

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 24680 of 2018
Reserved on: 28.08.2019
Pronounced on: 18.09.2019

Bhola Singh

.... Petitioner

versus

State of Punjab & Ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Argued by : Mr. Sanjay Kaushal, Sr. Advocate with
Mr. Saurabh Arora, Advocate
for the petitioner

Mr. P.S. Bajwa, Addl. AG Punjab.

ARUN MONGA, J.

1. Challenge herein, *inter alia*, is to an order dated 21.04.2015 (Annexure P-2) passed by Deputy Inspector General of Police, Ferozepur Range(respondent No.4) vide which the petitioner, who at the relevant time was serving as Inspector, was awarded punishment of dismissal from service for his alleged involvement in registration of a false FIR and a suspected murder, in exercise of powers under Article 311 of the Constitution of India. An appeal preferred against the said punishment order was dismissed by the Appellate Authority(Inspector General of Police) vide order dated 18.12.2015. The said Appellate order, in turn, was upheld by the Director General of Police vide an order dated 17.04.2017(Annexure P-4), *impugned herein*.

2. Later, after being acquitted in the criminal trial, the petitioner preferred a mercy appeal, which though was declined by competent

authority, but finally respondent No.1 vide order dated 05.07.2018 (Annexure P-9) partially allowed the same and instead of dismissal, the petitioner has been compulsorily retired from service.

3. Before adverting to the merits of the sustainability of punishment order/ Appellate Orders, impugned herein, the controversy that first requires adjudication at the threshold is, whether the punishment order was passed by a competent authority in law?

4. It is the case of the petitioner that immediately prior to the passing of the punishment order, upon promotion as Inspector, he was posted at Chandigarh in Crime Branch, Punjab, by the Director General of Police(respondent No.2) vide an order dated 23.12.2014(Annexure R-1). Since the petitioner was not sent on deputation to the Crime Branch, contended Mr. Sanjay Kaushal, learned Senior counsel assisted by Mr. Saurabh Arora, Advocate, safe assumption therefore would be that the petitioner was on regular posting in Crime Branch at Chandigarh. He, thus, did not remain under the administrative control of Deputy Inspector General of Police, Ferozepur Range. The Deputy Inspector General of Police, Ferozepur Range could not have arrogated himself the requisite authority to pass impugned order dated 21.04.2015, contended the learned Senior counsel.

5. Per contra, Mr. P.S. Bajwa, learned Addl. Advocate General Punjab appearing for the respondents resisted the argument of learned Senior counsel primarily on the ground that Crime Wing at the relevant time was not a separate cadre. The petitioner, therefore, continued to be member of Police force under Ferozepur Range. The entire edifice of the argument of learned Senior counsel is,thus, misplaced, contended the learned State

counsel.

6. Having heard the learned counsel appearing for the respective parties, I shall now proceed to deal with the details of the controversy hereinafter.

7. Learned State counsel drew my attention to affidavit dated 21.08.2019 sworn by the Assistant Inspector General of Police(Personnel-III) Punjab, Chandigarh, in which position regarding competence of DIG Ferozepur Range to dismiss the petitioner has been clarified. He argued that Inspectors in Crime Wing, being not separate cadre, are shown to be under the control of their respective allocated district Police cadre. The investigation cadre, which performs the same function as the Crime Wing, came into existence as a separate cadre with effect from 01.03.2018. Prior thereto, Inspectors in the Crime Wing were under the control of District Police. Since the petitioner was a member of Ferozepur Range, he continued to be a member of said Range as there was no separate cadre of Crime Wing at the relevant time. In the aforesaid premise, learned State counsel strenuously re-enforced his argument that Deputy Inspector General of Police, Ferozepur Range was competent to dismiss the petitioner.

8. On the other hand, learned Senior counsel vehemently relied on information dated 26.04.2019(Annexure P-11) provided under the Right to Information Act. Inspector General of Police, Ferozepur Range states therein that Deputy Inspector General of Police, Ferozepur Range was not competent authority as the petitioner was not posted in any District Police Force of Ferozepur Range.

9. Learned Senior counsel further submitted that respondents are placing implicit reliance on an order dated 23.01.2015 passed by respondent

No.4 and are trying to colour it as promotion order of the petitioner in order to establish that respondent No.4 is the competent authority to promote the petitioner. However, the same is only a relieving order of the petitioner passed by Senior Superintendent of Police, Moga and it nowhere establishes that respondent No.4 promoted the petitioner.

10. On merits, learned Senior counsel submitted that it is a fact that the petitioner was acquitted in the criminal case vide judgment dated 17.03.2017, which has attained finality as the same was not challenged by the State. He relied on Punjab Government Circular Letter No. 3/23/98-1PPII/10394 dated 5.8.1998 passed by the Department of Personnel and Administrative Reforms, addressed to all Heads of Departments etc. in the State of Punjab that if a Government servant-accused is acquitted on appeal or other proceedings, the order can always be revised. And if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled, had he continued in service. Since the petitioner has been acquitted in FIR in question vide order dated 17.03.2017, he is entitled to be reinstated with all the benefits.

11. Learned Senior counsel for the petitioner argued that petitioner's case is fortified by the precedents on this point viz. **Union of India Vs. Tulsiram Patel 1985(3) SCC 398, Smt. Surinder Kaur wd/o Sh. Labh Singh Vs. State of Punjab through DGP, Chandigarh, 2008(1) SCT 396, Ex.Constable Balwinder Singh Vs. State of Punjab and others, 2003(2) SCT 137, Sudesh Kumar Vs. State of Haryana, 2005(11) SCC 525, Joginder Singh Vs. Union Territory of Chandigarh & Ors. 2015(1) SCT 87** and also judgment rendered by this Court in **CWP No. 3532 of 2013, Union Territory, Chandigarh & Ors. Vs. Pardeep Kumar**

**& Ors., decided on 24.02.2016 and CWP No. 11315 of 2015, titled as
Kulwant Singh Vs. State of Punjab & Ors.**

12. Learned Senior counsel further argued that the petitioner was dismissed from service with immediate effect. The said dismissal order was passed against the petitioner without holding any departmental enquiry against him. More so, the holding of inquiry against the petitioner was held not to be reasonably practicable by the Deputy Inspector General of Police, Ferozepur Range. No reasoning has been given as to why the holding of inquiry against the petitioner was held to be not reasonably practicable. Proper procedure as laid down under Rule 16.2 of the Punjab Police Rules, 1934 has not been followed while passing the dismissal order of the petitioner. Even the provisions of Article 311 of the Constitution of India have not been complied with by the authorities while dismissing the petitioner from service. Recommendation of the Inspector General of Police, Bathinda Zone made to the Director General of Police, Punjab after acquittal of the petitioner from the criminal case was not considered by the Director General of Police, Punjab while dismissing the review appeal against the earlier orders passed by the authorities. The Inspector General of Police had specifically and very strongly recommended the case of the petitioner to the Director General of Police, Punjab on 24.07.2017. Whereby, it was recommended that the case of petitioner be reconsidered on the basis of judgment of acquittal passed by the Additional Sessions Judge, Moga.

13. Learned Senior counsel also argued further that even the Inspector General of Police, NRI falsified the one sided report given by Superintendent of Police(D), Moga on the basis of which petitioner was

dismissed from service. The evidence in both the cases was same i.e. cases arising out of FIR No. 31 dated 14.04.2015 and FIR No. 14 dated 15.04.2015. In FIR No. 31 dated 14.04.2015, the petitioner has been honourably acquitted and in FIR No. 14 dated 15.04.2015 the petitioner has been exonerated from the charges levelled against him on the basis of the judgment passed by the Additional Sessions Judge, Moga dated 27.04.2016 in revision petition against the judgment dated 01.12.2015 passed by the Court of Judicial Magistrate Ist Class, Moga.

14. Learned Senior counsel further contended that the impugned orders have been passed by the authorities without giving any opportunity of hearing to the petitioner in violation of principles of *audi alteram partem*. Not even a single contention raised by the petitioner in appeal/ revision/ review/ appeal/ mercy petition filed before different authorities have been dealt with while passing the impugned order.

15. Adverting to the issue of competency of respondent No.4 to pass impugned punishment order. Affidavit dated 21.08.2019 filed by respondents, gives the break up of the sanctioned strength of 791 cadre posts of Inspectors, under column(h), Crime Wing is shown in the category Intelligence Wing. An Inspector of Crime Wing does not, therefore, fall under the cadre of the District Police and as a necessary corollary, Deputy Inspector General of Police, Ferozepur Range cannot thus be held to be competent authority to pass punishment order dated 21.04.2015.

16. Furthermore, vide interim order dated 17.08.2019, this Court had asked the respondents to place on record the documents to establish that Deputy Inspector General of Police, Ferozepur Range was the competent authority to dismiss the petitioner from service. In compliance thereof, the

respondents though filed an affidavit of Mr. Pritam Singh, PPS, Assistant Inspector General of Police, Punjab dated 21.08.2019 and also attached four documents, but from none of the documents, it can be ascertained that Deputy Inspector General of Police, Ferozepur Range was competent authority of Inspectors posted at Crime Branch, Chandigarh. On the contrary, affidavit dated 21.08.2019 (Annexure R-3) sworn by Sh. Pritam Singh, PPS states that Crime Wing is a separate wing and is not covered under the District Police. What emerges clearly therefrom is that respondent No.4 was not the competent authority to dismiss the petitioner from service.

17. In the aforesaid premise, punishment order, if at all, ought to have been passed by the Deputy Inspector General(Crime) where the petitioner was posted at the time of being awarded punishment of dismissal from service. Accordingly, same is liable to be set aside having been passed by an authority lacking the legal competence.

18. As regards the merits of the case, I do not propose to deal with the same as it would be appropriate for the competent authority to take the same into consideration while passing the fresh orders after granting due opportunity to the petitioner to put forth his defence.

19. In view of my discussion above and reasoning contained therein, the punishment order is set aside and as a necessary consequence, the impugned orders 21.04.2015(Annexure P-2), 18.12.2015 (Annexure P-3), 17.04.2017 (Annexure P-4), dated 24.08.2017 (Annexure P-6) and dated 05.07.2018 (Annexure P-9) are also set aside.

20. The writ petition is disposed of with a liberty to the competent authority to pass fresh orders. I may hasten to add here that I may have made certain observations regarding merits of the case, but the same are

merely in order to record the arguments of learned Senior counsel and are at the most obiter dictum. The competent authority shall be at full liberty to apply its independent mind while passing the fresh orders, in accordance with law.

(ARUN MONGA)
JUDGE

September 18, 2019
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| 1. | Whether speaking/ reasoned: | Yes/ No |
| 2. | Whether reportable: | Yes/ No |