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

**CWP-12515-2021
Date of decision: 09.11.2022**

SHAMSHER SINGH ALIAS SHERA

...Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Jasbir Singh Mohri, Advocate
for the petitioner.

Mr. Sehajbir Singh Aulakh, AAG, Punjab.

JAISHREE THAKUR, J.

1. The instant writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of certiorari for quashing orders dated 25.05.2006 (Annexure P-1), dated 25.06.2007 (Annexure P-2), dated 22.01.2008 (Annexure P-4) and dated 20.05.2009 (Annexure P-14), communicated vide letter dated 05.04.2021 for the first time, as the petitioner has been dismissed from service by dispensing with departmental enquiry, on account of lodging of an FIR against him, whereas now the petitioner has been acquitted vide judgment dated 20.05.2008 (Annexure P-5) passed by the trial Court and further for issuance of a writ in the nature of mandamus directing the respondents to reinstate the petitioner w.e.f. 25.05.2006 along with all consequential benefits.

2. In brief, the facts of the case are that the petitioner herein joined the Punjab Police as Constable on 13.05.1992 and rendered more than 14 years of service. On 25.05.2006, a false complaint was made against the petitioner by one Geetika Puri. On the said complaint, an FIR No.145 dated 25.05.2006, under Sections 382 and 34 of the IPC, at Police Station Civil Line Amritsar was registered against the petitioner and another person. The allegations were that petitioner and one another person snatched purse of aforesaid Geetika Puri on 25.05.2006. On the basis of the said FIR, petitioner was dismissed from service on 25.05.2006 itself by the Senior Superintendent of Police, Amritsar vide order Annexure P-1 by exercising his powers by virtue of Rule 16.1 of the Punjab Police Rules, 1934 read with Section 7 of the Punjab Police Act, 1861 and Article 311(2)(b) of the Constitution of India, dispensing with the regular departmental inquiry. Against the order of the Senior Superintendent of Police, Amritsar, petitioner filed an appeal before the Deputy Inspector General of Police, Border Range, Amritsar and the said appeal was dismissed vide order dated 25.06.2007 (Annexure P-2). Aggrieved against the orders passed by the Senior Superintendent of Police, Amritsar and the Deputy Inspector General of Police, Border Range, Amritsar (Annexure P-1 and Annexure P-2 respectively), petitioner filed appeal-cum-mercy petition before the Inspector General of Police, Border Range, Amritsar but the same was also dismissed vide order dated 22.01.2008 (Annexure P-4).

3. Thereafter, the Chief Judicial Magistrate, Amritsar vide his judgment dated 20.05.2008 (Annexure P-5), acquitted the petitioner in FIR No.145 dated 25.05.2006. After the petitioner was acquitted, he submitted an appeal-cum-mercy petition before the Director General of Police, Punjab,

requesting to reinstate him in service with immediate effect with all consequential benefits. The petitioner also communicated about his acquittal to the Commissioner of Police, Amritsar vide representations dated 02.11.2011 and 05.03.2013 Annexures P-7 and P-8 respectively. In the year 2008 itself, the petitioner had met with an accident and suffered injuries in spine, head and chest. He was admitted in a hospital on 22.09.2008 and was discharged on 07.10.2008. The disability certificate issued by Medical Officer, Civil Hospital, Ajnala duly endorsed by Civil Medical Officer, Incharge, Civil Hospital, Ajnala would show that the petitioner suffered 100% permanent physical impairment and has locomotor disability. The medical record of the petitioner including his disability certificate is Annexure P-9. On 09.07.2013 also, the petitioner sent a legal notice (Annexure P-10) to respondents seeking his reinstatement, but to no avail. Accordingly, the petitioner filed Civil Writ Petition No.24248 of 2014 before this Court which was got dismissed as withdrawn on 27.11.2014 vide order Annexure P-11 with liberty to the petitioner to approach the respondents for redressal of his grievances. As the petitioner had already submitted an appeal-cum-mercy petition before the Director General of Police, Punjab (Annexure P-6) and no decision on the same had been taken or communicated to the petitioner, he submitted an application under Right to Information Act, 2005 seeking information about the fate of his appeal-cum-mercy petition. The respondents replied that Order No.4304/E-2(1) dated 20.05.2009 (Annexure P-14) had been passed on his appeal. Said order was communicated to the petitioner on 05.04.2021. It is in this background, the instant writ petition has been filed.

4. Learned counsel for the petitioner would contend that the petitioner had been falsely implicated in FIR No.145 dated 25.05.2006 and on the same very day, he was dismissed from service and the mandatory provision of conducting departmental inquiry was dispensed with. He would submit that conducting the departmental inquiry is a rule and dispensing with it, is an exception and moreover, impugned order dated 25.05.2006 (Annexure P-1) is silent as to why the departmental inquiry cannot be conducted. He further submits that the Chief Judicial Magistrate, Amritsar vide judgment dated 20.05.2008 (Annexure P-5), acquitted the petitioner in the aforesaid FIR and on the basis of said order, the petitioner ought to be reinstated back in service.

5. Learned counsel for the petitioner further submits that the impugned order dated 20.05.2009 (Annexure P-14) as passed by the Director General of Police, Punjab on the appeal-cum-mercy petition of the petitioner was not communicated to the petitioner and non-communication of the same, resulted in violation of petitioner's right to appeal. He would argue that he came to know about the impugned order dated 20.05.2009 vide letter dated 05.04.2021 (Annexure P-13) conveyed to him by the Assistant Inspector General of Police, Punjab. He would submit that petitioner met with an accident in the year 2008 and suffered 100% disability and it is the reason behind the delay in filing the instant writ petition.

6. Learned State counsel would submit that petitioner was found involved in other criminal and unlawful activities and in leaking important information to the criminal persons and he being a member of a disciplined force, tarnished the image of the police department in the eyes of general public and thus, regular departmental inquiry against the petitioner was not reasonable

in public interest. He would submit that the petitioner was dismissed from service on 25.05.2006 and his appeal was rejected by the Deputy Inspector General of Police, Border Range, Amritsar on 25.06.2007 (Annexure P-2). The petitioner was afforded maximum opportunities of being heard, but he did not bother to avail the same. He further submits that the petitioner filed appeal-cum-mercy petition before the Director General of Police, Punjab, Chandigarh, which was considered and rejected vide order dated 20.05.2009, copy of which was provided to the petitioner on 08.07.2009, under his proper signature, as would be evident from Annexure R-2.

7. Learned State counsel would further contend that the petitioner had previously filed civil suit on 01.06.2015 on the same cause of action, which was time barred and was dismissed in default on 10.09.2015 vide order Annexure R-3 by the Civil Judge (Junior Division), Amritsar. The petitioner again filed civil suit on 03.03.2016, which was also dismissed in default on 26.07.2017 vide order Annexure R-4 by the Civil Judge (Junior Division), Amritsar. He would further submit that now the petitioner has filed the present writ petition in the year 2021, but he has not mentioned about the civil suits filed by him before the Civil Courts, which were dismissed in default and thus, he has concealed material facts from this Court. He would contend that the instant writ petition itself also suffers from delay and laches and is liable to be dismissed.

8. I have heard learned counsel for the parties and have also perused the pleadings of the case.

9. From a reading of the reply filed, it is apparent that the petitioner has approached this Court seeking extraordinary relief and discretion without

disclosing all material facts pertaining to the litigation and as such the petitioner would be disentitled to the discretionary remedy from this Court under Article 226 of the Constitution of India. In **Shri K. Jayaram & Ors. versus Bangalore Development Authority & Ors., Civil Appeal No(s).7550-7553 of 2021 (Arising out of S.L.P.(C)No(S).26374-26377 of 2013)**, the Supreme Court has held that :

“12. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the Court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.”

10. Further, in **K.D. Sharma versus Steel Authority of India Limited and others (2008) 12 SCC 481**, it was held thus:

“34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.”

11. Admittedly, the petitioner herein was dismissed from service on 25.05.2006 and his appeal was rejected by the Deputy Inspector General of Police, Border Range, Amritsar on 25.06.2007 vide order Annexure P-2. The appeal-cum-mercy petition filed before the Director General of Police, Punjab, Chandigarh, was considered and rejected vide order dated 20.05.2009, copy of which was provided to the petitioner on 08.07.2009, under his proper signature, as would be evident from Annexure R-2. He did not take appropriate steps at the relevant time and after a lapse of several years, filed a civil suit seeking reinstatement, which stood dismissed in default at two occasions. There has been non-disclosure of the filing of the civil suits and dismissal of the same. There is also non-disclosure of the second suit filed and its subsequent dismissal. Suppression of material facts, in any case, would disentitle the petitioner to any relief under Article 226 of the Constitution of India.

12. Moreover, the petitioner has kept silent for several years i.e from 2009, when the mercy appeal was rejected and copy of the same was supplied to him without any inordinate delay as per Annexure R-2. The argument that he had suffered an injury leading to 100% disability, on which count, he did not avail of his remedy, is belied from the fact that he had been filing civil suits, which stood dismissed in default. It is only thereafter, he has filed the present writ petition.

13. Consequently, the instant writ petition, devoid of any merit, is hereby dismissed.

(JAISHREE THAKUR)
JUDGE

09.11.2022
Chetan Thakur

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