

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

LPA No.459 of 2016 (O&M)
DATE OF DECISION : 28th AUGUST, 2018

Satbir Singh

.... Appellant

Versus

State of Haryana & others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH**

* * * *

Present : Mr. Pawan Kumar, Senior Advocate with
Mr. Rohit Kumar, Advocate for the appellant.

Mrs. Tanisha Peshawaria, DAG Haryana.

* * * *

A. B. CHAUDHARI, J.

1. By the present letters patent appeal the appellant-Satbir Singh has put to challenge the judgment and order dated 17.02.2016 passed in CWP No.24204 of 2011, passed by learned Single Judge of this Court, by which the relief claimed by the appellant was declined. In the writ petition the petitioner challenged the order dated 01.04.2008 (Annexure P-5) that was passed by the Inspector General of Police, Hisar Range, Hisar in the matter of date of enlistment of the appellant in promotion as Sub-Inspector and confirmation as such from 01.04.1980 to 01.10.1984, 01.04.1984 to 14.11.1984 and 31.01.1985 to 31.08.1987 respectively.

FACTS:

2. The petitioner was initially appointed as Assistant Sub-Inspector in the year 1971 in Haryana Police. In the year 1972-74 he was

conveyed several adverse remarks including about his doubtful integrity. His representation was considered and rejected by order dated 19.07.1975 by DIG. As per the applicable instructions the effect of the adverse remark was the petitioner's confirmation and further promotion was to remain for 10 years. However, in the year 1975, he was confirmed as ASI and also promoted as Sub-Inspector by order dated 14.11.1984 vide order dated 06.02.1986 on his ante dated representation dated 01.04.1980. Thereafter, the petitioner was confirmed on promotion list E w.e.f. 31.01.1985. The petitioner after lapse of 15 years made a second representation dated 29.10.1990 for expunction of adverse remarks made against him way back in the years 1972 to 1974 and his representation was also accepted by order dated 01.01.1991 by the then DIG of Police. As a result, the adverse remarks about his integrity were expunged after 15 years. The fact came to the knowledge of the DGP Haryana and as per the procedure he issued show cause notice to the appellant as to why the said order dated 01.01.1991 should not be withdrawn as the same was without jurisdiction and authority that too after 15 years. The appellant filed the reply to the show cause notice and the DGP thereafter restored the earlier order dated 19.07.1975 setting aside order dated 01.01.1991 being without jurisdiction. As a consequence the necessary changes were made. In the writ petition the petitioner did not disclose about the order dated 19.02.1996 passed by DGP Haryana. The challenge raised by the petitioner to the said order failed before the learned Single Judge on the ground of *supperssio veri suggestio falsi* and also on merits. Hence this appeal.

3. In support of the appeal learned counsel for the appellant vehemently argued that the DGP Haryana had committed an error in law in reviewing the order dated 01.01.1991 belatedly which was wholly impermissible. Apart from that the representation by way of mercy petition was available to the petitioner and therefore, the learned Single Judge committed an error in holding that there was no provision. According to the learned counsel for the appellant the impugned action in the petition could not have been entertained, particularly when the appellant had retired way back in the year 2009. The consequence of passing of the impugned order was that the confirmation and promotion given to the appellant was being withdrawn after 22 years and therefore the learned Single Judge ought to have considered the matter in correct perspective. He relied on the decisions of this Court in the cases of **ASI Dharambir Singh versus State of Haryana and others** dated 11.05.2010 passed in **CWP No.206 of 2007; Sub-inspector Ravi Dutt versus State of Haryana and others** dated 20.01.2010 passed in **CWP No.10675 of 2009 and eight other connected matters** and **Ram Niwas versus State of Haryana and others, 2007(1) SLR 243**.

4. Per contra, learned State counsel for the State of Haryana opposed the petition and argued relying on the decision in the case of **Vinod Kumar Versus State of Haryana and others, 2013(16) SCC 293**, that the Apex Court has already decided the issue while considering the relevant provision, therefore, the case is squarely covered by the said decision. According to her learned Single Judge also considered the ratio of the judgment of Apex Court in his impugned judgment besides the fact

that the appellant was guilty of suppression of material facts. She therefore, prayed for dismissal of the petition relying on the said decision of the Apex Court.

CONSIDERATION:

5. At the outset, during the course of hearing we asked the learned senior Advocate for the appellant to place on record the representation that was made by the appellant on 29.10.1990 in respect of the adverse confidential remarks against him and his integrity for the period from 01.04.1972 to 30.09.1974 and 15.11.1974 to 31.03.1975 by the petitioner labeled as mercy petition. The counsel for the appellant has placed the same on record as Annexure A-1 with CM No.3552-LPA-2018. We have carefully perused the said alleged mercy petition and we find that the petition is dated 29.10.1990 and in the entire representation/petition nowhere there is a single reason shown as to why in respect of remarks relating to such old period the representation was made after almost 15 years. There is no explanation, whatsoever, in that behalf. We also find it strange that in this so called mercy petition the petitioner suppressed the fact about he making representation to the DIG against those adverse remarks. He also suppressed material fact in the mercy petition that his representation made at that time was rejected by order dated 19.07.1975 by the DIG and the entire mercy petition merely raised challenge to the adverse remarks from the year 1972-74. It, therefore, appears to us that the appellant even deceived the then DIG of Police before whom he had filed mercy petition/representation by suppressing all the material facts and succeeded in obtaining order dated

01.01.1991. The petitioner again repeated the same thing before the learned Single Judge for which he invited the following finding from learned Single Judge:

“The order impugned in the present petition is primarily based on the afore-referred order dated 19.02.1996 passed by the DGP, Haryana. The petitioner was well aware of the passing of the aforesaid order dated 19.02.1996 as the same was preceded by a Show Cause Notice, to which the petitioner had also filed a reply. However, a perusal of the writ petition shows that the petitioner has not disclosed the factum of the proceedings undertaken by the DGP leading to the passing of order dated 19.02.1996. This fact and the order has been withheld by the petitioner, which according to me, was crucial. Conveniently, the petitioner has by-passed the order dated 19.02.1996 passed by the DGP, Haryana to wrongly project that the petitioner, in the year 1986, was ordered to be promoted as SI w.e.f. 01.04.1980 and after the passage of nearly 20 years, he received a Show Cause Notice so as to why his dates of confirmation and promotion be not changed. The crucial intervening event, which took place in the year 1996 and which formed the basis for the change of

the petitioner's date of confirmation and promotion was conveniently by-passed. For suppression of this fact, I conclude that the petitioner has not come to the Court with clean hands and as per the settled law, for doing so, he has disentitled himself to be even heard on merits.

6. We are, therefore, compelled to confirm the above finding recorded by the Single Judge about the conduct of the appellant.

7. That apart, the learned Single Judge has rightly relied upon the Apex Court's decision in the case of ***Vinod Kumar (supra)*** by relying on paragraphs 16 and 19 thereof in relation to the rules 13.7 and 14.7. Having gone through the said discussion made by the learned Single Judge we think that even on merits the decision rendered by the learned Single Judge is legal, correct and proper. We quote following from the judgment of learned Single Judge:

“In this regard, the following observations of the Apex Court in **Vinod Kumar's** case (*supra*), while interpreting Rules 13.7 and 14.7 of the Rules, can usefully be referred to:-

“16. Thus, these Rules only pertain to recording of ACRs. There is no provision in the Rules containing any procedure for dealing with representations against the ACRs. That is provided in 1962 and 1999 Instructions, already taken note of above. Therefore, the High Court rightly rejected the contention of the appellant predicated on these Rules. Thus, we find that on the face of it, the second

representation preferred by the appellant, in which the ACRs were expunged was not permissible. It was not only contrary to 1962 and 1999 Instructions, but was made after 9 ½ years from the date when first representation against the ACR was rejected.”

In view of the afore-referred authoritative pronouncement by the Apex Court, while interpreting Rules 13.7 and 14.7 of the Rules read with the applicable Instructions/standing order, the petitioner’s second representation made in the year 1990 was not maintainable and thus, the order passed thereupon was resultantly, without jurisdiction.”

8. The judgments cited by the learned counsel for the appellant have no relevance.

9. In that view of the matter, we find no merit in the present appeal. Hence we make the following order:

ORDER

(i) The LPA No.459 of 2016 is dismissed.

(A. B. CHAUDHARI)
JUDGE

28th AUGUST, 2018
‘raj’

(KULDIP SINGH)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>