

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

**LPA No.600 of 2018(O&M) in
CWP No.7033 of 2018
Date of Decision:24.04.2018**

Rajesh Kumar

..... Appellant

versus

State of Haryana and others

..... Respondents

**CORAM : HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE B.S.WALIA**

Present: Mr. Surinder Kumar Daaria, Advocate for the appellant.

B.S.WALIA, J.

1. Intra-court appeal has been filed against order dated 21.3.2018 whereby the learned Writ Court dismissed the writ petition challenging order dated 8.3.2018 whereby three month's notice was served on the appellant in terms of Rule 144 (iii) of the Haryana Civil Services (General) Rules, 2016 read with Rule 9.18 (1) (c) of the Punjab Police Rules, 1934 (hereinafter referred to as "1934 Rules") as applicable to the State of Haryana informing that on expiry of three months, he would stand retired from service.

2. The order of the Writ Court has been challenged, inter alia, on the ground that proceedings on the basis of FIR under the Prevention of Corruption Act resulted in the acquittal of the appellant. There was no adverse remark in the entire service tenure of the appellant and in view of the acquittal, there was no material on the basis of which the appellant could have been prematurely retired.

3. We have considered the submissions of learned counsel for the appellant and are of the considered view that there is no merit in the appeal.

4. No doubt the appellant was acquitted in the case registered against him under the Prevention of Corruption Act. However, the same was on the ground that the prosecution had failed to prove guilt beyond the shadow of reasonable doubt and further the prosecution had failed because of undependability of PW-6 Deepak Sharma who was the star witness and that said Deepak Sharma had knowingly and intentionally made a false statement by doing a somersault qua complaint filed by him thereby harming the cause of justice by helping the accused to go scot-free and for which proceedings under Section 344 Cr.P.C had been initiated against him. The departmental proceedings initiated against the appellant resulted in misconduct qua the incident of having accepted illegal gratification being proved for which order of punishment dated 8.6.2015 dismissing appellant from service was passed. Appeal in respect thereto was dismissed by the Commissioner of Police, Gurugram by relying upon the video clip which clearly showed the appellant accepting illegal gratification from truck drivers and others. No doubt in the revision petition against the orders passed by the Commissioner of Police, Gurugram, the punishment of dismissal was converted into punishment of stoppage of five annual increments with cumulative effect but principle of "No work No pay" was applied while taking him back in service. Mercy appeal alleged to have been filed is stated to be pending with the Home Secretary. Appellant's case for extension in service beyond 55 years was rejected on the ground that he had been departmentally punished for his involvement in a criminal case which showed beyond an iota of doubt his doubtful integrity. Accordingly, notice of three months' was given in public interest in exercise of powers under 1934 Rules as applicable to the State of Haryana, informing the appellant that he would stand retired from service on the

expiry of three months' from the date of receipt of aforesaid notice.

5. Criminal proceedings and departmental proceedings operate in different fields, have different scope and the standard of proof required to prove the offence/misconduct is different. While in a criminal trial, the offence has to be proved beyond reasonable doubt, in departmental proceedings, misconduct can be proved on the basis of probabilities also. The video recording of the appellant accepting illegal gratification from truckers and motorists was relied upon by the Commissioner of Police, Gurugram to pass order of dismissal from service against the appellant. No doubt order of dismissal has been converted into punishment of withholding of five annual increments with cumulative effect besides applying the principle of 'No work No pay' while reinstating the appellant. However, the basis for passing order of punishment i.e. of doubtful integrity of the appellant as evident for establishing of misconduct of his receiving illegal gratification from truckers etc. subsists. Even one such act of misconduct is enough to form an opinion that it is in public interest not to retain such an employee in service beyond the age of 55 years. Action having been taken by the competent authority in accordance with the Rules, no circumstances exist warranting intervention with the order passed by the learned Writ Court.

6. Accordingly, finding no merit in the appeal the same is dismissed in limine.

(RAJESH BINDAL)
JUDGE

(B.S.WALIA)
JUDGE

April 24, 2018

ps

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No