

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

**CWP-12035-2016 (O&M)
Date of Decision :14.02.2020**

Amarjit Singh

... Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. K.S.Sidhu, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

SUVIR SEHGAL, J.

Petitioner has approached this Court for issuance of a writ in the nature of certiorari for quashing the impugned order dated 24.10.2010, Annexure P-7 passed by respondent No.5 whereby the petitioner was dismissed from service and subsequent orders dated 17.07.2013, 28.10.2013, 06.03.2013 and 15.03.2016, Annexures P-8 to P-10 and P-15 respectively were passed by respondents No.1 to 4 whereby his appeal, revision and mercy petition were rejected. Petitioner has further sought a writ in the nature of mandamus directing the respondents to reinstate him in service from the date of dismissal with all consequential benefits or in the alternative to consider his case under Rule 16.2 of the Punjab Police Rules, 1934 for the purpose of pension by keeping in view his length of service.

Facts, in brief, leading to the filing of the present petition are that the father of the petitioner is a war veteran. The petitioner was

born on 10.12.1972. He was directly recruited in service on 23.01.1995 when he was adjudged as the best athlete. Thereafter the petitioner got positions in the 72nd Punjab Athletics Championship in the year 1995 and he was selected three times in National Cadet Corps to be part of parade on the Independence Day. Initially, the petitioner served in the Punjab Armed Police and thereafter, in the Commando Unit which was specially constituted to tackle terrorism. During his service, he was awarded more than 18 Commendation Certificates. Petitioner got married to Sneh Lata on 29.06.2001. However, the relations with his wife became strained. On 21.05.2003, his wife lodged an FIR No.78 under Sections 406 and 498-A IPC at Police Station Tapa, District Barnala against him and his family members, who were tried as accused. By judgment dated 03.02.2010, the Judicial Magistrate Ist Class, Barnala convicted the petitioner and his mother under Section 498-A IPC for two years rigorous imprisonment and imposed fine of Rs.1500/- each. An appeal filed against conviction was dismissed qua the petitioner by the Sessions Court on 15.07.2010, however, the conviction of his mother was set aside. The petitioner preferred Criminal Revision No.2066 of 2010 before this Court which was dismissed on 02.08.2010. The petitioner completed his sentence and was released from prison on 04.02.2012. The Director General of Police, Punjab issued revised guidelines for punishing employees who had been convicted in criminal cases vide memo dated 18.05.2010, Annexure P-5. On 24.10.2010, Annexure P-7, the Senior Superintendent of Police, respondent No.5 passed the impugned order dismissing the petitioner from service on the basis of his conviction by relying upon the revised guidelines, Annexure P-5. Aggrieved against the dismissal order, the

petitioner filed statutory appeal before the Deputy Inspector General of Police, Bathinda, respondent No.4 which was dismissed vide impugned order dated 17.07.2013, Annexure P-8. Revision petition filed by the petitioner was dismissed by the Inspector General of Police, Bathinda, respondent No.3 on 28.10.2013, Annexure P-9. Appeal filed by the petitioner before the Director General of Police, Punjab, respondent No.2 was dismissed vide order dated 06.03.2014 which was communicated to the petitioner vide letter dated 26.04.2014, Annexure P-10. He submitted a revision-cum-mercy petition. In the meantime, the petitioner arrived at a settlement with his wife. A decree of divorce by mutual consent was granted by the District Judge on 07.10.2014, Annexure P-12. His wife executed an affidavit dated 09.09.2015, Annexure P-13 to the effect that she has no objection in case the petitioner is taken back in service. The petitioner submitted all these documents to respondent No.1 and filed a review-cum-mercy petition on 23.9.2015, Annexure P-14. However, the same also came to be rejected on 15.03.2016, Annexure P-15.

Upon notice being issued, the writ petition was contested by the respondents by filing a reply wherein it was submitted that the petitioner had been convicted of an offence which involved moral turpitude. The petitioner was dismissed from service in view of the instructions dated 18.05.2010, which provided that in cases of offence for which punishment prescribed in Indian Penal Code is imprisonment for 3 years or more, dismissal of the police official is the norm. Petitioner filed replication to the reply filed by the respondents re-asserting the stand taken in the writ petition.

Learned counsel for the parties were heard and record was perused with their able assistance.

The counsel for the petitioner has submitted that the revised guidelines dated 18.05.2010 which were issued by the respondent authorities came up for consideration before this Court in CWP No.19578 of 2011 and by judgment dated 28.02.2013, Annexure P-16, sub-para (ii) and (iii) of para 1 thereof was set aside. Sub para (ii) provided that where a police official is convicted on a criminal charge for an offence where the punishment prescribed is more than three years, dismissal of such official should be the norm. He further submits that in any case, the offence under Sections 406, 498-A IPC was an offence arising out of a matrimonial dispute which was personal in nature and since the petitioner had settled the dispute with his wife and she had executed an affidavit, the conviction order stood nullified. This aspect, according to him, should have been taken into consideration by the respondent authorities while passing the impugned orders.

On the other hand, learned State counsel could not deny the fact that sub-para (ii) and (iii) of para 1 of the guidelines dated 18.05.2010 had been quashed. However, he supported the orders passed by the authorities on the ground that the offence under Section 406 and 498-A of IPC is an offence which involves moral turpitude and a person who is convicted for demanding dowry, harassing and maltreating his wife cannot be said to be a person with good morals. Reliance was further placed on Rule 16.2(2) of the Punjab Police Rules, 1934, to justify the action.

A perusal of the order dated 24.10.2010, Annexure P-7 passed by respondent No.5 shows that the order has been passed by following the guidelines dated 18.05.2010. The effective extract of the

order is reproduced hereunder:-

“Now Director General of Police, Punjab Estt.-2 Branch vide his letter No. 8751-8850/E-2(1) dated 07.10.2010 has written that action against Punjab Police Officers/Employees punished by the different courts under different sections will be taken keeping in view the instructions issued by this office vide No.3550-3830/E-2(1) dated 18.05.2010 and Punjab Police Rules 16.2 Sub Clause (2).

The undersigned thoroughly perused the instruction received from the office of Director General of Police, Punjab, Chandigarh, vide No.3750-3830/E-2(1) dated 18.05.2010 and Punjab Police Rules 16.2 Sub Clause (2), according to perusal the above offences committed by Constable Amarjit Singh No.98/C.T.S. now 1174/Bathinda according to that against him case under Sections 498-A, 406 IPC at P.S. Tapa, Distt. Barnala, has been registered, which according to Indian Penal Code, 1860, read with Criminal Procedure 1973 in this case as per 498-A maximum 3 years imprisonment and fine can be awarded. Therefore, the case of this employee comes under this section, which fulfills the instructions of para No.1(1) sub para (2) dated 18.05.2010 in which it is entered as under:-

“ii) When an enrolled police officer is convicted by trial Court on a criminal charge for an offence where the prescribed punishment in the Indian Penal

Code, 1860 read with the Criminal Procedure, 1973 is more than 3 years, dismissal should be the norm irrespective of the quantum of the sentence awarded by the court.”

According to Punjab Police Rules 16.2 sub clause (2) if character of recruited police officer in any criminal case is proved and he is awarded the punishment of imprisonment, then he will be dismissed.

The undersigned as per Punjab Police Rules in para No.16.2 sub clause (2) and the guidelines issued by the office of Hon'ble Director General of Police, Punjab, Chandigarh, vide letter No.3750-3830/E-11(1) dated 18.05.2011 according to para No.1 of sub para No.2, the evidence on record was thoroughly perused and after perusal I immediately dismiss the Constable Amarjit Singh No.98/C.T.S. now 1174/Bathinda from the Police Department. Besides this he is also advised that if he want to file any appeal against the order of this Punishment then he can file the same with the Hon'ble D.I.G. Range within 30 days. One copy of order be delivered free of cost to the delinquent employee.

The order be entered in the register.”

An examination of the above reproduced reasoning given by respondent No.5 shows that the order is based simply on the guidelines. No reference has been made to the conduct leading to the conviction of the petitioner. Not only this even the appellate, revisional and other higher authorities have passed the orders relying on the guidelines. This

is despite the fact that the guidelines, Annexure P-5 had been initially stayed in the year 2011 and subsequently part of guidelines came to be quashed by this Court on 28.02.2013, Annexure P-16 by observing as under:-

“We, therefore, set aside sub-paras (ii) and (iii) of Para-1 of the impugned guidelines in the present form, however, giving liberty to the respondents, at the same time, to take out fresh guidelines in the modified form taking care of the law stated in this judgment.”

It, therefore, was obligatory on the authorities to have taken into consideration the fact that the guidelines which formed the basis of the order dismissing the petitioner from service did not withstand the judicial scrutiny. As such the dismissal order passed by the authorities deserved to be reconsidered. In view of the fact that the respondent-authorities have ignored the orders of this Court, the Court is left with no option but to set aside the impugned orders and remit the matter to the disciplinary authority to relook into the entire matter and pass a fresh order.

Accordingly, the impugned orders Annexures P-7, P-8 to P-10 and P-15 are hereby quashed. The disciplinary authority, Senior Superintendent of Police, Bathinda- respondent No.5 is directed to examine the matter afresh and pass a speaking order in accordance with law within a period of 4 months from the date of receipt of certified copy of this order. However, order of re-instatement of the petitioner shall be kept in abeyance till fresh consideration by the disciplinary authority-respondent No.5 and would depend upon the outcome of the same.

Writ petition is disposed of in the above terms.

14.02.2020

pooja saini

(SUVIR SEHGAL)

JUDGE

Whether speaking/reasoned?

Yes

Whether reportable?

Yes