

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-991-2011 (O&M)
Date of decision: 10.01.2017

Tejwant Singh

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.P.S.Sekhon, Advocate for the petitioner
Mr.Anshul Gupta, Asstt. A.G. Punjab

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Petitioner was working as Assistant Superintendent Jail, Amritsar. On 21.11.1994, Bikramjeet Singh, I.G. Jail visited the Central Jail Amritsar, where the petitioner is alleged to have misbehaved with him. On the basis of said misbehaviour, the petitioner was suspended from service on 21.11.1994. An FIR No.174 under Sections 186, 323, 332, 353 and 506 IPC was also registered against him. At the same time, parallel departmental inquiry was also conducted by Shri Dhanna Singh, Superintendent of Police Jails, in which, he was held guilty. Consequently, vide order dated 9.8.1996, Additional Director General of Police dismissed the petitioner from service w.e.f. 10.8.1996. Appeal filed by the petitioner before the State Government was dismissed on 5.6.1997. Petitioner challenged his dismissal from service by way of CWP NO.2089 of 1998 before this Court, which was decided on 13.12.1999. The impugned order of dismissal and the order of appellate authority were set aside and the case was remanded to the department to

decide the matter afresh. Consequently, the Inspector General Jails, Punjab, after considering the matter afresh, passed a fresh order on 4.5.2000, vide which, he was awarded punishment of stoppage of two annual promotions along with future effect. Petitioner was reinstated in service and the suspension period from 21.11.1994 to 9.6.1996 was treated as leave. Thereafter, on attaining the age of superannuation, the petitioner retired from service on 30.11.1999. Bad time started for the petitioner when after his retirement, he was convicted by the Additional Chief Judicial Magistrate, Amritsar on 3.4.2006 under Sections 186, 332 and 506 IPC and sentenced to various imprisonments. In appeal, the learned Additional Sessions Judge (Adhoc) Fast Track Court Amritsar vide judgment dated 4.7.2007 upheld the conviction of the petitioner but set aside the sentence and he was released on probation undertaking to maintain peace and be of good behaviour.

Thereafter, Director General of Police, (Jails), Punjab passed an order endorsed on 27.10.2008 (Annexure P7) under Rule 2.2(a) of Punjab Civil Services Rules Volume II, vide which, pension was stopped for 4 ½ years. Appeal filed by the petitioner against the said order was dismissed by the State Government vide order dated 11.10.2010 (Annexure P8).

State in the reply, has taken a stand that the order of stoppage of pension for 4 ½ years has been passed under Rule 2.2(a) of Punjab Civil Services Rules Volume II, which implies future good conduct as a condition for grant of the pension and which gives a right to the government to withhold or withdraw the pension or part thereof if the pensioner is convicted of a serious crime or guilty of grave misconduct. The other facts regarding previous dismissal of the petitioner from service and reinstatement were not disputed.

I have heard learned counsel for the parties and have also carefully gone through the file.

Admitted facts are that the petitioner was previously dismissed from service on account of the incident of misbehaviour with IG Jails. On the basis of the same facts, FIR No.174 dated 4.5.2000 was also registered against him at Police Station Sadar, Amritsar. The department held a parallel inquiry, in which, though the petitioner was initially dismissed from service but later on when the case was remanded to the department by this Court, the punishment of stoppage of two annual promotions along with the future effect was awarded. The said order has now become final. On the basis of the same incident, the petitioner was convicted by the Court of Additional Chief Judicial Magistrate, Amritsar and in appeal, his conviction has been upheld and sentence part has been set aside and the petitioner has been released on probation.

The question arising for consideration before this Court is as to whether on the basis of the same misconduct, two separate punishments can be awarded by the department at different times, one during the service and another after the retirement? I find the reply in negative. Once, the petitioner has been awarded punishment by the department for the misconduct during his service, then after his retirement, on the basis of the same misconduct, which resulted into his conviction, another punishment cannot be awarded by the department. The position would have been different if no punishment was awarded by the department on the basis of the same incident when the petitioner was in service and they had waited for the result of the criminal trial.

Secondly, the petitioner was released on probation by the

appellate Court and the department was required to first determine whether the evidence on which the petitioner was convicted but ultimately released on probation amounts to gross misconduct warranting exercise of powers under Rule 2.2(a) Punjab Civil Services Rules Volume II. The impugned order does not show that such misconduct was determined. The order was passed merely on the basis of the conviction, assuming that from the conviction itself, a grave misconduct is conclusively proved.

In view of the matter, the impugned order endorsed on 27.10.2008 (Annexure P7) and the order dated 11.10.2010 (Annexure P8) passed in the appeal are not sustainable in the eyes of law and are hereby quashed. Consequently, the petition is allowed.

Arrears, if any, shall be released to the petitioner within two months from the date of receipt of certified copy of this order. The petitioner shall also be entitled to interest @ 9% per annum on the arrears, if any.

10.01.2017

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes