

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

CWP No.5748 of 2016

Date of Decision:10.01.2017

Harkesh Kumar

... Petitioner

Vs.

State of Haryana and others

... Respondents

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

Present : Mr. N.C. Kinra, Advocate for the petitioner.

Mr. Rajesh Gaur, Addl. A.G. Haryana.

P.B. BAJANTHRI J.

In the instant writ petition, the petitioner has questioned the validity of the dismissal order dated 4.6.2015 and further order dated 9/11.9.2015 (Annexure P-6) rejection of his reporting to duty in view of releasing him on probation and order dated Nil (Annexure P-8) rejection of his appeal.

The petitioner is stated to have been appointed as a constable and he has earned promotion as Head Constable. He was involved in a criminal case for the offences under Sections 148, 149, 323, 325 and 506 IPC and FIR No.57 dated 12.5.2011 was registered at Police Station Raipur Rani. On 31.10.2014/411.2014, in the criminal proceedings, the petitioner was convicted alongwith other members of his family on 31.10.2014 and sentenced was passed on 4.11.2014. Feeling aggrieved by the conviction order, he preferred an appeal before the Appellate Court. On 4.6.2015, the appellate court released the petitioner on probation while observing as under:

“Taking into account all the facts and circumstances of the

case and antecedents of the appellants-convicts and since the appellants-convicts are ready to deposit the amount of Rs.1,00,000/- for paying the same to the complainant as compensation, this court is of the opinion that the present case is a fit one where appellants-convicts can be given the benefit of probation. So, judgment of conviction passed by learned trial court stands affirmed and the order of sentence passed by the trial court stands modified to the extent that the appellants-convicts are ordered to be released on probation on their executing probation bonds in the sum of Rs.50,000/- each for a period of one year along with one surety each in the like amount with the undertaking that they would maintain peace and keep good conduct during the period of probation and would appear before the trial court as and when called by the trial court to receive the punishment. With this modification in the sentence, the appeal stand disposed of. The amount of compensation which shall be deposited by the appellants-convicts is ordered to be given to the complainant. Requisite probation bonds furnished, accepted and attested.”

On 4.6.2015 itself the disciplinary authority imposed the penalty of dismissal from service on the ground that the petitioner has been convicted and sentenced to undergo imprisonment. The petitioner after releasing on probation submitted a representation to the official respondents to take back him into service. The same was rejected. The petitioner had preferred an appeal against the order of dismissal. The same was also rejected by the appellate authority.

Heard learned counsel for the parties.

Short question for consideration in the present case is whether disciplinary authority and appellate authority while imposing the penalty of dismissal from service on 4.6.2015 and rejecting the appeal of the petitioner, have taken into consideration order dated 4.6.2015 passed in

criminal appeal or not?

Perusal of the order dated 4.6.2015 (Annexure P-3) passed by the disciplinary authority and order dated Nil (Annexure P-8) passed by the appellate authority shows that order dated 4.6.2015 passed in criminal appeal has not been taken into consideration. In other words, the disciplinary authority and appellate authority have come to the conclusion that the petitioner has been convicted and sentenced as ordered by the trial court. Thus, there is non application of mind by the disciplinary authority and appellate authority while passing order of dismissal dated 4.6.2015 and rejecting the petitioner's appeal vide Annexure P-8.

Hence, order of disciplinary authority dated 4.6.2015 (Annexure P-3) and order of the appellate authority dated Nil (Annexure P-8) are set aside and the matter is remanded to the disciplinary authority to take a fresh decision while taking into consideration order dated 4.6.2015 passed in criminal appeal and the fact that the petitioner has rendered 24 years of service and pass a speaking order within a period of four months from today and communicate the same to the petitioner.

Accordingly, the present petition stands disposed of.

10.01.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**