

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

CWP No.7498 of 2017

Date of Decision : 17.04.2017

Nar Singh

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Sumeet Goel, Advocate
for the petitioner.

AJAY TEWARI, J. (Oral)

This petition has been filed for quashing the impugned order dated 29.01.2008 passed by the Commandant 1st Bn. HAP, Ambala City vide which the petitioner has been discharged from service and the orders passed in appeal and revision thereby discharge order has been upheld and the order dated 06.03.2017 passed by the Commandant, 1st Bn. HAP, Ambala City vide which the petitioner's claim for reinstatement has been declined.

The petitioner was appointed in the year 2007 as a Constable and his original certificate was sent for verification. The Haryana School Education Board reported that the matriculation certificate he had submitted as proof of education and age the date of birth was discrepant. The matter was sent to the FSL who opined that the letter 1 had been mechanically erased and retyped as 4 and therefore his date of birth was shown as 1984

instead of 1981. On that account he was discharged under Rule 12.21. Simultaneously a criminal case was also filed against him.

As regards the order of discharge, he challenged it by resorting to all the departmental remedies available to him and ultimately filed CWP No.655 of 2011 (Annexure P-9). That petition was dismissed by order dated 25.01.2012 finding as follows :-

“.....on verification of the matriculation certificate submitted by the petitioner, the same was found by the Board of School Education, Bhiwani, Haryana as there was overwriting in the same in the date of birth in the original matriculation certificate. Further it has been proved by the FSI that the date of birth in the original matriculation certificate has been mechanically erased and re-typed.”

The present petition has been filed again challenging the same impugned order and the ground taken is that in the meantime the criminal Court has acquitted him by holding that the prosecution was not able to prove that he had engineered the change in date of birth on the original matriculation certificate.

I have serious doubts on the maintainability of this petition as well.

Learned counsel has sought to argue that the findings of the criminal court has resulted in such super-arching circumstances that the judgment of the writ Court has to be revisited. In other words, a review by a different name.

Order XLVII CPC reads as follows :-

1. Application for review of judgment.- (1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
(b) by a decree or order from which no appeal is allowed, or
(c) by a decision on a reference from a Court of Small Causes,
and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation : The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]

A perusal of the above clearly brings out that the conditions which are pre-requisite for the exercise of power of review are not present in this case. Moreover, the previous petition was dismissed not by holding that the petitioner was guilty of erasing and retyping the date of birth but on the ground that the same was existing.

Consequently the finding of the criminal Court that the petitioner was not responsible for the change is neither here nor there.

In the circumstances, the present petition is dismissed as not being maintainable.

Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

17.04.2017
pooja sharma-I

(**AJAY TEWARI**)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No