

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

Date of decision: 11.01.2017

CWP No.24423 of 2016

Naveen Kumar

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Deepanshu Matya, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J.

1. The petitioner is an ex-Constable of Haryana Police. He was dismissed from service after inquiry on the charge that while under the influence of alcohol, he along with ex-Constable Samundar Singh had together beaten up two Constables of the same Department in a fight. The charge was proven by the inquiry officer in his report. The Superintendent of Police, Faridabad accepted the inquiry report and dismissed the petitioner from service on July 30, 2005 after receiving comments of the delinquent employee in his defence. The appeal was rejected by the Inspector General of Police, Gurgaon Range, Gurgaon on October 10, 2005. The revision before the Director General of Police, Haryana failed on March 11, 2006. Aggrieved by the dismissal order, the petitioner approached the Court of the learned Civil Judge (Junior Division), Gurgaon, for setting aside the punishment order praying for reinstatement. The trial court dismissed the suit on January 14, 2012. Appeal before the learned Additional District Judge, Gurgaon was dismissed on July 04, 2014. Regular Second Appeal was likewise dismissed by this Court on May 18, 2015.

2. On July 14, 2016, the petitioner moved a representation to the Director General of Police, Haryana pleading a case of discrimination pointing out that one ex-Constable named Gordhan, who was also dismissed from service, but on a representation was reinstated to service and accordingly the same treatment should be given to his case despite dismissal of the Regular Second Appeal by this Court against the order of punishment.

3. The petitioner has not appended, but has produced an order dated November 19, 2008 passed by the Inspector General of Police, Faridabad Range, Faridabad for perusal of this Court, which is taken on record as Mark – ‘A’ to substantiate his claim to parity and equal treatment with Gordhan. A perusal of the order reveals that Gordhan was dismissed from service for absence from duty. He had explained in his memorial as a mitigating circumstance that he was suffering from typhoid and was under treatment during the relevant period September 05, 2006 to October 27, 2006 and that sufficiently explained the disputed absence from duty. He had also completed 19 years of service which was by itself a mitigating circumstance when the act of misconduct was not of the gravest kind enumerated in Rule 16.2 of the Punjab Police Rules, 1934 as applicable to Haryana. This salutary protection built in the rule was disregarded by the authority while dismissing Gordhan since his case for pension was not considered at the time when the order was passed nor the gravity of the charge of misconduct.

4. The Inspector General of Police, Faridabad Range, Faridabad accepted the appeal on the finding that the punishment awarded was rather excessive in dismissing Gordhan from service after having put in more than 19 years of service for an absence of 52 days since it deprived the claimant to his right to pension. Hence, a lenient view was taken and the punishment

reduced on administrative review from dismissal to stoppage of two future increments with permanent effect.

5. On the other hand, the case of the petitioner is not of absence from duty, but of a misconduct which borders on commission of crime of beating up two of his colleagues after consuming liquor. I fail to see any parity or even an approximation on facts between the two cases to consider a case of active and unfair discrimination in the matter of award of punishment.

6. Reliance placed by the learned counsel for the petitioner on the judgment in New Tibba Cooperative Agricultural Service Society Ltd. Vs. State of Punjab & others, 2005 (3) SCT 782 to contend that the dismissal of Regular Second Appeal is not a bar to the maintainability of a writ petition is misplaced and misjudged and deserves to be rejected. In *New Tibba* case, a freak situation arose where the dispute was referred to two labour courts taking divergent views. The Regular Second Appeal was against the subsequent award, which related only to an order dismissing the application for setting aside an ex parte award and, therefore, there had been no decision on the merits of the dispute referred for adjudication and that is why the Court held that a writ was maintainable against the other Award. The case is thus distinguishable on facts.

7. There is hardly any scope of any intervention in this case since the order of dismissal has been upheld till this Court in appeal, which judgment has attained finality. It is not possible to reopen the case through the representation (Annex P-8) since there is no parity found in the cases of the petitioner and Gordhan.

8. Consequently, for the reasons above, the petition is dismissed since it is found not maintainable under Article 226 of the Constitution of

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India. Moreover, after the Regular Second Appeal has been dismissed on merits interference would be wholly unwarranted. The writ jurisdiction is not armed with power to avoid a decree of a civil court, when the contested issue has become *res judicata* between the parties.

11.01.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>