

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

CWP No.1885 of 2018 (O&M)
Date of Decision.12.05.2022

Parmod Kumar

...Petitioner

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Manjeet Singh, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

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JAISHREE THAKUR J. (ORAL)

C.M. No.18028-CWP-2018

C.M. No.18029-CWP-2018

The main civil writ petition, which is otherwise lying admitted, has been ordered to be fixed for hearing on 14.07.2022 on a similar application of petitioner bearing CM-13070-CWP-2021. Today the applications, filed at an earlier occasion, seeking similar relief, have been listed by the registry. Both the counsel for the parties are ready with arguments today in the main petition.

Both the instant applications are disposed of and the main writ petition is taken up for actual hearing today.

CWP No.1885 of 2018 (O&M)

The petitioner herein has approached this Court under Article 226/227 of the Constitution of India for quashing the impugned order dated 13.10.2015 passed by respondent No.4 whereby he has been dismissed from

service and the order dated 23.09.2016 whereby the said order has been upheld in appeal primarily on the ground that the appeal was time barred.

In brief, the facts are that the petitioner was appointed as a Constable in the year 2017 in the Haryana Police. He came to be nominated as an accused on the basis of complaint case and an FIR No.4 dated 30.01.2012 had been registered under Section 7 of the Prevention of Corruption Act and Section 342 IPC. On the basis of the said FIR, a departmental enquiry was conducted and the petitioner was dismissed from service vide order dated 13.10.2015. A statutory appeal was filed within the period of limitation on 08.11.2015, which remained pending consideration before the appellate authority. The petitioner came to be acquitted in the FIR on 02.05.2016, which factum was brought to the knowledge of the appellate authority and on an assurance given that the matter would be considered favourably in case the appeal is withdrawn, the petitioner with a bona fide belief that the order of dismissal would be modified, withdrew the appeal. However, as the order of dismissal continued to subsist, he preferred an application seeking recalling of the order and that his appeal be decided on merits. However, the said application stands dismissed on account of being barred by limitation.

At this stage, Mr. Tapan Kumar Yadav, learned counsel appearing for the respondent-State would point out that apart from the appeal being time barred, the revision petition preferred stands dismissed as well. It is further submitted that there is no infirmity in the order passed by the Commissioner of Police, Gurugram on the application seeking adjudication of the appeal on merits and therefore, no ground for interference is made out by

this Court. He also points out that DGP has also considered request of the petitioner and has rejected the same.

Learned counsel appearing for the petitioner would submit that due and fair opportunity should be given to the petitioner to have the appeal decided on merits.

I have heard learned counsel for the parties and have also perused the order passed by the Director General of Police in a revision petition filed by the petitioner. Admittedly, the petitioner herein, who had been dismissed from service filed appeal within the period of limitation and the same was withdrawn under the belief that his order of acquittal would be sufficient to have him reinstated in service. A reading of the order passed on application seeking to have the appeal decided on merits would reflect that the same stands dismissed on the ground of limitation itself whereas the order passed by the DGP in revision petition does not take into consideration any of the points raised therein other than the fact that the matter stood dismissed being time barred. Therefore, keeping in view the fact that the petitioner was under a bona fide belief that he would be reinstated in service, in case he would withdraw his appeal and when the same had not happened, his request for adjudication of the appeal on merit appears to be genuine. Consequently, taking into account that there was an order of acquittal in the hand of the petitioner at the time when he withdrew his appeal, may be under the belief that he would be reinstated in service, it would be expedient to set aside the order as passed on the application of the petitioner for re-hearing of the appeal. The petitioner will appear before the Appellate Authority on 24.06.2022 at 10 AM. Needless to say, question of limitation will not be raised considering the fact that the petitioner was diligent in moving

appropriate application for recalling and adjudication of the appeal on merits,
when he was not reinstated in service.

The writ petition stands disposed of in above terms.

(JAISHREE THAKUR)
JUDGE

May 12, 2022

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No