

1)

CWP-17240-2020

Date of decision: 08.03.2021

Rani Devi

.....Petitioner

versus

State of Haryana and others

.....Respondents

2)

CWP-24220-2015

Date of decision: 08.03.2021

Rani Devi

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**Present:** Mr. Manish Soni, Advocate and
Mr. Tejeshwar Singh, Advocate
for the petitioner.Mr. Gaurav Jindal, Addl.A.G., Haryana
for the respondent-State.**FATEH DEEP SINGH, J.**

Due to outbreak of pandemic COVID-19, the instant case
is being taken up for hearing through video conferencing.

These are two separate civil writ petitions both under Articles 226/227 of the Constitution of India and were filed by the same petitioner-Rani Devi, one bearing CWP No.17240-2020 (in short referred to as the first petition) and CWP No.24220-2015 (hereinafter referred to as the second writ petition). Since, both these writ petitions are inter-dependent and inextricably interwoven in such a manner and, therefore, to facilitate easy disposal as well as brevity, are being taken up together and disposed of by this common order.

Undisputedly, the petitioner-Rani Devi had shown her date of birth as 06.10.1962 and was appointed as Head Constable on 11.09.1988/17.11.1988 under belt No.6930 and remained on list C-1 with effect from 05.07.1995 by virtue of office order dated 22.08.1995. The petitioner became officiating Head Constable on 08.10.2001 vide office order dated 09.10.2001 and was supposed to retire on 31.10.2020 afternoon on attaining the age of 58 years. By virtue of her hard work and dedication, the petitioner was promoted as Sub-Inspector under No.219/GGM when troubles started mounting upon her and she was ignored for being promoted to the post of Inspector. It was on 12.10.2020, the petitioner filed the first writ petition on the grounds that she had exhibited exemplary performance in sports/athletics and other competitions in the force and had put in hard efforts in the discharge of her official duties, as a consequence of which, she was commended on a number of occasions but due to her uprightness, had skirmishes and was

denied her promotion to Head Constable forcing her to file a civil suit which was decreed in her favour on 09.11.1999 and even, this Court in RSA-3508-2000 vide orders dated 17.11.2003 has held that the petitioner was entitled to promotion as Head Constable with effect from 15.11.1995. It is claimed that the authorities failed to implement the Court orders and it was, thereafter, on 02.04.2005, was promoted with effect from 15.12.1995 and her seniority was fixed above Head Constable-Daya Kaur bearing No.796/GGM and below Head Constable-Shobha Rani bearing No.456/FBD. It is alleged that the respondents had been trying to scuttle her rise in the service and even her seniority was wrongly fixed and was shown to be below that of Daya Kaur and which was, thereafter, rectified vide order dated 01.06.2004/02.04.2005 and, thereafter, was deemed to be senior to Sumitra Devi bearing No.209/FBD and Kamla Devi bearing No.328/FBD. Because of this hard burning, the respondents illegally promoted Sumitra Devi and Kamla Devi who were junior to the petitioner and with great difficulty, she got her promotion as Additional SHO and during her posting at Police Station Udyog Vihar, Gurugram during 27.08.2014 to 18.02.2015 the Commissioner of Police awarded her commendation certificate on Republic Day i.e. 26.01.2015. The primary grouse of the petitioner that upon posting of one Sube Singh as SHO on 11.02.2015 at Police Station Udyog Vihar, Gurugram, who happens to be in close proximity with the then Commissioner of Police, Gurugram, started devising ways and

means to suppress the good work of the petitioner and who interfered in the working of the petitioner without any substantial cause and, thus, termed that because of this, she was tried to be sidelined and her promotions scuttled at the whims and fancies of these influential persons. It is claimed that the juniors of the petitioner, namely, Sunita Rani bearing No.442/GGM, Geeta Rani and Suman Kumar, were promoted as Inspectors on 29.07.2019, whereas, Seema Rani and Usha Rani were promoted on 31.03.2020. It is claimed that the respondents for a motivated cause devised a mechanism and without substantial cause, in spite of the fact her ACRs had 48 good entries and over single stray entry, that too at the fag end of her career, made in the year 2015, compulsory retired her with effect from 19.10.2020 instead of her superannuation, which was supposed to be on 31.10.2020 afternoon and, thus, challenged this conduct of the respondents claiming promotions, quashment of adverse entry and entitlement to monetary benefits.

The respondents termed the averments of the petitioner to be figment of imagination, totally false and though, accepted the good entries and a single adverse entry, had claimed the work and conduct of the petitioner was not found satisfactory during the period 23.11.2014 to 31.03.2015 and has reiterated the fact that her integrity was found to be doubtful, for which, an advisory note was issued and her representation to the Director General of Police too, was declined against that very entry. The respondents has sought to take the aid

of Civil Services Rules, Haryana No.2759-4GSI-73/12854 dated 21.05.1973 to hammer home the point that officials/officers, whose integrity is considered doubtful, should not be brought on the slab of suitable official/officer for promotion and has termed the writ petition to be wholly without merits and sought its dismissal.

In the second writ petition, the petitioner has claimed similar writ of certiorari for quashment of order dated 16.09.2015 (Annexure P-3) with regard to expunging of adverse remarks recorded in her ACR which was rejected by the Director General of Police, Haryana. In the second writ petition, the factual scenario is akin to that of first writ petition and claimed that her working period before the reviewing authority was with effect from 23.11.2014 to 26.02.2015 as she remained on earned leave from 27.02.2015 to 30.03.2015 only of 60 days, which is less than three months and, therefore, in view of Government letter bearing No.2784/3570 dated 02.03.1971, the reporting authority could not record any remark on the work and conduct of the employee and since, it was less than three months, the same was not legally sustainable and she had reiterated her claim to be exemplary in overall performance in sports where she secured innumerable medals, certificates and awards, besides her work and conduct throughout her service was exemplary and, thus, was given commendation certificate at the Republic Day Parade. The petitioner has sought relief for expunging the adverse remarks in her ACR made by respondent No.2 besides her right

to dispensation of justice at the hands of the respondents. The respondents has similarly reiterated the averments of the written statement in the first writ petition on similar lines and denied that there was any illegal infirmity in the adverse remarks recorded against the working of the petitioner and admitted that the Reviewing Authority had excluded the period. The petitioner was on leave and that the observation was for the entire period with effect from 23.11.2014 to 31.03.2015 terming each and every claim of the petitioner to be figment of lies, distortion of true facts and denying the same, sought dismissal of the writs.

Upon hearing both the sides and on perusal of the records including the police file of the petitioner, none of the dates of appointment, promotion *et cetera* are subject to any dispute and the only rallying point which has been the bone of contention between the two sides is over the fact that out of total ACRs, recorded in respect of the petitioner in her career spanning over 32 years, numbering 49, 48 entries are good while there is only single entry of doubtful integrity, which pertains to period 23.11.2014 to 26.02.2015.

The Court had gone through her personal records and found that there is specific mention of her reliability being honest, dependable, disciplined with at times, special appreciation and it is only while she was posted as Sub-Inspector, this lone stray entry of adverse nature has come about. Strange enough in her career of more than 32 years, except this stray entry, there is nothing of

overwhelming nature to suspect the working of the petitioner while she was in the force. It is the own stand of the respondents that she has been promoted at various points of time in the hierarchy of the police force from the rank of Constable to that of Sub-Inspector is itself suggestive as to the clean service record of the petitioner which has prompted the authorities, her superiors to promote her besides her commendation certificates. It is also not denied that the petitioner happens to be good in sports and other activities, for which, she had earned medals for the force. A big question mark comes to the mind of the Court as to the sharp contradiction that has crept in the working of the respondents, when during a period of time, the petitioner was given commendation certificate on the eve of Republic Day Parade for performing extra-ordinary commendable job in the police force in the year 2014-15, how and by what means, during the same very period, when she remained posted under DCP (West) for 05 months and the DCP was supposed to write her ACR, how and by what means the Commissioner of Police, Gurugram made adverse remarks in her ACR instead of DCP, especially, when there is nothing by way of complaint of any type nor any departmental inquiry or proceedings have ever been initiated on that score which matters furthers the suspicion of the Court that all was not well with the working of the respondents at that point of time. Moreover, the then Commissioner of Police, Gurugram, who too, himself, was subject of scrutiny by the public for his conduct and

complaint by his female colleague, are matters which cannot be swept under the garb. Moreover, the Government Letter No.2784/3570 dated 02.03.1971 clearly ensures that no reporting authority should remark in the confidential report, unless she/he has seen the working of the official for at least three months, during the financial year. To the specific query of the Court, Mr. Gaurav Jindal, Addl.A.G., Haryana, the learned State counsel, was clearly at loss of words, when posed with this query, what further aggravates the suspicion of the Court which by now tends to be nearing truth is that the petitioner was supposed to retire on 31.10.2020 and how in an illegal manner, DCP Headquarters, Gurugram, who had passed order in 17814 dated 08.09.2020 regarding the superannuation on 31.10.2020, the Commissioner of Police ordered withdrawal of order dated 08.09.2020 and the petitioner was compulsory retired from the service with effect from 19.10.2020 while, the petitioner was on 15 days leave, smacks of arbitrariness, vindictiveness and illegal conduct of the respondents. What it appears to this Court that the adverse remarks were recorded for motivated cause to attain a sinister design when it is a settled proposition of law, note of which can be taken in the ratio laid down in "S.T. Ramesh versus State of Karnataka and another", 2007(9) SCC 436 that a Confidential Report cannot be contrary to the Government instructions and in a casual way, affecting the service career of an employee besides, as has been held in "The State of Haryana and others versus Mohinder Singh", 2012(2) SLR 710 by this Court in an

earlier pronouncement that though, Courts should not be valiant to interfere in such subjective satisfaction of the authorities, however, by way of judicial scrutiny in the matter of recording of adverse ACRs, where an employee administers clear and open bias at the hands of the reporting Officer against him and which is precisely, the case before this Court that it smacks of arbitrariness and total absence of materials justifying the recording of the same, the ratios laid down in “Union of India and others versus E.G. Nambudiri”, 1991(3) SCC 38 and “Swatantar Singh versus State of Haryana and others”, 1997(4) SCC 14 do not advance the case of the respondents as nowhere in the entire service record of the petitioner, it could be highlighted by what reasonable grounds, conclusion has been drawn over the integrity of the petitioner. More so, immediate prior thereto in the ACRs, she has been shown to be very hardworking, dedicated, intelligent police officer with outstanding track record and even the Commissioner of Police has recorded her to be strong, bold and hardworking. Though, during the period in question of this adverse remarks, the Joint Commissioner of Police Headquarters, Gurugram, did not record any adverse remarks against the petitioner and what is apparent from the service record is that the Commissioner of Police, Gurugram had made an entry in his hand for the period 23.11.2014 to 31.03.2015 (and both these officers were subject matter of controversy with each other during that relevant period) for which the Court takes judicial notice of the

arguments put forth by counsel for the petitioner. From this all, it is quite apparent that orders under assail are biased, illegal against the own Rules of the respondents and, therefore, on account of being manifested with illegality and perversity, both the writ petitions need to be allowed and the order dated 16.09.2015 (Annexure P-3) in second writ petition needs to be set aside and expunged from the ACR of the petitioner. Further on the basis of these findings, the first writ petition also deserves to be allowed in toto and though as is factually conceded at the bar, the petitioner, by now, has been made to retire, it would suffice the purpose if the petitioner is granted notional promotion accompanied by all her service benefits as if no adverse remarks having been passed and for which, she is entitled to all the arrears of salary pay benefits *et cetra* of that rank with effect from 26.10.2016 with interest at the rate of 12 per cent per annum from the day became due till realization of the amount.

Both the writ petitions stand disposed off.

08.03.2021

Neha

**(FATEH DEEP SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No