryana police within his home district. The rules require that a Constable will not be posted in his home district while serving the Police Department. Thus the entry into service was obtained on a wrong address at the time of recruitment. A preliminary inquiry was conducted by the DSP, Bhiwani wherein the petitioner was not found resident of Village Patan, District Hisar. The ration card and the voters' identity card reflected that the petitioner was resident of Village Lilas in District Bhiwani. This was taken to be an act of negligence of duty and indiscipline and as a result, the regular departmental inquiry was instituted by serving a charge-sheet into the allegation of misconduct. The

prosecution produced seven witnesses and in defence, the petitioner produced four all belonging to Village Lilas, Bhiwani and it turns out that there were none from Village Patan, Hisar.

2. The defence forthcoming from the witnesses was that about 17/18 years (prior to the recording of statements) the family of the petitioner Lal Chand s/o Surja Lal had gone to Village Patan from Village Lilas. Lal Chand had been engaged in agricultural work in Village Patan. Defence Witness No.1 Hanuman when asked in cross-examination by the Enquiry Officer for how many years did the father of Lal Chand till land in Patan the answer was that it was for about 7/8 years, that is, till 1994. Defence Witness No.3 Bhagwan Singh resident of Lilas stated that the petitioner's father had gone to Village Patan, Hisar 17-18 years back and taken land from Purshotam DW-4 on Batai and Lal Chand was also staying in Village Patan with his family. DW-4 Purshotam made statement that the petitioner stayed in Village Patan about 20 years back and was cultivating their land on Batai but now he is staying in Village Lilas. Purshotam had land in both Patan and Lilas. He deposed that when Lal Chand was recruited he was residing in Village Patan, Hisar. The petitioner and his father had cultivated their land for about 7/8 years from 1987 to 1993 and that the family shifted to Village Lilas, Bhiwani. The year 1987 is relevant because the Inquiry Officer found in evidence the Matriculation Certificate of the petitioner from the Government High School Lilas, Bhiwani of March 1987, which is attached in his Service Book.

3. Written defence was submitted to the Inquiry Officer. There is no mention of the defence produced through witnesses regarding migration

from Village Patan, Hisar to Village Lilas, Bhiwani and all the rest of it. The written defence placed at Annex P-5 at page 39 of the paper-book reveals a sordid story that the petitioner was being prosecuted for the criminal acts of his brother Ganga Jal s/o Surja Ram r/o Lilas, Police Station Siwani and as further narrated as follows:-

“Who (Ganga Jal) is a smuggler of opium and reg. whom it has been came to known that he used to supply opium from Chittor Garh, Bhilwara Kota in Rajasthan to Fatehabad & Jakhal area of Haryana & Mansa & Kot Kapura in Punjab and was arrested in 2004 in case FIR No. 94 dated 27.04.2004 u/s 18/61/85 NDPS Act PS Bhuna with 500 Gms. Of opium and was convicted in the said case and on dated 01.02.2011, 2 kgs of opium sent by him was captured in district Fatehabad and the said Ganga Jal was arrested on 09.06.2011 and during interrogation he revealed before DSP City Fatehabad that due the delinquent being in police Department he was having good relations with Om Parkash the then SHO PS Siwani & HC Atma Ram the then MHC PS Siwani and due to these relations he easily smuggle opium from Rajasthan via the area of PS Siwani and thus the delinquent have conducted gross dereliction towards his official duty and have shown negligence & misconduct. That your good self being the Enquiry Officer after examining the prosecution and defence version framed charges against the delinquent and asked me to produce defence written statement.”

4. By way of this written defence the delinquent petitioner submitted that the charges levelled against him are false and frivolous, against law and facts. This is followed by three grounds in the defence statement, mostly resulting from his brother's confession to the police and his bad relations with his brother with whose illegal business he had nothing to do. They were living separately for the last couple of years. The charge-

sheet did not mention anything about Ganga Jal and there is, therefore, no pleaded defence against charge that he had given a false address at the time of enlistment as a Constable in 1991 and, therefore, technically speaking no evidence can be led in support of the stand taken in the writ petition. Even if the evidence is considered as legal evidence then there is no story of Ganga Jal therein. The verification of the address was done on November 01, 1991 by Purshotam and the Sarpanch of Gram Panchayat Patan which documents were produced on record through the Fauji Missal. When PW-2 appeared as a witness for the prosecution in the inquiry he was asked a question by the petitioner whether at the time of recruitment, the address of Village Patan District Hisar was given and thereafter in the year 1993 permanent address was got changed as Lilas which is as per record. The specific answer to the question was that as per record of service book the address is of Village Patan, Hisar. There is no change of address in the service book. The second question asked by the petitioner was, as per application in the year 1993 the order was passed to change his address from Village Lilas vide order No.OBC-239-93 dated December 30, 1993 then why was not it entered in service book. The answer of the witness was that this was the duty of the Record Clerk, Fourth Battalion HAP, Madhuban who may have been posted on December 31, 1993 who could have obeyed the orders, if any, and enter the same in record.

5. PW-3 Uggar Sain, Sarpanch Gram Panchayat, Lilas stated that the land of Village Lilas is Barani. There was drought in the year 1987. Many families of the village left in search of livelihood and migrated to places irrigated by the canal. However, when the petitioner was recruited in

the police in the year 1991 his entire family was living at Village Patan, District Hisar and doing agricultural work there. They were not staying in the Village Lilas 4-5 years back. Again in 1995 they came to Village Lilas but half of the family of Purshotam, Sant Lal, Raja Ram and their son are still living in Village Patan, Hisar. This migration to Village Lilas was about five years back which statement appears from its date of recording evidently after 2012. When asked whether in the year 1991 were any family members of the petitioner residing at Lilas, the answer was that the petitioner's "Tau" was living at Lilas where they had their house and land but petitioner Lal Chand's father Surja Ram and mother, and brothers were staying at Patan, District Hisar and were engaged in agriculture and, therefore, at the time of recruitment he has given his address as Patan which is correct. PW-5 Shanti Devi, Sarpanch, Gram Panchayat Patan, District Hisar stated that she did not know petitioner Lal Chand and he did not stay in her village. She did not know such anything. She was not cross-examined. The other witnesses were formal who appeared from different departments to testify to the ration card and voter identity card.

6. In the face of this evidence and the proof of charge in the inquiry report the Superintendent of Police issued show cause notice dated February 27, 2012 proposing provisionally award of punishment of stoppage of two annual increments with permanent effect. Before taking proposed action, the petitioner was offered opportunity of showing cause against the action proposed to be taken in the show cause notice. The petitioner submitted the reply to the show cause notice pleading innocence.

He submitted that the Inquiry Officer report is based on no evidence and

rests on conjectures and surmises. He submitted that Village Lilas Bhiwani subsequently fell in District Bhiwani on the merger of Tehsil Siwani in District Bhiwani. He submitted that none of the prosecution witnesses have uttered a word against the delinquent which clearly establish his innocence beyond reasonable doubt and, therefore, he prayed that no action be taken against him. The reply was not found satisfactory and the Superintendent of Police, Jhajjar vide order dated April 20, 2012 considered the report of the Inquiry Officer and the written defence and the entire evidence on record including the statement of prosecution and defence witnesses and concluded that the petitioner had committed an act of misconduct by giving wrong address at the time of recruitment in 1991 and remained posted in his home district for about six years. He heard the petitioner personally on April 19, 2012. The punishing authority kept in view the length of service and the future career of the petitioner and came to view that the proposed punishment of two annual increments with permanent effect deserves to be scaled down to the award of punishment of stoppage of one future annual increment with permanent effect and ordered accordingly. The charge that the petitioner had given a wrong address to serve in his home district in which he was recruited as a Constable the punishment was deserved but was reduced by half. The appeal carried to the Inspector General of Police, Rohtak Range, Rohtak was rejected on July 19, 2012. The revision before the Director General of Police, Haryana was declined on October 08, 2015. The Director General of Police, Haryana considered the case on merits and found the orders of the authorities as not suffering from any material irregularity in the proceedings or in the production of fresh evidence which

was barred or on the plea of mercy and held that fresh scrutiny of evidence is strictly prohibited at this stage. Not only this, the Director General of Police, Haryana referred to PPR 16.32 as applicable to Haryana and held that Officer whose appeal has been rejected, may apply, within a month of the date of dispatch and receipt of the adverse appellate order to person aggrieved, to the authority next above.

7. The record revealed that the revision petition against the appellate order was filed with a delay of over two and quarter years and was barred by limitation. The revision was also dismissed as highly time barred. The legal notice served under section 80 CPC dated July 01, 2013 after infliction of punishment till the stage of first appeal and before the orders passed in revision by the DGP, Haryana become meaningless. The legal notice is at Annex P-17 at page 71 of the paper-book. The same was replied to by the Superintendent of Police, Jhajjar vide letter dated January 08, 2014. The petitioner has placed on record a representation dated July 30, 2015 to the Financial Commissioner-cum-Secretary to Government, Home Department, Haryana and to the DGP, Haryana, IGP, Rohtak Range, Rohtak, Superintendent of Police, Bhiwani and the Superintendent of Police, Jhajjar praying for setting aside the order of punishment which is before the dismissal of the revision petition on October 08, 2015 by the DGP, Haryana and is, therefore, rendered otiose. The prayers made in the petition are restricted to setting aside the three orders passed by the punishing authority, the appellate authority and the revising authority dated April 20, 2012, July 19, 2012 and October 08, 2015 respectively.

8. I have considered the arguments of the respective counsel for

and against the impugned orders. It cannot be said that on the basis of evidence produced on the inquiry file the view taken by the authorities is not a possible one or a plausible one. It is not an impossible view on the materials on record on standards of preponderance of probabilities. In the matter of punishment discretion exercised judiciously is not to be interfered with by the Writ Court only to substitute the view from one to the other or to tinker with the quantum of punishment because it may appear more suitable which punishment already stands reduced to half in exercise of discretion power by the punishing authority himself and I would, therefore, not find it a fit case for interference as there is no error apparent on the face of record, perversity, irregularity or arbitrariness wide enough to admit interference in extraordinary jurisdiction exercised by this Court provided by Article 226 of the Constitution.

9. A perusal of the registered/AD notice served by the petitioner's counsel in District Court, Bhiwani vide counsel's Reference No.36/2013 dated July 01, 2013 after the first two impugned orders were passed and before the third order came into existence, I find that the notice has been served under section 80 CPC with acknowledgement due. When the petitioner has invoked section 80 CPC he has elected his remedy before the civil court and then approached this Court in writ jurisdiction and this is yet another reason why interference may not be called for and the petitioner left to his remedy before the Civil Court, if advised and remains actionable. I express no final opinion on the point of maintainability having considered the matter from the view point of writ jurisdiction in a case of enquiry and imposition of punishment.

10. Accordingly, the petition is dismissed on merits. There will however be no order as to costs.

(RAJIV NARAIN RAINA)
JUDGE

05.09.2016
manju

Whether speaking/reasoned	Yes
Whether reportable	Yes