

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

237

CWP-27282-2018 (O&M)
Date of decision: 19.02.2020

Harjinder Singh

.....Petitioner

versus

State of Punjab and others

....Respondents

CORAM: Hon'ble Mr. Justice Girish Agnihotri

Present: Mr. G.S. Bal, Senior Advocate with
Mr. Ashish Mehlawat, Advocate
for the petitioner.

Mr. Rajesh Bhardwaj, Sr. DAG, Punjab.

GIRISH AGNIHOTRI, J. (Oral)

The present petition has been filed by petitioner-Harjinder Singh/Ex. Constable No.80/882 *inter alia* praying for quashing the termination order dated 29.07.2015 (Annexure P-2).

Vide order dated 29.07.2015, the Competent Authority i.e. Commandant, 80th Battalion, Punjab Armed Police, Jalandhar Cantt, has ordered that in exercise of powers under Article 311(2) of the Constitution of India read with Rule 16.2(2) of the Punjab Police Rules 1934, had ordered dismissal of the petitioner from service of the police department.

The order reveals that an FIR No.159 dated 22.07.2015, was registered at Jalandhar.

Learned Senior counsel appearing for the petitioner placed

reliance on the judgment dated 16.05.2018, passed in CRM-M-176-2017.

Vide the said judgment (copy of which is appended as Annexure P-4) dated 16.05.2018 FIR No.159 dated 22.07.2015 has been quashed qua the petitioners.

Learned counsel for the respondent on instructions from official, who has come to brief him, submits that there was some other case also against the petitioner.

Learned counsel for the petitioner submits that in the case FIR No.139 dated 26.07.2015 also, the petitioner has been acquitted vide judgment dated 04.10.2019.

Learned Senior Counsel relies on the judgment dated 08.04.2008, passed by the Division Bench of this Court in CWP-16605-2006. Learned counsel also relies on an another judgment dated 17.01.2003 in CWP-11245-1995. Para-4 of the judgment dated 08.04.2008, is reproduced hereunder:-

xxxx xxxx xxxx xxxx

“4. Admittedly, the respondents have not considered the case of the petitioner after his acquittal from the charges levelled against him, presumably on the ground that he has attained the age of supperannuation. Once the petitioner has been acquitted of the charges levelled against him, he is entitled to be reinstated in service with all consequential benefits as are admissible in law. May be due to efflux of time he can not be physically reinstated in service for the reason that he has attained the age of supernnuation but his claim for retiral benefits after regularizing the period of termination etc., is required to be considered by the respondents.”

Learned counsel also relies on a Division Bench judgment of this

Court dated 23.11.2000 in CWP-18048-1999. Para 7 of the judgment is reproduced hereunder:-

xxxx xxxx xxxx xxxx

“7. At this stage, we deem it necessary to advert to Rule 7.3 of the Punjab Civil Services Rules as applicable to Haryana State (for short “the Rules” Sub-rule (1) and (2) of Rule 7.3 of the Rules reads as under:-

“7.3 (1) When a Government employee, who has been dismissed, removed, compulsory retired or suspended, is reinstated, or would have been reinstated but for his retirement on superannuation the authority competent to order the reinstatement shall consider and made a specific order:-

(a) regarding the pay and allowances to be paid to the Government employee for the period of his absence from duty, occasioned by suspension and/or dismissal, removal or compulsory retirement ending with his reinstatement on or the date of his retirement on superannuation as the case may be, and

(b) Where the authority mentioned in sub-rule (1) is of opinion that the Government employee has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government employee shall be given the full pay and allowances to which, he would have been entitled, had he not been dismissed, removed compulsorily retired or suspended, as the case may be”

Rule 7.5 of the Rules also assumes importance. In this connection reference can well be made to Rule 7.5 of the Rules which deals with suspension during pendency of criminal proceedings and effect thereafter. It reads as under:-

“7.5 An employee of Government against whom proceeding have been taken either for his arrest for debt or on a criminal charge or who is detained under any law providing for preventing detention should be considered as under suspension for any period during which he is detained in custody or is undergoing imprisonment, and not allowed to draw any pay and allowances (other than any subsistence allowance that may be granted in accordance with the principle laid down in Rule 7.2) for such period until the final termination of the proceedings taken against him or until he is released from detention and allowed to rejoin duty, as the case may be. An adjustment of his allowance for such period should thereafter be made

according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him were for his arrest for debt), of its being proved that the officers liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified.” (emphasis added)

It is abundantly clear that Rule 7.3 of the Rules is the general rule, while in case, a person is acquitted, it is specific rule 7.5 of the Rules that would be attracted. The law is well settled that special rule will always taken precedence over the general rule and consequently it must follow that under Rule 7.5 of the rules, referred to above, the petitioner was entitled to the full back wages because, as mentioned above, the earlier decisions referred to above have little application in the present case.”

This Court in view of the above facts and circumstances, deems it appropriate to **dispose of** the present writ petition with the following directions:-

- (i) Respondent No.2 i.e. Director General of Police, Punjab Police Headquarter, Sector-9, Chandigarh, may himself or may direct the Competent Authority (in the present case, the impugned termination order was passed by respondent No.5-The Commandant, 80th Battalion, Punjab Armed Police, Jalandhar Cantt) to re-examine the matter. It is directed that *de hors* the termination order earlier passed on 29.07.2015, in view of the subsequent significant developments, the case of the petitioner deserves to be re-considered. The Competent Authority may examine the entitlement of the petitioner for reinstatement on account of having been acquitted/found not involved in two FIRs mainly in the judgment dated 16.05.2018, passed in FIR No.159 dated 22.07.2015.
- (ii) The Competent Authority as aforementioned, is directed to complete the exercise of re-consideration/passing the fresh

order within a period of four weeks from the date of receipt of certified copy of this order.

- (iii) The Competent Authority is further directed that on coming to the conclusion that the petitioner is entitled to be reinstated, all consequential orders be also passed in accordance with law within a period of one month from the date of decision so taken by the Competent Authority.

(GIRISH AGNIHOTRI)
JUDGE

19.02.2020

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Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No