

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10473 of 2015.

Date of Decision:-11.05.2017.

Tejbir Singh Kundu

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Sunil K. Nehra, Advocate for the petitioner.

Mr. Ravi Partap, AAG, Haryana.

P.B. BAJANTHRI, J. (Oral)

1.) In the instant petition, petitioner has questioned the validity of the order of discharge dated 18.03.2013 (Annexure P-1) which reads as under:-

“ORDER

No. /CRC, dated (.) Discharge from Service

Recruit Constable Tejbir Kundu No.1/424 of this Battalion is hereby discharge from service with immediate effect under Punjab Police Rule 12.21 as he is found unlikely to prove an efficient Police Officer.

*(Ram Niwas), IPS
Commandant,*

*1st Bn. HAP, Ambala City.
/CRC, dated 18-3-13”*

Endst. No.3178-89

2.) Learned counsel for the petitioner submitted that even though order of discharge do not reveal reasons for discharge. It only assigned reasons that petitioner is unlikely to prove an efficient Police Officer whereas the motive behind passing of such order of discharge is that the petitioner was involved in a criminal case and he was arrested for the offences under Section 302/201 IPC and 25-54-59 of the Arms Act.

3.) It is stated that during pendency of this petition, he has been acquitted in the criminal case on 27.8.2014 (Annexure P-2). It was further contended that proceedings were drawn by the official respondents before passing the order of discharge dated 18.3.2013. It is evident that order of discharge has been passed on the allegations like habitual absentee and petitioner was involved in criminal case. Therefore, order of discharge is a stigmatic one. Hence, the order of discharge is liable to be set aside.

4.) Per contra, learned counsel for the respondents vehemently contended that petitioner's past conduct is taken into consideration to the extent that habitual absentee (within one year, petitioner remained 4 times absent) and further he was involved in a heinous crime for which he was subjected to criminal proceedings. It was further submitted that the Police Department is a disciplined force. Petitioner was serving in the Police Department. Thus, he should be fair in discharging the duties. Therefore, he is unfit to be in Police Department, such opinion has been formed by the disciplinary authority. Consequently, no inference is called for with reference to Annexure P-1.

5.) Heard learned counsel for the parties.

6.) Perusal of the order of discharge, no doubt it spell out that the

petitioner is found unlikely to prove as an efficient Police Officer. In that event, it is necessary to verify the file relating to order of discharge. Learned counsel for the State produced relevant proceedings for the purpose of examining the same and it was found that the petitioner's conduct relating to habitual absence as well as he was involved in criminal proceedings has been taken into consideration for the purpose of discharging the petitioner from service. The above material is evident that based on the allegation petitioner has been discharged from service. It is undisputed that no inquiry has been ordered and the petitioner has not been heard in the matter before taking habitual absence allegations as well as pendency of the criminal case. Therefore, Annexure P-1 is liable to be set aside. In identical matter a detailed order has been passed in CWP No.10316 of 2015 on 16.3.2017 while relying on two decisions of the Supreme Court, namely, **Shamsher Singh and another Vs. State of Punjab reported in 1974 (2) S.L.R. 701** and **Anoop Jaiswal Vs. Government of India, 1984(1) SLR 426 SC.** In view of the principle laid down in the aforesaid decisions read with the facts of the present case, it is crystal clear that the petitioner has been discharged from service attaches stigma. Hence, disciplinary proceedings were required. Accordingly, Annexure P-1 order of discharge is set aside. Learned counsel for the petitioner further submitted that in the criminal case, the petitioner has been acquitted on 27.8.2014. In this background, respondents are at liberty to initiate disciplinary proceedings if it is warranted. The petitioner be taken back to duty and regulate intervening period as duty for all purposes. At this stage, learned counsel for the respondents submitted that petitioner is not entitled for monetary benefits during the intervening period from the date of discharge till reinstatement. Said contention is

hereby rejected for the reasons that the petitioner has been discharged from service by the official respondents and order of discharge has been set aside. In effect, the petitioner is entitled for all service benefits including monetary benefits. The same shall be calculated and disbursed within a period of six months from today. Quashing of an order and its effect has been dealt by the Supreme Court in the case of **M/s. Shree Chmundi Mopeds Ltd. Vs. Church of South India Trust Association, Madras AIR 1992 SCC 1439.**

Para 10 reads as under:-

“In the instant case, the proceedings before the Board under Ss. 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material before it, found that the appellant-company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant-company under S. 25 of the Act against said order of the Board was dismissed by the Appellate Authority by order dated January 7, 1991. As a result of these orders, no proceedings under the Act was pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a

*distinction has to be made between quashing of an order and stay of operation of an order. **Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed.** The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February*

21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned Single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No. 16 of 1991 filed by the appellant-company against the order of the learned Single Judge dated August 14, 1991. [Section 22\(1\)](#) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No. 126 to 1992, directed against the order for winding up of the appellant-company. The said appeal, therefore, fails and is liable to be dismissed.

7.) With the above observations, petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

May 11, 2017.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.