

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

CWP No.14026 of 2021 (O&M)

Date of Decision.31.08.2022

Shish Ram

...Petitioner

Vs

State of Punjab and another

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sidharth Grover, Advocate
for the petitioner.

Mr. APS Tung, DAG, Punjab.

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JAISHREE THAKUR J. (ORAL)

The petitioner has approached this Court seeking to assail order dated 29.04.2021 (P-9) passed by respondent No.2 vide which penalty of stoppage of five annual increments with immediate effect has been imposed upon him.

Learned counsel appearing on behalf of the petitioner herein would contend that on account of registration of an FIR No.26 dated 22.02.2006 under Section 18 of the NDPS Act at Police Station, Sector 3, Chandigarh, the petitioner herein was dismissed from service by invoking Article 311(2)(b) of the Constitution of India without any adequate reasons being given in the said order as to why departmental proceedings could not be held. Aggrieved against the said order, the petitioner approached this Court by way of filing a civil writ petition, which was allowed and the impugned order of dismissal from service by invoking Article 311(2)(b) of the Constitution of India was set aside. The respondent-State had been given opportunity to proceed against the petitioner in departmental proceedings. It is submitted that in the departmental enquiry that was held,

the petitioner has been found guilty and punishment of stoppage of five annual increments has been imposed and other benefits have been ignored. It is argued that the petitioner stands acquitted by the trial court on the ground that the prosecution had failed to comply with the provisions of Section 42 and 50 of the NDPS Act. Once prosecution had failed to establish the culpability of the petitioner and he was acquitted, departmental proceedings on the same cause of action could not have been initiated.

Learned counsel appearing on behalf of the respondent-State raises a preliminary objection that the instant petition is not maintainable, as the petitioner has remedy of appeal, which has to be availed at the very outset.

In view of the fact that the petitioner ought to have availed his remedy of appeal against the impugned order which is provided under Punjab Police Act, 1934 but he approached this Court, let his writ petition itself be treated as an appeal by the respondents and a decision be taken thereon by passing a speaking order in accordance with law, after considering all the pleas raised by the petitioner, within a period of one month from the date of receipt of certified copy of this order.

The writ petition stands disposed of in above terms.

(JAISHREE THAKUR)
JUDGE

August 31, 2022

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No