

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.22527 OF 2014

RESERVED ON: JULY 25, 2017

DATE OF DECISION: SEPTEMBER 15th, 2017

HC Kulwant Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.KS Sidhu, Advocate for the petitioner.

Mr.Avinit Avasthi, Assistant Advocate General, Punjab.

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TEJINDER SINGH DHINDSA, J.

Petitioner, who is serving as a Head Constable under Punjab Police, has filed the instant petition assailing the order dated 10.8.2004 passed by the Senior Superintendent of Police, Annexure P6, imposing upon him the punishment of forfeiture of one year approved service as also treating his absence period from 16.5.2002 to 10.9.2002 as non-duty period. Challenge has also been made to the order dated 29.10.2011, Annexure P11, to the extent of granting promotion to the petitioner as Head Constable w.e.f. 1.4.2010. Petitioner claims such promotional benefit w.e.f. March, 2005 instead. Furthermore, challenge has been raised to orders dated 16.5.2012 and 31.10.2013 at Annexures P12 and P14 passed by the Director General of Police

and State Government, Department of Home Affairs and Justice respectively declining the appeal/mercy appeal preferred by the petitioner against the order of forfeiture of one year's service as also against denial of promotion as Head Constable w.e.f. March, 2005.

Brief facts emanating from pleadings on record are that the petitioner was appointed as Constable on 6.11.1989 and allotted Constabulary No.3262/LDH. His name was brought on promotion list C-I vide order dated 22.7.2005. Petitioner was promoted as Head Constable in the year 2011 w.e.f. 1.4.2010 by the then Commissioner of Police, Ludhiana. While posted at Police Station Sadar Ludhiana on general duty in the year 2002, petitioner remained absent from duty for 4 months, 3 days and 21 hours i.e. from 16.5.2002 to 10.9.2002. A regular departmental enquiry was initiated on the charge of being absent from duty without sanctioned leave and it is such enquiry that has culminated into passing of impugned order dated 10.8.2004, Annexure P6, passed by the then Senior Superintendent of Police, Ludhiana imposing the punishment of forfeiture of one year's approved service and the absence period being treated as non-duty period.

Learned counsel representing the petitioner would contend that the petitioner was involved in three false criminal cases i.e. FIR No.14 dated 20.3.2001, under Sections 7, 13(2) of the P.C. Act registered at Police Station Vigilance Bureau, Patiala, FIR No.50 dated 20.3.2001, under Sections 354, 351, 506 of the Indian Penal Code registered at Police Station Sarabha Nagar,

Ludhiana and FIR No.166 dated 15.5.2002, under Sections 7, 13(2) of the P.C. Act registered at Police Station Sadar Ludhiana. It is submitted that in all the three cases, the criminal trial has culminated in the acquittal of the petitioner. Further asserted that the petitioner was exonerated even in the departmental enquiries conducted against him on the same very charges. Learned counsel has argued that the petitioner was denied promotion as Head Constable from the due date i.e. March, 2005 only on account of pendency of criminal cases and since the petitioner stands acquitted, he was vested with the right to be promoted from such due date. Further contended that the mercy appeal preferred before the State Government seeking promotion as Head Constable w.e.f. March, 2005 instead of 1.4.2010 has been rejected vide impugned order dated 31.10.2013, Annexure P14, on the basis that the trial Court had acquitted the petitioner by giving benefit of doubt. Learned counsel argues that acquittal of criminal charge even by giving benefit of doubt is an honourable acquittal in the eyes of criminal law. Insofar as the order dated 10.8.2004, Annexure P6, imposing the punishment of forfeiture of one year's approved service, learned counsel submits that the petitioner had sent various leave applications from 16.5.2002 onwards to pursue the cases registered against him, but no information had been given to the petitioner for non-sanction of the leave and, accordingly, petitioner was under the impression that his leave was duly sanctioned. It is urged that under such circumstances, the punishment of forfeiture of one year's approved service, Annexure P6, cannot sustain.

Learned counsel for the parties have been heard at length.

It is not in dispute that a departmental enquiry was initiated against the petitioner on 25.9.2002 on the charge that when he was posted at Police Station Sadar, Ludhiana, he remained absent from 16.5.2002 to 10.9.2002 i.e. for a period of 4 months, 3 days and 21 hours. The departmental enquiry was entrusted to the then Deputy Superintendent of Police, Control Room, Ludhiana. Findings were returned by the Enquiry Officer holding the charge against the petitioner to be duly proved. The Punishing Authority having considered the enquiry report, served upon the petitioner a show cause notice contemplating the imposition of punishment of forfeiture of six years' approved service. Copy of the enquiry report was also served upon the delinquent along with show cause notice. It is after considering the reply submitted by the petitioner to the show cause notice and upon affording to him an opportunity of personal hearing, a lenient view was taken and the impugned order dated 10.8.2004 was passed by the Senior Superintendent of Police, Ludhiana, Annexure P6, imposing upon him the punishment of forfeiture of one year's approved service.

It is by now well settled that the exercise of judicial review by this Court would be against the decision-making process and not the decision itself. Learned counsel for the petitioner has not made out a case that the enquiry proceedings suffered from any procedural irregularity. Under such circumstances, this Court would not embark upon the exercise of

re-appreciation and re-appraisal of evidence so as to substitute its own decision as opposed to the one taken by the competent authority. The impugned order dated 10.08.2004 (Annexure P-6) imposing upon the petitioner the penalty of forfeiture of one year service on a permanent basis, as such, does not warrant any interference.

Even the claim raised by the petitioner seeking promotion as Head Constable w.e.f. 01.04.2010 instead of March, 2005 is not well founded. Placed on record and appended along with the instant petition is an order dated 07.09.2007 passed by the Senior Superintendent of Police, Ludhiana and in terms of which the petitioner along with certain others were ignored for promotion as Head Constable on account of unsatisfactory service record. Petitioner for certain strange and inexplicable reasons has chosen not to challenge such order dated 07.09.2007 at Annexure P-2. Attempt has been made to draw mileage from the order dated 31.10.2013 (Annexure P-14) issued by the State Government which was in the nature of a mercy appeal against the imposition of punishment of forfeiture of one year service as also against supersession. Concededly, in such order at Annexure P-14, an observation with regard to the petitioner having been acquitted by the criminal Court by giving benefit of doubt has come. However, such observation would not be of any consequence in the peculiar facts and circumstances of the instant case. Such view is being taken on two counts. Petitioner had been ignored as regards grant of promotional benefit to the post of Head Constable in the year 2007. He ought

to have agitated the issue immediately thereafter. It is by now well settled that in matters of promotion and seniority, any employee feeling aggrieved has to approach the competent authority within a period of six months or at most within a period of one year. A reference in this regard may be made to the decision of the Apex Court in P.S. Sadasivaswamy Vs. State of Tamil Nadu, AIR 1974 SC 2271. The Apex Court had examined the issue of an employee invoking the extraordinary writ jurisdiction of a High Court under Article 226 of the Constitution of India at a belated stage in matters of promotion and seniority and held as under:-

“A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as

the appeal.”

On a pointed query having been put, counsel concedes that the order dated 31.10.2013 at Annexure P-14 was not towards exhausting any statutory remedy of appeal or revision. In other words, it was an order which the petitioner himself has invited. Petitioner, as such, cannot be permitted to gain any impetus on account of passing of order dated 31.10.2013 (Annexure P-14). Secondly, even if, the observation made in the order dated 31.10.2013 (Annexure P-14) as regards petitioner having been acquitted by giving benefit of doubt is ignored, yet the order of punishment of forfeiture of one year service permanently would stare the petitioner in his face. Supersession of the petitioner as regards promotion to the post of Head Constable vide order dated 07.09.2007 (Annexure P-2) was on account of his adverse service record. Acceptance of the prayer of the petitioner for grant of ante dated promotion to the post of Head Constable w.e.f. March, 2005 and further consequential benefits would amount to unsettling settled matters. Claim of the petitioner for such benefit deserves to be rejected on merits as well as on the ground of delay. Held Accordingly.

For the reasons recorded above, there is no merit in the instant writ petition.

Dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

SEPTEMBER 15th, 2017

harjeet

Note:	<i>Whether speaking/reasoned:</i>	<i>Yes</i>
	<i>Whether Reportable:</i>	<i>No</i>