

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

**CWP-8773-2014 (O&M)
Date of decision : 13.03.2019**

Joginder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sandeep Arora, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN J. (ORAL)

This writ petition under Articles 226/227 of the Constitution of India has been filed for the issuance of a writ of Certiorari quashing impugned order dated 20.01.2014 (Annexure P-8), passed by respondent No.2, thereby compulsorily retiring the petitioner w.e.f. 17.06.2010.

The petitioner, a Driver in the Punjab Roadways, was convicted under Section 326 IPC and sentenced to undergo rigorous imprisonment for a period of 5 years vide judgment/order dated 23.12.2008, in FIR No.110 of 2002 under Sections 307, 326 IPC at P.S. Lambra. Feeling aggrieved, the petitioner preferred criminal appeal bearing CRA-S-128-SB-2009 before this Court which is still pending adjudication. However, during the pendency of the instant petition, respondent No.3 initiated proceedings under Rule 13(1)

of the Punjab Civil Services (Punishment & Appeal) Rules, and dismissed him from service vide order dated 17.06.2010/24.06.2010 (Annexure P-2). Thereafter, the petitioner preferred appeal before respondent No.2 for setting aside the impugned order of dismissal (Annexure P-2). However, vide memo dated 12.06.2012 (Annexure P-6), it was informed that the appeal of the petitioner has been kept pending awaiting adjudication of the criminal appeal preferred by him before this Court. Thereafter, the petitioner filed CWP-17353-2013 seeking direction to the respondents to decide the appeal preferred by him against order dated 17.06.2010/24.06.2010 (Annexure P-2). The writ petition came to be decided by this Court vide order dated 12.08.2012 (Annexure P-7), directing respondent No.2 to consider and decide the statutory appeal. In pursuance thereof, the matter was reconsidered by respondent No.2 and vide impugned order dated 20.01.2014 (Annexure P-8), the petitioner was ordered to be compulsorily retired w.e.f. 17.06.2010. Hence, the instant petition.

Learned counsel for the petitioner contends that an appeal preferred by the convict against his conviction is continuation of the proceedings in the main case and it was improper and illegal for the respondents to pass the impugned orders. It is further submitted that the offence allegedly committed by the petitioner does not involve moral turpitude, therefore, the punishment of dismissal/compulsory retirement deserves to be set aside. Lastly, it is submitted that the order of dismissal passed by respondent No.2 against the petitioner having been set aside, the order of compulsory retirement being punitive in nature, ought not have

been passed retrospectively w.e.f. 17.06.2010 and the petitioner is entitled to full pension on the basis of the length of service put in by him.

On the other hand, learned State counsel submits that in the statutory appeal preferred by the petitioner, already a lenient view has been taken and the order of dismissal from service has been converted into compulsory retirement. The period during which the petitioner remained out of service was treated as without pay and the same has been counted towards pensionary benefits.

Heard.

The grouse of the petitioner is that during the pendency of the criminal appeal against conviction before this Court, the petitioner had been proceeded against departmentally and a punishment of compulsory retirement had been inflicted upon him. The decision taken by the department has been stated to be taken in haste and in the event of his acquittal by this Court in the appeal, an irreparable loss would have already been caused to him on account of his compulsory retirement. However, the stand taken by the petitioner is misplaced inasmuch as even his acquittal by this Court in criminal proceedings may not entitle him to reinstatement. In a recent judgment rendered by Hon'ble the Supreme Court in ***Union Territory, Chandigarh Administration and others Vs. Pradeep Kumar and another***, Civil Appeal No.67 of 2018, decided on 08.01.2018, it has been observed as under:-

“13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the

antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in Mehar Singh and Parvez Khan cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated.....”

As of now, the petitioner is admittedly a convict under Section 326 IPC and has been awarded imprisonment for a period of five years. A perusal of the case file reveals that due procedure had been followed by the respondents before passing the impugned orders and no fault can be found therein.

In view of the above, finding no merit in the instant petition, the same is hereby dismissed.

13.03.2019*atulsethi***(JITENDRA CHAUHAN)
JUDGE**

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No