

[205] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21338-2020 (O&M)

Date of Decision : 11.11.2021

Aditya Sharma

...Petitioner

Versus

State of Punjab and Ors.

....Respondents

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

Present : Mr. Gurminder Singh, Sr. Advocate assisted by
Mr. Gurnoor Singh Sandhu, Advocate for the petitioner.

Mr. Kanisth Ganeriwala, DAG, Punjab.

B.S. Walia, J. (Oral)

[1] Prayer in the writ petition under Articles 226/227 of the Constitution of India is for the issuance of a writ of Certiorari for quashing order, Annexure P/29 dated 24.11.2020 as also for the issuance of a writ in the nature of Mandamus directing the official respondents to allow the petitioner to join duty against the post of Sub-Inspector forthwith.

[2] Learned Senior Counsel assisted by Mr. Gurnoor Singh Sandhu, Advocate contends that the petitioner was appointed as Sub-Inspector in the Punjab Police on the recommendation of the DGP (Punjab) vide appointment letter, Annexure P/1 dated 24.01.2019 whereafter on 31.07.2019, the petitioner pursuant to joining was sent to the Maharaja Ranjit Singh Punjab Police Academy for basic training. Unfortunately, vide order, Annexure P/23 dated 16.06.2020, services of

the petitioner were discharged in exercise of powers under Rule 12.8 of

the Punjab Police Rules, 1934 (hereinafter referred to as – ‘1934 Rules’) on the basis of two FIRs which were registered against the petitioner by his wife on account of matrimonial dispute going on between them and also on account of his absence from duty due to ill-health for which he had duly sought leave by submitting leave application but the same had neither been declined nor allowed. The petitioner submitted a detailed representation, Annexure P/24 dated 27.07.2020 to the predecessor-in-office of respondent No.1 i.e. the Additional Chief Secretary (Home) for review of order, Annexure P/23 dated 16.06.2020 under Rule 16.28 of the 1934 Rules. Pursuant thereto vide letter Annexure P/25 dated 07.08.2020, the petitioner as well as the representative of the office of the DGP i.e. IG (Administration) was called for personal hearing on the representation filed by the petitioner. Proceedings were held on 17.08.2020 before respondent No.1 who gave opportunity of hearing to the petitioner as well as to the representative of the DGP whereafter in exercise of powers under Rule 16.28 of the 1934 Rules, speaking order, Annexure P/26 dated 25.08.2020 was passed setting aside the order of discharge Annexure P/23 dated 16.06.2020 and allowing the petitioner to rejoin service. The petitioner submitted the aforementioned orders as also the joining letter but the petitioner was not allowed to join and in the meantime, the successor-in-office of respondent No.1 passed order, Annexure P/29 dated 24.11.2020 re-reviewing the orders passed by his predecessor on a request made by the DGP in derogation of the provisions of law applicable under the 1934 Rules and set aside order, Annexure P/26 dated 25.08.2020. It is order, Annexure P/29 dated 24.11.2020 which has been challenged before this Court in the instant petition.

[3] Sole argument of learned Sr. Counsel assisted by Mr. Gurnoor Singh Sandhu, Advocate is that order of discharge, Annexure P/23 dated 16.06.2020 was set aside on review by respondent No.1 vide order, Annexure P/26 dated 25.08.2020, and the petitioner had been allowed to rejoin service and that in the absence of a power of re-review, the action of respondent No.1 in passing order, Annexure P/29 dated 24.11.2020 was an *action coram non judice*.

[4] Learned State counsel on the other hand has contended that the impugned order has been passed by the competent authority, therefore, was immune from challenge.

[5] I have considered the submissions of learned counsel for the parties.

[6] Admittedly, the power of review vests in the State Government, IGP (now DGP), DIG (now IGP) and SP (now SSP) against the orders passed by their subordinates in exercise of powers under Rule 16.28 of the 1934 Rules (Volume II). Rule 16.28 is reproduced as under:-

“Rule 16.28, Punjab Police Rules 1934, Volume II

16.28. Powers to review proceedings. – (1) The Inspector-General, a Deputy Inspector-General, and a Superintendent of Police may call for the records of awards made by their subordinates and confirm, enhance, modify or annul the same, or make further investigation or direct such to be made before passing orders. [The State Government may also call for the records and review the awards made by the Inspector General of Police Punjab or by any other authority subordinate to him.]

(2) If an award of dismissal is annulled, the officer annulling it shall state whether it is to be regarded as suspension followed by reinstatement, or not. The

order should also state whether service previous to dismissal should count for pension or not.

(3) In all cases in which officers propose to enhance an award they shall, before passing final orders, give the defaulter concerned an opportunity of showing cause, either personally or in writing, why his punishment should not be enhanced.”

[7] Admittedly, in exercise of the aforesaid powers, the then respondent No.1 vide order Annexure P/26 dated 25.08.2020, set aside order, Annexure P/23 dated 16.06.2020, under Rule 12.8 of the 1934 Rules, discharging the petitioner from service.

[8] No doubt, order Annexure P/29 dated 24.11.2020 has been passed inter alia on the ground that predecessor of respondent No.1 had wrongly held that the order of discharge was to be passed by the DGP and not the IGP. However, learned Sr. Counsel assisted by Mr. Gurnoor Singh Sandhu, Advocate has urged that order, Annexure P/26 dated 25.08.2020 had been passed inter alia not only on the ground of competence of the officer to pass the order but also by taking into account the fact that the petitioner and the complainant were in a consensual relationship, had got married, pursuant thereto FIR, departmental enquiry as well as suspension of the petitioner from service had been settled and that in the circumstances, FIR No.91 dated 03.06.2020 under Sections 498-A and 323 IPC etc. seen in totality of circumstances did not amount to gross misconduct, besides, absence from duty from 25.05.2020 to 29.05.2020 and 05.06.2020 to 16.06.2020 were of minor nature, therefore, the impugned order, Annexure P/29 dated 24.11.2020 cancelling order Annexure P/26 dated 25.08.2020 and reviving order, Annexure P/23 dated 16.06.2020, is an unreasoned order but still he does

not challenge the impugned order on the ground that it has not been passed by the competent authority because in fact order, Annexure P/26 dated 25.08.2020 has wrongly taken into account that the order was not passed by the competent authority and that the order had been correctly passed by the competent authority i.e. the IGP.

[9] Learned Sr. Counsel assisted by Mr. Gurnoor Singh Sandhu, Advocate, however, contends that the impugned order is cryptic inasmuch as it only records that after reconsidering the record of service tenure of the petitioner and the cases registered against him and the misconduct for remaining absent from duty and because of bad service record, it had been decided to withdraw orders, Annexure P/26 dated 25.08.2020. Learned counsel contends that not only are the aforementioned orders cryptic and have been passed without giving opportunity of hearing for taking away a right which had accrued to the petitioner in terms of orders, Annexure P/26 dated 25.08.2020 but the same are de hors the provisions of Rule 16.28 of the 1934 Rules inasmuch as there is no power of re-review.

[10] Learned Senior Counsel assisted by Mr. Gurnoor Singh Sandhu, Advocate relies upon the decision of Hon'ble the Privy Council in **R.T. Rangachari Vs. Secretary of State for India in Council, AIR 1937 Privy Council 27**. In the aforementioned case, an official who had been allowed to retire after the order of retirement was in operation was removed from service and denied disability pension. Relevant extract of the decision of Hon'ble the Privy Council is reproduced as under:-

“In these circumstances the case becomes a case in which, after Government officials duly competent and duly authorized in that behalf have arrived honestly at one decision, their successors in office, after the decision has been acted upon and is in effective

operation purport to enter upon a reconsideration of the matter and to arrive at another and totally different decision. It seems to require no demonstration that an order purporting to remove the appellant from their service at a time when, as their Lordships hold, he had for some months duly and properly ceased to be in their service, was a mere nullity and cannot be sustained. It follows that in their Lordships' view the appellant had, and has, every right to complain of the stoppage of the pension as a breach of the rules relating to pensions. Both Courts below so held, and their Lordships are in entire agreement with their decision on this point."

[11] Learned Senior counsel has also referred to the decision of Hon'ble the Supreme Court in ***Deoki Nandan Parashar vs. The Agra Distt. Co-operative Bank, Agra and Others, 1973 (3) SCC 303***. Relevant extract of the same is reproduced as under:-

"10. It is contended before us on behalf of the petitioner/appellant that the former Registrar had passed an Order in favour of the petitioner in due exercise of his powers and as a result of that, Order the petitioner had actually resumed his service on September 4, 1966 and continued to be in service for more than a year thereafter, when, all of a sudden he was removed from service on the ground that the previous Order passed by the Registrar in his favour had been withdrawn by his successor on 17-10-1967. The allegation of mala fides made by the petitioner had not, been controverted. But for the purpose of this appeal Mr. Setalvad for the petitioner does not want to make any capital out of it. He is prepared to show that the view of the High Court that the Order was either under Rule 28 or 22 of the Service Rules and that neither required a reasonable opportunity being given

is quite erroneous. But he says that it is not necessary for him to press even that point because his chief grievance was that the successor of the Registrar had no authority whatsoever either under the Act or the Rules to withdraw an Order passed by his predecessor by which certain rights and obligations had been created. The predecessor's Order had set aside the resolution of the Board terminating the petitioner's service and the petitioner had been reinstated. The successor Registrar simply purported to withdraw his predecessor's Order without giving any reasons for his action; nor was the petitioner given an opportunity to show cause against the purported withdrawal. The Order made by the first Registrar, whether on merits it was right or wrong was an Order made with jurisdiction under Rule 101 of the Service Rules, and such a quasi judicial Order passed by a statutory authority like the Registrar in exercise of his jurisdiction was not liable to be simply withdrawn by an officer who succeeds him."

11. *We asked Mr. Shukla, appearing on behalf of the respondent Bank, to point out to us any authority statutory or otherwise, which enabled the successor Registrar to set aside, without notice to parties, a quasi judicial Order passed by his predecessor more than a year previously. Mr. Shukla was unable to invite our attention to any statute or legal authority in this connection. The petitioner had alleged mala fides. But for the purposes of disposing of this appeal is not necessary for us to deal with it in this appeal. The Registrar had no jurisdiction whatsoever "to withdraw" his predecessor's Order and his action in withdrawing it must be regarded as a nullity and of no effect. The consequence will be that the former Order of the Registrar passed on September 3, 1966 will continue to hold the field."*

[12] Rule 16.28 of the 1934 Rules only provides for review. There is no power of re-review. Despite query, learned DAG has not been able to point out any such power. Once order Annexure P/23 dated 16.06.2020 had been set aside in exercise of the powers of review by the then respondent No. 1 vide order Annexure P/ 26 dated 25.08.2020, no further power vested under Rule 16.28 to re review orders passed by the predecessor of respondent No. 1. In case the respondents were not satisfied with order Annexure P/26 dated 25.08.2020, the only recourse available to them was to challenge the same by way of an appropriate proceedings before a Court of law. The same was not done, instead recourse was made to a procedure contrary to law , thereby rendering the impugned order legally unsustainable.

[13] No other point has been argued by either side.

[14] Accordingly, in the light of the position as noted above, the writ petition is allowed. Impugned order, Annexure P/29 dated 24.11.2020 is set aside and the petitioner is ordered to be reinstated in terms of order, Annexure P/26 dated 25.08.2020. However, in view of statement of learned Sr. Counsel assisted by Mr. Gurnoor Singh Sandhu, Advocate, that the petitioner would not claim arrears for the period he was not allowed to work, it is ordered that the petitioner would not be entitled to arrears of pay but only continuity of service.

[15] Writ petition allowed in aforementioned terms.

(B.S. Walia)
Judge

11.11.2021
'Amit'