

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1883 of 2016 (O&M)

Date of Decision: 28.02.2020

Balbir Singh

... Petitioner

VS.

Additional Chief Secretary to Govt. of Haryana & Ors. ... Respondents

CORAM: HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

Present: Mr. Mohinder Pal, Advocate for the petitioner

Ms. Safia Gupta, AAG Haryana

GIRISH AGNIHOTRI, J. (Oral)

(1) Petitioner – Balbir Singh has filed the present writ petition *inter alia*, with a prayer to quash the order/notice dated 30.11.2015 (P11). Vide the impugned notice (P11), the petitioner was conveyed the decision of the competent authority to serve 3 months' notice and it was also clarified that he shall retire from service after expiry of notice period.

(2) It is a matter of fact that on 29.02.2016 the petitioner was ordered to retire w.e.f. 01.03.2016. Learned counsel for the petitioner submits that the ACR period mentioned in the notice which is regarding suspension period of the petitioner cannot be taken adverse against him. He submits that during the suspension period, the ACR could not be treated to be adverse.

(3) Records show that vide order dated 15.05.2017, learned State counsel was directed by this Court to verify whether the petitioner has been exonerated and acquitted in the disciplinary proceedings as well as in the criminal case which are pointed out by learned counsel for the petitioner.

(4) The order of retirement dated 29.02.2016 (R1/T) notices that the basis to order premature retirement of the petitioner was ACR period

from 22.10.2013 to 31.03.2014. In the order, FIR No.968 dated 23.10.2013 has also been noticed to be pending against the petitioner. It has also been noticed that the departmental enquiry which has been initiated vide order dated 04.07.2015 is said to be pending against the petitioner. In view of these very circumstances, the competent authority took a decision on 29.02.2016 to retire the petitioner w.e.f. 01.03.2016.

(5) Meanwhile, on 09.03.2016, Sh.OP Narwal, IPS, SP, Fatehabad has filed the written statement. Thereafter another affidavit has been filed on 23.05.2017 by Sh. Kuldeep Singh, IPS, SP, Fatehabad wherein it has been averred that the petitioner has been exonerated from the charges leveled against him and thus the departmental enquiry against the petitioner has been filed vide order No.437-41/ST dated 09.06.2016. In para 3 of the said written statement, it has been further averred that the petitioner has also been acquitted in the criminal case i.e. FIR No.968 dated 23.10.2013 u/s 7 read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 vide order dated 02.01.2017. Still further, it is averred that vide order dated 06.04.2017 passed by the Director General of Police, Haryana, the adverse remarks recorded in the ACR of the petitioner for the period from 22.10.2013 to 31.03.2014 has also been expunged.

(6) In this view of the matter, the writ petition is disposed of with the following directions:-

- (i) The competent authority, namely, the Superintendent of Police, Fatehabad is directed to pass a fresh order *de hors* the order dated 29.02.2016 (R1/T) in view of the above 3 facts in relation to the petitioner, namely, expunging of his ACR; his acquittal in the criminal case and exoneration in the departmental enquiry;

(ii) Let the above exercise be completed within 2 months from the date of receipt of certified copy of this order;

(iii) In case, the competent authority comes to a conclusion that the petitioner is entitled to be treated as on duty and the order dated 29.02.2016 is treated to be withdrawn, the petitioner shall be released all consequential benefits within a period of 2 months from the date of completion of the above exercise.

(7) So ordered.

28.02.2020

Vvishal

(Girish Agnihotri)
Judge

1. Whether speaking/reasoned?

Yes/No

2. Whether reportable?

Yes/No