

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-1386-2015 (O&M)

Date of Decision: January 09, 2017

Mahender Singh

.....Appellant

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

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| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Mr.Ashwani Talwar, Advocate
for the appellant.

Mr.R.D.Sharma, DAG, Haryana.

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SURYA KANT, J.

The appellant joined as a Constable in the Haryana Police on 16.08.1977. He was later on promoted as Head Constable. A criminal case under Sections 148, 149, 307 IPC read with Section 27 of the Arms Act was registered against him vide FIR No.191, dated 27.08.1995 at Police Station Jhajjar. He was held guilty by the trial Court for committing an offence punishable under Section 307 IPC read with Section 27 of the Arms Act and was sentenced to undergo rigorous imprisonment for a period of four years.

[2] The competent Authority dismissed the appellant from service on 05.06.2003 on the basis of his conduct which led to his conviction on a criminal charge.

[3] The appellant filed criminal appeal in this Court against the order of conviction and sentence, which was allowed in part to the extent that his conviction was converted to Section 324 IPC read with Section 27 of the Arms Act. He was released on probation for a period of two years on maintaining good conduct.

[3] On the basis of the appellate order the appellant claimed that notwithstanding his dismissal from service, he be granted pension in view of Rule 16.2 of the Punjab Police Rules, 1934 as applicable to State of Haryana (for brevity, 'the Rules 1934').

[4] Rule 16.2(2) empowers the Competent Authority to dismiss a police official from service on the basis of his conviction on a criminal charge. However, its first proviso says that "the Punishing Authority may in an exceptional case involving manifestly extenuating circumstances for reasons to be recorded and with the prior approval of the next higher authority impose any punishment other than that of dismissal."

[5] Since the Competent Authority has declined to invoke its power under the said proviso, the appellant approached this Court and his writ petition has been dismissed by the learned Single Judge.

[6] We have heard learned counsel for the parties and gone through the record. In view of the fact that the appellant was found guilty of the offence under Section 324 IPC, he could indisputably be dismissed from the service under proviso to Article 311(2) of the Constitution of India, regardless of such powers separately vested in the Competent Authority under Rule 16.2(2) of the Rules 1934. The fact that the appellant was in

appeal held to be guilty of committing the offence of lesser gravity or his

sentence was reduced has not obliterated the criminal charge which led to his conviction. There are no exceptional circumstances highlighted by the appellant on the basis of which the power, which is to be exercised in extraordinary situations, could be invoked by the Competent Authority.

[7] No case to interfere with the order under appeal is made out.

[8] Dismissed.

**(SURYA KANT)
JUDGE**

January 09, 2017
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**(SUDIP AHLUWALIA)
JUDGE**

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |