

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

CWP No.18276 of 2017 (O&M)

Date of Decision: August 18, 2017

Inderjit Singh

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. K.G. Chaudhary, Advocate
for the petitioner.

TEJINDER SINGH DHINDSA, J.

Petitioner who was serving in the Punjab police as Constable has invoked the extraordinary writ jurisdiction of this Court assailing the action of the respondent-authorities in having dismissed him from service. Further challenge is to the orders at Annexure P-5 to P-7 whereby the penalty of dismissal has been affirmed by the Appellate and Revisional Authorities.

Learned counsel representing the petitioner would submit that dismissal of the petitioner is based solely upon conviction and order of sentence passed by the Criminal Court. It is argued that the appropriate authority has not gone into the aspect of the conduct of the petitioner leading to his conviction and that it is well settled that dismissal from service is not an automatic consequence upon conviction and the punishing authority was obligated to consider all

the circumstances leading to criminal prosecution and then to form an opinion as to whether conduct of the delinquent officers/officials which led to his conviction is such as to render his further retention in service undesirable.

Having heard counsel for the petitioner at length and having perused the case paper book, this Court is of the considered view that the petitioner has disentitled himself from any relief by the writ Court.

Such view is being taken for the following reasons:-

Petitioner was dismissed from service vide order dated 14.12.1998, passed by the Senior Superintendent of Police, Jalandhar (Annexure P-2) upon his conviction in case FIR No.98 dated 30.07.1996, under Section 306 IPC, Police Station Mukerian, District Hoshiarpur and whereby, he had been sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.500/-. Petitioner along with two other co-convicts, preferred Criminal Appeal No.454-SB of 1998 against the judgment of conviction and order of sentence dated 22.05.1998, passed by the learned Sessions Judge, Hoshiarpur. Petitioner also preferred Civil Writ Petition No.1064 of 1999, assailing his order of dismissal based upon conviction.

Criminal Appeal No.454-SB of 1998 came to be partly accepted qua co-convicts/appellants-Malkiat Kaur and Swaran Kaur, vide judgment dated 28.01.2010, passed by this Court at Annexure P-1. However, insofar as the present petitioner is concerned, his

conviction was upheld and appeal qua him, was dismissed.

CWP No.1064 of 1999 (Inderjit Singh vs. State of Punjab and others) matured for final hearing in the month of November 2013 and strangely, the petitioner took a stand that the judgment of conviction, passed by the trial Court, has been reversed and he has been acquitted by this Court. On the basis of such false stand having been taken, CWP No.1064 of 1999 was disposed of on 15.11.2013, directing reinstatement of the petitioner in service and by observing that such reinstatement would remain suspended for a period of six weeks to await further course of action at the hands of the State Government as liberty had been granted to initiate independent departmental proceedings.

Relevant extract of the order dated 15.11.2013, passed by the Co-ordinate Bench in CWP No.1064 of 1999 is reproduced herein below:-

“.....The petitioner would contend that in the ultimate decision in Criminal Appeal No. 454-SB of 1994 this Court has reversed the judgment of the trial court and has acquitted him. The petitioner seeks for reinstatement and for quashing the proceedings.

2. So long as there was a provision for terminating the services of an employee on conviction of a criminal case, the vires of which itself are not in challenge. The termination made on a conviction rendered cannot be assailed. If there has been a reversal of the judgment by the Appellate court, the only benefit that the petitioner could obtain is the department is bound to set its own law in

motion, if it so deems by initiating an independent departmental proceedings referring to the incident as a misconduct and give an opportunity to the employee to defend himself on the charge that may be levied against him. The order of termination will therefore come to an end but I allow for the respondent-State the liberty of taking such action as it deems fit under the circumstances, within six weeks from the date of receipt of the order. The petitioner is ordered to be reinstated but it will remain suspended for a period of six weeks to await the course of action that the State chooses to follow.

3. The writ petition is disposed of with the above directions.”

It so transpires that ultimately State of Punjab preferred review application No.167 of 2014 in CWP No.1064 of 1999 apprising this Court that judgment of conviction qua the petitioner, had not been reversed rather has been upheld and his appeal has been dismissed in the light of judgment dated 28.01.2010 in ***Criminal Appeal No.454-SB of 1998***. The Review Application was allowed in terms of order dated 10.04.2015 and the writ petition i.e. CWP No.1064 of 1999 filed by the petitioner was ordered to be dismissed and State was permitted to proceed further and to take action for dismissal of the services of the petitioner. As a consequence, services of the petitioner have been dismissed vide order dated 13.05.2015, passed by the Commissioner of Police, Jalandhar (Annexure P-5) and the order of dismissal has been affirmed by the

Appellate and Revisional Authorities.

Learned counsel would make an attempt to urge before this Court that CWP No.1064 of 1999 had been allowed by the writ Court “**under a mistaken belief**” that the petitioner's appeal against conviction had been accepted. Such contention raised by counsel is ill founded.

It would be apposite to notice that final order dated 15.11.2013, while allowing CWP No.1064 of 1999, was passed in the presence of the counsel representing the petitioner, who was none other than Mr. K.G. Chaudhary, Advocate himself. Petitioner, in pursuance to the order dated 15.11.2013, passed by this Court in CWP No.1064 of 1999, was reinstated in service. He thereafter continued to draw salary and other service benefits. It is only on account of a review application having been preferred by the State that the correct factual position came forth and the review application was allowed on 10.04.2015 at Annexure P-4. The bench having been apprised that the judgment of conviction had not been reversed but rather affirmed by this Court with Criminal Appeal No.454-SB of 1998, allowed the review application and directed dismissal of the writ petition preferred by the petitioner.

Stand taken by counsel that CWP No.1064 of 1999 had been allowed by this Court “**under a mistaken belief**” does not inspire any confidence whatsoever.

Petitioner, vide the judgment dated 15.11.2013 in CWP No.1064 of 1999, enjoyed reinstatement and other consequential

benefits. It goes without saying that the petitioner was aware that the writ Court had allowed the writ petition by taking note of the stand of the petitioner that in Criminal Appeal No.454-SB of 1994, this Court has reversed the judgment of conviction. Under such circumstances, even if the petitioner believed that the writ Court had allowed the writ petition **“under a mistaken belief”**, he was duty bound to have filed the requisite application immediately thereafter by bringing forth the truth and actual factual position. He chose not to do so. Remedial steps were ultimately taken by the State, which led to the review application having been allowed by the same bench in the light of order dated 10.04.2015 at Annexure P-4.

This Court is convinced that the petitioner not only made an attempt but has actually mislead the writ Court. Such ground itself would be sufficient to nonsuit the petitioner without even examining the validity of the impugned orders on merits. It is one of the settled proposition of law that a person who invokes a writ jurisdiction of the High Court, must come with clean hands and if the litigant has misled the Court, he must be dealt with firmly and should be denied hearing on the merits of the case. Reference in this regard must be made to the decisions of the Supreme Court in **Welcome Hotel and others vs. State of Andhra Pradesh and others, AIR 1983 SC 1015** and **Ramjas Foundation and others vs. Union of India and others, AIR 1993 SC 852.**

In **Welcome Hotel and others vs. State of Andhra Pradesh and others' case (supra)**, the Apex Court held that a party

which has misled the court in passing an order in its favour, is not entitled to any consideration at the hands of the Court.

The conduct of the petitioner deserves deprecation and translates in disentitlement to any relief from this Court.

Writ petition is accordingly dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

18.08.2017
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No