

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM No.13970 of 2016 in/and
CWP No.9814 of 2015
Date of Decision: 29.01.2018**

Karnail Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K. Malik, Sr. Advocate,
with Mr. Mandeep Singh, Advocate,
for the applicant-petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J.

CM No.13970 of 2016

The application is allowed. The matter is taken up on Board with the consent of both the parties.

Main Case

The petitioner had over 29 years of service when he was dismissed on December 21, 2011. Career profile is that he was promoted as an Exemptee Assistant Sub Inspector of Police in the year 2006. His statutory appeal against the dismissal order was rejected on March 06, 2012. His revision before the Director General of Police, Haryana was declined on April 16, 2015. The dismissal goes to a criminal complaint filed by one Chiranji Lal in 1994 under Sections 323/324/342/504 and 506 of the IPC against the petitioner Karnail Singh and three other policemen, namely, ASI

Babu Ram, Constable Prem Parkash and Constable Darshan Singh. The complaint was that these police officials had beaten up the complainant Chiranji Lal. The petitioner and the co-accused were convicted and sentenced on August 03, 2007 by the Judicial Magistrate, Ambala Cantt, The appeal to the Sessions Judge, Ambala failed when it was dismissed on October 03, 2011.

Aggrieved by the conviction and sentence, the petitioner and other co-accused filed three separate Criminal Revisions and those were disposed of by a common judgment of this Court by order dated December 21, 2011. The conviction was upheld but the sentence was modified by an order releasing the police officials on probation for a period of one year. This started the process of issuance of show cause notice of dismissal to the petitioner inviting his objections upon conviction. The objections found no favour. Dismissal followed on December 21, 2011 and the petitioner was thrown out of service. He has approached this Court by this petition under Article 226 of the Constitution for setting aside the order affirmed till revision before the Director General of Police, Haryana by issuing a writ of certiorari.

The short point pressed by Mr. Malik in this petition is that length of service and right to pension has not been considered by the appointing authority while Rule 16.2 (1) of the PPR, 1934 as applicable to Haryana required the penalty of dismissal to be awarded for the gravest acts of misconduct or as the cumulative effect of continuous misconduct proving incorrigibility and complete unfitness for retention in police service. In making such an award, rule requires that regard shall be had to the length of

service of the offender and his claim to pension. The eight acts enumerated as falling under grave misconduct are not applicable to the charges proven against the petitioner and his colleagues who faced criminal trial. It is further contended that the petitioner has been released on probation, so Rule 16.2 (2) of PPR, 1934 is not applicable. This argument is not acceptable since release of convicted person on probation applying the provisions of the Probation of Offenders Act, 1958 does not obliterate the stigma of conviction. (See, Supreme Court in The Divisional Personnel Officer, Southern Railway & another v. T.R. Challappan, AIR 1975 SC 2216 (para.11).

Mr. Malik goes further to urge that offences under Section 323 and 324 of the IPC do not involve moral turpitude. There is, therefore, no justification in terminating the services of the petitioner who had rendered more than 29 years of service at the time of dismissal. Senior counsel cites Shish Pal Singh v. State of Haryana, 1990 (7) SLR 29 to contend that offence under Section 323/325 of the IPC do not involve moral turpitude.

The petitioner may or may not have had a case after conviction on a non-employment related offence, but Mr. Malik comes armed with the cases of the co-convicts i.e. Babu Ram, ASI and Prem Prakash, Constable all of whom were convicted and released on probation by a common judgment of this Court but no action was taken against Babu Ram and Prem Prakash and they had retired and are drawing pension. A case of discrimination arises which requires consideration.

In the reply filed by the State, it has not refuted that the colleagues of the petitioner are not punished and are happy receiving

service pension for their involvement in the same act and conviction on the same set of allegations on which the conviction of the petitioner is based. It is also not disputed that the service career of the petitioner has only one unsightly incident against him being the present one under consideration. ASI Babu Ram retired on superannuation and gets pension. No disciplinary action was taken against him and he is Scott free. Prem Prakash, Constable also remained in service till his actual date of retirement. They were not dismissed from service by the Police Department. The fourth, Darshan Singh was still in service at the time when the petitioner was singled out for dismissal without the disciplinary authority going into his conduct which led to the conviction. Notwithstanding that the sentence was converted to probation. With the uniform common measuring stick of Article 14 of the Constitution in hand coupled with the fact, not disputed, that similarly situated persons have been treated in different and adverse ways, this Court is left with no option but to allow this petition on parity of treatment and to direct the respondents to consider treating the petitioner as having retired on reaching the age of superannuation so that he earns his pension from the date when he would normally have retired from police service.

Darshan Singh co-accused/co-convict had filed CWP No.9847 of 2015 and the same was allowed on October 18, 2016. The Court held that there could be no automatic dismissal from service merely on conviction and it was obligatory upon the competent authority to apply its mind to the judgment of the Criminal Court and other material to reach a definite conclusion that it would not be desirable to retain an employee in service on account of his conviction. The quality of the impugned order in *Darshan*

Singh's case is similar to the order of dismissal in this case when it does not reflect any such objective application of mind at the hands of the punishing authority. In both cases, length of service was also not factored in while directing dismissal from service. Darshan Singh had spent 22 years in service when the axe fell on him. The Court noticed the cases of *Babu Ram* and *Prem Prakash*, which petitioners, were allowed to superannuate and thereafter on superannuation were drawing service pension every month on regular basis. This aspect should also have been kept in predominant mind while passing final order. Factually admitted position is that the State has not filed Letters Patent Appeal against the order passed in *Darshan Singh's* case. And this is another strong reason for me in passing orders favourable to the petitioner.

For the reasons recorded above, the writ petition is allowed. A writ of certiorari is issued quashing the impugned orders dated December 21, 2011 (P-4), March 06, 2012 (P-6) and April 16, 2015 (P-8). Accordingly, they are set aside.

As a result, the matter is remanded to the punishing authority for re-consideration on all the aspects as pointed out in the case of *Darshan Singh* in the orders passed in CWP No.9847 of 2015 and the authority would pass a fresh order in accordance with law. It would be open to the punishing authority to consider whether conviction of the petitioner deserves the extreme punishment of dismissal or any other lesser penalty.

Let the re-consideration exercise conclude with a fresh order within three months from the date of receiving certified copy of the order and/or the final orders passed in *Darshan Singh's* case which may be

considered as appropriate and applicable in the present case.

29.01.2018
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned *Yes*

Whether reportable *No*