

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2267 of 2017

Date of Decision: 08.05.2019

Subhash Chander

... Petitioner

Versus

The District and Sessions Judge,
Narnaul

... Respondent

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

Present: Mr. Saurabh Dalal, Advocate,
and Mr. Tarun Singhal, Advocate.
for the petitioner.

Mr. Munish Kapila, Advocate,
for the respondent.

RAJIV NARAIN RAINA, J.(Oral)

1. Heard the learned counsel for the petitioner and for the Sessions Division in challenge to and in defence of the decision of the District & Sessions Judge, Narnaul dated October 19, 2016 dispensing with the services of the petitioner during the period of probation. The challenge in this petition is confined to the contents in a portion of the order being stigmatic in nature and if these can stand the test of judicial scrutiny. The discharge from service is not under challenge.

2. Having read the order, I find myself in agreement with Mr. Saurabh Dalal appearing for the discharged ex Addl. Ahlmad that there is a tinge of stigma attaching to conduct of the petitioner. The question is that if he were to carry the termination order to the next prospective employer or is asked to produce it, it might dissuade them from offering him a job.

Inasmuch as in three of the allegedly offensive paragraphs on the second

page of the order towards the end, all starting with the word “Vide...” it is recorded that the work and conduct of the petitioner was not only unsatisfactory but he was grossly indisciplined employee whose conduct was found unbecoming of a public official. As also that his services were qualitatively very poor and were highly unsatisfactory. These comments are based on extracts of reports made by the Judicial Officer/s the petitioner worked under.

3. On a consideration of the matter, and having regard to the total impact of the order I feel strongly that these remarks need not have been incorporated in the order of discharge of a probationer and, therefore, to serve the ends of justice, the order deserves to be partly quashed as it contains matters which would needlessly attach stigma on the forehead of the petitioner and would hound him whenever he applies for a job in future and is asked to explain whether he has ever been terminated from service by employer in the past. The assessments of work and conduct made by Judicial Officers may be good but need not have been reflected in the discharge order but kept in the official record.

4. The discharge order could have been simpliciter stating merely that work and conduct was not found satisfactory during the probation period. Adjectives describing conduct and performance in the negative could have been avoided in the order without taking away its ultimate objective.

5. But by the setting aside of identified part of the order and with the partial success of the petition it will not change the result of the office order as only the content of the three paragraphs recording in the order the

comments of the Presiding Officer/s would have to be incised from the rest of the order leaving intact and operative the part relevant to the context.

6. Accordingly, the petition is partly allowed and the office order to the extent it is found offensive (as discussed above) is declared otiose and surplus and is directed to be removed so that it does not unnecessarily prejudice and burden the petitioner in any future job he may apply for in any department/public office, authority or private organization etc. It may be noticed that there was no charge of corruption against the petitioner and that is the mitigating circumstance which has persuaded me in making this order.

7. Fresh order be passed by the learned District & Sessions Judge, Narnaul within a fortnight from supply of order by excluding the three paragraphs starting "Vide..." and the same when passed and provided to petitioner will relate back to the date of the order i.e. October 19, 2016 for all intents and purposes. To clarify and remove any doubts, the petitioner shall remain discharged from service on and from October 19, 2016.

(RAJIV NARAIN RAINA)
JUDGE

08.05.2019
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Whether speaking/reasoned Yes

Whether reportable Yes/No