

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

CWP-4139-2019

Date of decision: - 15.02.2019

Satpal Singh

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Amit Kaith, Advocate,
for the petitioner.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the claim which has been made by the petitioner is for setting aside of order dated 16.01.2019 by which the benefits such as gratuity and leave encashment has been withheld keeping in view the pendency of Criminal Revision No.374 of 2016.

The necessary facts which are to be noticed are that the petitioner joined as a driver with the respondents in the year 1992 and his services were regularized in the year 1995 and he ultimately retired from the said post on 31.01.2018. During the time when the petitioner was in service, an FIR No.492 dated 13.10.2008 was registered against him on 13.10.2008 and he was ultimately convicted in the above-said FIR on 17.01.2013 and he was sentenced to undergo rigorous imprisonment for a

period of six months and a fine of Rs.1,000/- was also imposed. Petitioner filed an appeal against the said order and the said appeal was dismissed by the Competent Court of Law on 07.01.2016.

Against the said orders, the petitioner preferred a Criminal Revision No.374 of 2016 and the said criminal revision was admitted by the Court on 26.07.2017 and the conviction of the petitioner was stayed. The said criminal revision is still pending consideration before this Court.

As per the averments made in the writ petition, after the petitioner was convicted and his appeal was also dismissed by the Competent Court of Law in the year 2016, his services were terminated on 08.06.2016. Though the services of the petitioner had already terminated on 08.06.2016, but without disclosing the actual facts that his services had already been terminated in pursuance to the conviction, he got an interim order in his favour from this Court by misrepresenting the fact that in case the conviction of the petitioner is not stayed, he will be dismissed from service on account of conviction. The order passed by this Court on 26.07.2017 in CRM-15640 of 2016 in CRR No.374 of 2016 is as under: -

“The revision preferred by the applicant-petitioner, who was convicted for the offences under Sections 279/304-A I.P.C., and which conviction was upheld by the learned Appellate Court, was admitted by a Coordinate Bench of this Court on April 08, 2016.

Learned counsel for the applicant-petitioner has urged before this Court that conviction of the applicant-petitioner needs to be stayed, since he faces the immediate threat of dismissal from Government Service, even though he has not been convicted of any offence involving moral turpitude. To support this submission, the earlier decisions of this Court in “**Balbir Singh Versus State of Punjab**”, 2008 (2) R.C.R. (Criminal)

531, “Roop Singh Versus State of Punjab”, 2005 (2) R.C.R. (Criminal) 799 and “Darshan Singh Versus State of Haryana”, 2007 (3) C.C.R. 172 have been cited. In those decisions, Coordinate Benches of this Court had stayed earlier applications of the convicts/ revisionists on the special ground that their livelihoods were at stake, and there was little possibility of the revisions being decided expeditiously, after the same had been admitted. In **Balbir Singh Versus State of Punjab** (supra), it was specifically observed that the concerned petitioner had not earned conviction on account of misuse of his office.

In “Navjot Singh Sidhu Versus State of Punjab”, 2007 (1) Recent Criminal Reports (Crl.) 836, again the Supreme Court had allowed the prayer for suspension of conviction of the concerned petitioner after taking note of the fact that death of the victim was an incident, which happened all of a sudden, without any premeditation; that the deceased was wholly unknown to the petitioner and that there was no motive for commission of the crime. Undoubtedly, in the present case also, no *mens rea* is attributable to the applicant-petitioner. It is a case of pure negligence, which the applicant-petitioner seeks to disprove from the record, and for which purpose his petition is already admitted. His livelihood and dependency of family members would be under imminent threat, in case he is dismissed from service on account of the conviction.

For the aforesaid reasons and relying upon the ratio of the decisions cited above, the instant application is allowed, and conviction of the petitioner is stayed.”

A bare perusal of the above-said order would show that the petitioner misled this Court in believing that he was in service on 26.07.2017 and this Court in order to save his services while relying upon his statement made before this Court, stayed the conviction.

After presenting the order dated 26.07.2017, the petitioner pressed for his reinstatement on the ground that the conviction has already been stayed by this Court and therefore, he should be reinstated in service.

As the order of conviction was stayed by this Court, there was no other option with the authorities, but to reinstate the petitioner and the petitioner was allowed to join his duties on 09.10.2017 from where he ultimately retired on 31.01.2018. Now after the retirement, the petitioner is asking for the grant of ACP scales on the ground that once the conviction has been stayed, the petitioner is entitled for the benefit of the ACP scales even for the period he stood convicted and was actually serving the sentence till the date his conviction was stayed by this Court. The said request of the petitioner has been declined by the respondents by the impugned order dated 16.01.2019 (Annexure P-6) on the ground that as the criminal revision filed by the petitioner is pending and the conviction of the petitioner has only been stayed as a matter of interim order. The stand of the respondents is that all the benefits for which the petitioner is entitled for will be granted to him after the decision of CRR filed by the petitioner against his conviction and dismissal of his appeal against conviction.

Not satisfied with the said order, the petitioner has filed the present writ petition on the ground that once the conviction has been stayed, the petitioner is entitled for all the benefits by treating him as an employee, who is not convicted.

I am afraid that the argument, which is being raised by the petitioner in the present writ petition is that once the conviction has been stayed by this Court, the petitioner is to be entitled for all the benefits immediately without waiting for the actual decision of the criminal revision, is not at all made out. The conviction has been stayed as a matter

of interim order and that too when the petitioner has misled this Court in believing that in case the conviction is not stayed, his services will be terminated, whereas the petitioner's services already stood terminated a year before the passing of the order by this Court on 26.07.2017 by which the conviction was stayed. It can be safely presumed that this Court was misled in passing the said order by the petitioner without giving the actual facts that his services already stood terminated on account of the conviction a year before.

Be that as it may, once the proceedings are pending before this Court and the petitioner has not been exonerated, the respondents are well within their right to keep the claim of the petitioner in abeyance till the finalization of the said proceedings. No fault can be found on this score.

Further, the discretion vested in this Court cannot be exercised in favour of a person, who does not approach this Court with clean hands. Petitioner got the order of his conviction stayed by misrepresenting the actual facts and therefore, this Court refuses to exercise discretion in favour of the petitioner in the present case.

In view of the above, the present writ petition is dismissed with no order as to costs.

February 15, 2019
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	No