

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

CWP No.7248 of 2021

Date of Decision :13.12.2021

Charan Singh s/o Shri Darshan Singh

....Petitioner

v/s

State of Punjab and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. Jaspal Singh Maanipur, Advocate for the petitioner.
Mr. Ayush Sarna, AAG, Punjab, for the State.

B.S. Walia, J.

[1] Prayer in the petition under Article 226 of the Constitution of India, is for the issuance of a writ, order or direction, especially in the nature of Certiorari for quashing impugned punishment order (Annexure P-4) dated 06.11.2004, order dismissing appeal (Annexure P-5) 16.01.2006 as well as order dismissing revision (Annexure P-7) dated 26.04.2007.

[2] Learned Counsel contends that the petitioner, who is an Ex-Serviceman, joined Punjab Police as a Constable on 21.05.1990 and was performing his duty without any complaint but was involved in a false case in FIR No.245 dated 21.11.2002 under Sections 304 Part-II, 285, 286, 337, 338, 188 IPC and 9-B of the Explosives Act registered at Police Station, C-Division, Amritsar on the allegation that he had engaged one Amrik Singh and others for manufacturing fire crackers in his house and on 21.11.2002 a lit rocket fell on the fire crackers and other explosive material, resulting in the death of Amrik Singh and Roshan Lal whereas Manga and Bikram Singh suffered burn injuries, leading to conviction of the petitioner

vide judgment (Annexure P-2) passed by the learned Addl. Sessions Judge, Amritsar dated 17.09.2004, sentencing him to rigorous imprisonment for a period of 05 years and to pay a fine of Rs.2000/- or in default to undergo further rigorous imprisonment for a period of 02 months under Section 304 Part-II IPC, rigorous imprisonment for a period of 01 year and to pay a fine of Rs.1000/- or in default to undergo further rigorous imprisonment for a period of 01 month under Section 9-B of the Explosives Act and to undergo rigorous imprisonment for a period of 03 months and to pay a fine of Rs.500/- or in default to undergo further rigorous imprisonment of 15 days under Section 188 IPC with all sentences of imprisonment to run concurrently besides, the period of detention already undergone by the petitioner during the course of investigation and trial to be set off against the imprisonment awarded.

[3] Learned counsel contends that pursuant to the conviction and punishment of the petitioner, respondent No.4, solely on the basis of conviction, dismissed the petitioner from service vide order (Annexure P-4) dated 06.11.2004 w.e.f. 17.09.2004 i.e. date of conviction and appeal against the order of dismissal was dismissed by the Appellate Authority i.e. respondent No. 3 vide order (Annexure P-5) dated 16.01.2006. Thereafter, the revision petition filed on 17.07.2006, under Rule 16.32 of the Punjab Police Rules along with application for condonation of delay was dismissed as time barred by respondent No.2 vide order (Annexure P-7) dated 26.04.2007.

[4] Learned counsel contended that the impugned order of dismissal (Annexure P-4) dated 06.11.2004 is based solely on the conviction of the petitioner without taking into account the conduct of the petitioner, leading to his conviction, therefore the same is contrary to the

law laid down by Hon'ble the Supreme Court in case titled as '**Union of India versus Tulsi Ram Patel**, 1985 (1) SLR 576, as per which conviction on a criminal charge does not entail automatic dismissal, removal or reduction in rank and the said decision was followed by a Division Bench of this Court in '**Hari Ram versus Dakshni Haryana Bijli Vitran Nigam Limited**', 2006(2) SCT 112, '**Kaur Singh and others versus Punjab State Electricity Board and others**', 2007(4) SCT 426, '**Kulwant Singh, Ex-Driver No.136 versus State of Punjab and others**', 2012(3) SCT, '**State of Haryana and another versus Ram Chander**', 2013(2) SCT 95, besides the authorities did not consider whether the petitioner was liable to imposition of any penalty other than of dismissal. Learned Counsel further contended that as per the decision in '**Baldev Singh versus Punjab State Power Corporation Ltd.**', CWP No.19079 of 2010 decided on 24.07.2019, and '**Rambhaj versus State of Haryana and others**', 2020 (1) SCT 693, the claim of the petitioner for pension was to be considered in terms of Rule 16.2 of the Punjab Police Rules, 1934 before passing order of dismissal while as per Rule 6.16-A of the Punjab Civil Services Rules Volume 11, on rendering ten years' service, an employee was entitled to pension and had the petitioner been retired compulsorily instead of dismissal, he may have got pensionary benefits, that even as per Rule 9.18 of the Punjab Police Rules, the petitioner was entitled to retiring pension on account of having rendered more than 13 years' service, that the Appellate as well as Revisional Authority did not take into account as to how and under what circumstances, the plea raised by the petitioner was not worthy of acceptance, therefore, the impugned order was contrary to the mandate of Rule 16.31 of the Punjab Police Rules as well as law laid down in '**Paramjit Singh versus State of Punjab and others**', 1996 1 RSJ 515, on account of not containing any reason, therefore, the

impugned order was liable to be set aside and the petitioner reinstated in service with all consequential benefits.

[5] Learned Asstt. AG, Punjab, on the other hand has vehemently opposed the plea for setting aside of the impugned orders and for reinstatement with all consequential benefits. Learned AAG contends that the petitioner was placed under suspension vide order (Annexure R-1) dated 04.12.2022 on account of his arrest in case FIR No.245 dated 21.11.2002 under Sections 304/283/286/337/338/188 IPC and 9-B of the Explosive Act, P.S.C. Division, Amritsar and sent to judicial custody on 24.11.2002 till 21.12.2002 when he was granted bail whereafter he was provisionally reinstated in service by the Deputy Inspector General of Police, Border Range, Amritsar vide order (Annexure R-2) dated 23.04.2003 without prejudice to the criminal case / departmental proceedings pending against him. Thereafter, the petitioner was again placed under suspension w.e.f. 09.07.2003 vide office orders (Annexure R-3) dated 18.07.2003 on account of his involvement in case FIR No.232 dated 09.07.2003 under Sections 61/1/14, Excise Act, PS Sadar, Amritsar. However, the petitioner was again reinstated in service by the Deputy Inspector General of Police, Border Range, Amritsar vide office order dated 20.01.2004 and further issued by the office vide Endst. No. 207581/B2 (Annexure R-4), dated 24.01.2004. Later the petitioner was convicted by the learned Addl. Sessions Judge, Amritsar vide judgment (Annexure P-2) whereupon the petitioner was dismissed from service vide order (Annexure R-5) in terms of the Punjab Police Rules 16.2(ii). Subsequently, on orders passed by Hon'ble the High Court dated 08.09.2005 in Criminal Appeal No.1888-SB-2004 the petitioner was released on bail from Central Jail, Amritsar. However, the appeal filed by the petitioner against order (Annexure P-4) was rejected by the Deputy

Inspector General of Police, Border Range, Amritsar vide order (Annexure R-6) dated 21.01.2006. Likewise, revision petition filed by the petitioner was rejected by the Inspector General of Police, Border Range, Amritsar, on the ground of the same being time barred vide order dated 26.04.2007. Thereafter, the petitioner filed revision-cum-mercy petition before the Director General of Police, Punjab, Chandigarh, which was also rejected by the competent authority. The criminal appeal filed by the petitioner was dismissed by Hon'ble the High Court vide order dated 27.07.2016 and the judgment of conviction recorded by the learned trial Court was upheld and surety bonds cancelled. Thereupon, the petitioner was sent to judicial custody and was released from Central Jail, Amritsar on 30.11.2019 after completion of sentence of imprisonment by taking into account the period of sentence actually undergone in the prison, benefit of concession earned and deposit of fine at Central Jail, Amritsar.

[6] Learned AAG further contends that the petitioner was dismissed from service for his conviction in the criminal case on account of his running an illegal business of manufacturing fire crackers due to which two labourers employed by him for manufacturing fire crackers lost their lives, for which he was held guilty by the learned trial Court, therefore it was not in a public interest to reinstate the petitioner in service, as the allegations against the petitioner related to commission of a heinous crime, despite being a member of a disciplined force, that the judgment of conviction as recorded by the learned trial court was upheld by Hon'ble the High Court and even SLP filed by the petitioner was dismissed by Hon'ble the Supreme Court besides the petition was highly belated.

[7] On query with regard to challenge to orders of punishment of dismissal (Annexure P-4) dated 06.11.2004 passed by respondent No.4,

Annexure P-5 dated 16.01.2006 passed by the Appellate Authority i.e. respondent No.3, as well as Annexure P-7 dated 26.04.2007 passed by the Revisional Authority, dismissing the appeal and revision and upholding the order of dismissal by way of the instant petition in the year 2021 i.e. after more than 14 years, learned counsel contends that the petitioner had earlier not challenged the impugned orders in the High Court on the ground that he was hopeful that he would be acquitted of the criminal charges and the impugned order having been passed only on the basis of conviction, as per Rule 16.3 of the Punjab Police Rules, 1934, the same was to be reviewed by the authority in view of the second proviso of Rule (2) of Rule 16.2 of the Punjab Police Rules but now that the conviction of the petitioner had been upheld upto Hon'ble the Supreme Court and the petitioner had undergone imprisonment as per punishment awarded, the instant petition was filed. Learned counsel relies on paragraph No. 24 of the decision of Hon'ble the Supreme Court in **Basanti Prasad's versus Chairman, Bihar School Examination Board and others**, 2009(4) RSJ 310, to contend that there is no delay. The same is reproduced as under:-

“24 As we have already noticed, the dismissal was in view of the order of conviction passed by the Magistrate, till that order is set aside by a superior forum, the appellant's husband or the appellant could not have questioned the same till he was acquitted by the Sessions Court. In view of these peculiar circumstances, in our view, the High Court was not justified in rejecting the prayer of the appellant primarily on the ground of delay and laches on the part of the appellant in questioning the order of termination passed on 4.8.1992 in a petition filed in the year 2005.”

[8] A perusal of the application for condonation of delay filed along with the revision petition (Annexure P-6) reveals that the petitioner had consulted a lawyer for filing a petition in the Hon'ble Punjab and Haryana High Court but was advised instead to file the revision petition under the provisions of the Punjab Police Rules, whereupon the revision petition along with application for condonation of 181 days delay was filed. Further, perusal of paragraph No.7 of the revision petition reveals that the petitioner has taken the same grounds in the instant petition namely, that mere conviction on a criminal charge did not entail automatic dismissal in terms of Rule 16.2 (ii) of the Punjab Police Rules, 1934 in view of the decision of '**Hari Ram's** case (supra), secondly, that the conduct of the petitioner was not taken into consideration while passing the order of dismissal, which was a mandatory requirement in terms of Rule 16.2(ii) of the Punjab Police Rules, 1934, likewise, the dismissal order had been passed solely on the basis of conviction without taking into account the conduct of the petitioner which led to his conviction *in derogation* of the law laid down by this Court in '**Om Parkash** versus ***Director Postal Services (Posts and Telegraphs Department) and others***', AIR 1973 P&H 1 and Hon'ble the Apex Court of India in '**Tulsi Ram Patel's** case (supra) and Division Bench judgement of Hon'ble High Court in '**Hari Ram's** case (supra), that the conviction of the petitioner did not constitute moral turpitude, therefore, could not be made the basis for dismissal in view of the decision in '**State of Punjab and others** versus **Hari Chand**', 1992(1) RSJ 553 etc.

[9] I have considered the submission of learned counsel for the parties.

[10] Admittedly, the petitioner was convicted and sentenced to undergo rigorous imprisonment of 05 years as per details given in judgment of conviction (Annexure P-2) dated 17.09.2004 on account of having indulged in illegal business of manufacturing fire crackers, leading to fire crackers and explosives stored in his house exploding and two labourers engaged in manufacturing fire crackers, dying, besides two other labourers receiving serious injuries. The order of conviction and sentence passed by the learned Addl. Sessions Judge, Amritsar was upheld by Hon'ble the High Court, as well as Hon'ble the Supreme Court and the petitioner underwent the sentence of imprisonment imposed upon him which is evident from certificate Annexure P-1 issued by the jail authorities.

[11] Order of dismissal (Annexure P-4) was passed by respondent No.4 on 06.11.2004. The same was upheld by the Appellate Authority vide order (Annexure P-5) dated 16.01.2006 by respondent No.3. Revision petition against the rejection of the appeal (Annexure P-5) was dismissed by the revisional authority vide order (Annexure P-7) dated 26.04.2007. The petitioner was released on bail on 08.09.2005 in Criminal Appeal No.1888-SB-2004 till dismissal of his criminal appeal on 27.07.2016 by the High Court and was taken into custody vide order dated 02.01.2017 and thereafter released from Central Jail, Amritsar on 30.11.2019 on his having undergone sentence of imprisonment awarded. However, despite having taken legal advice and having filed revision petition in the year 2006 and the same having been dismissed in the year 2007, and being on bail till the year 2016, the petitioner did not deem it appropriate to challenge the impugned order and chose to maintain a stoic silence and approached the Court after more than 14 years on the basis of a lame excuse that he had not challenged the impugned dismissal order in the hope that he would be

acquitted from the criminal charge. There is a gross delay of 14 years in challenging the impugned orders. The petitioner has failed to satisfy the Court that he was prevented by a sufficient cause from invoking the jurisdiction of this Court. Although challenge after acquittal would constitute a sufficient cause, but mere expectation that he was likely to be acquitted but was not acquitted does not constitute a sufficient cause. Although there is no dispute with regard to the proposition of law as per judgments relied upon by the petitioner but in view of the extra ordinary delay of 14 years in challenging the impugned order and no justifiable explanation having been given to ignore the delay, the petitioner not being ignorant of his rights as evident from the revision petition filed by him (Annexure P-6) dated 17.07.2006 in which he had raised identical grounds as raised in the instant petition, I do not find any ground whatsoever to interfere with the impugned orders after an inordinate delay of 14 years. Judgment of Hon'ble the Supreme Court in 'Basanti Prasad's case' (*supra*), is not applicable because in said case, conviction of the appellant was set aside and the petitioner therein was acquitted by the Sessions Court but in the instant case, the petitioner was never acquitted by any Court rather his conviction and sentence was upheld upto Hon'ble the Supreme Court.

[12] In **Naresh Kumar vs. State of Haryana and others 2004 (4) RSJ 652**, writ petition filed by the petitioner therein challenging his termination after delay of nine years was dismissed by a Division Bench, by relying upon the decision of a Constitution Bench of Hon'ble the Supreme Court in **State of Madhya Pradesh and another vs. Bhailal Bhai and others-AIR 1964 Supreme Court 1006**. Relevant extract of the same is reproduced as under:-

“The special remedy provided in Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it.

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“It is not easy nor is it desirable to lay down any rule for universal application. It may however be stated as a general rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. ”

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“The provisions of the Limitation Act do not as such apply to the granting of relief under Article 226. However, the maximum period fixed by the Legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable. ”

[13] The decision in Bhailal Bhai's case (supra) was followed by Hon'ble the Supreme Court in **M/s Tilokchand Motichand and others vs. H.B. Munshi and another-AIR 1970, Supreme Court 989** as also by an Eleven-Judges Bench of Hon'ble the Supreme Court in **Mafatlal Industries**

Ltd. Etc. Vs. Union of India etc. JT 1996 (1) SC 283, wherein it was held that the High Court should not entertain belated petitions. Likewise the Division Bench of this Court also relied upon the decision of Hon’ble the Supreme Court in **Kamini Kumar Das Choudhary vs. State of West Bengal and others, Rakesh Kumar vs State of Haryana & others AIR 1972 SC 2060**, to hold that a petition for quashing order of termination after a lapse of two years deserved to be dismissed on the ground of delay.

[14] No satisfactory explanation has been given for invoking the jurisdiction of this court after 14 years of the passing of the impugned orders. The writ petition is accordingly ***dismissed*** on ground of delay and laches.

(B.S. Walia)
Judge

13.12.2021
‘Rajneesh’

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No